

**TOWN OF KEYSTONE
ORDINANCE NO. 2024-O-13**

AN ORDINANCE OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, DESIGNATING THE SITE SELECTION OF ARTERIAL HIGHWAYS, INTERCHANGES, AND COLLECTOR HIGHWAYS, THE SITE SELECTION AND CONSTRUCTION OF MAJOR NEW DOMESTIC WATER AND SEWAGE TREATMENT SYSTEMS AND MAJOR EXTENSION OF EXISTING DOMESTIC WATER AND SEWAGE TREATMENT SYSTEMS, AND THE SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY AS MATTERS OF STATE INTEREST, AND ENACTING *THE TOWN OF KEYSTONE AREAS AND ACTIVITIES OF STATE INTEREST* GOVERNING THE DESIGNATION, PERMITTING, REGULATION AND ADMINISTRATION OF MATTERS OF STATE INTEREST, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

WHEREAS, the Town of Keystone ("Town") is authorized to regulate the use and development of land under Colorado Revised Statutes Sections 31-23-101 *et seq.* and 29-20-101 *et seq.*; and

WHEREAS, the Town is authorized pursuant to the Areas and Activities of State Interest Act, Colorado Revised Statutes Sections 24-65.1-101, *et seq.* ("AASIA" or the "Act") to establish and designate certain areas and activities of state interest; and

WHEREAS, the AASIA authorizes the Town to adopt guidelines and regulations for administration of areas and activities of state interest, to establish and designate a permit procedure, receive applications for development in or conduct of matters of state interest, and to exercise other powers in connection therewith; and

WHEREAS, on November 12, 2024, the Town Council conducted a public hearing to consider designation of matters of State interest and adoption of guidelines and regulations for the administration thereof; and

WHEREAS, public notice of such hearing has been properly given; and

WHEREAS, the Town Council conducted a public hearing on the date and time noticed; and

WHEREAS, the Town Council having considered all relevant evidence regarding the proposed designations of activities of state interest; and

WHEREAS, the Town prepared regulations entitled "The Town of Keystone Areas and Activities of State Interest" dated November 12, 2024 (the "Regulations") to govern the designation, permitting, regulation, and administration of matters of state interest; and

WHEREAS, the Town Council desires to enact the Regulations; and

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WHEREAS, the Town Council set a public hearing, with proper notice provided, to consider adoption of the Regulations as required by law; and

WHEREAS, copies of the Regulations are available at the Town's office for review and inspection by the public; and

WHEREAS, the Town Council of the Town of Keystone, Colorado **FINDS AS FOLLOWS:**

1. The present and foreseeable intensity of growth and development within the Town and region supports the designation of the following activities of state interest and adoption of the Regulations pursuant to the Act:

- (a) Site selection of arterial highways, interchanges and collector highways;
- (b) Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems; and
- (c) Site selection and construction of major facilities of a public utility.

2. The designation of these activities as matters of state interest is intended to:

- (a) Enable and facilitate the local administration of site selection of arterial highways, interchanges, and collector highways, site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems, and the site selection and construction of major facilities of a public utility by establishing requirements that must be met before a site may be selected so that such site conforms to the permit approval criteria in the Regulations;
- (b) Ensure the historic and cultural significance of Keystone and its historic landscape is preserved;
- (c) Protect the natural, rural, and mountain character of the Town;
- (d) Prevent adverse impacts to the air and water quality in the Town;
- (e) Keep noise and light pollution to a minimum so as to preserve the quality of life in the Town;
- (f) Provide for the continuation of desirable local community patterns in the face of regional development pressures;

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(g) Ensure that such sites are compatible with surrounding land uses; and

(h) Encourage compliance with the Town's plans;

3. The enactment and adoption of the Regulations will facilitate the designation and administration of matters of state interest.

4. A fee in an amount necessary to cover the costs incurred in the review and approval of permit applications, including all hearings conducted thereof, will facilitate and reasonably cover the costs incurred in the administration of matters of state interest.

5. All requirements of law have been met, all public notices required have been given, and a public hearing has been held as required.

**THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO,
ORDAINS:**

Section 1. Designation of Matter of State Interest. The Town Council hereby designates the following activities as a matter of state interest:

(a) Site selection of arterial highways, interchanges and collector highways;

(b) Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems; and

(c) Site selection and construction of major facilities of a public utility.

Section 2. Boundaries of Area Covered by Designation.

(a) The site selection of any arterial highway or interchange or collector highway within the incorporated boundaries of the Town of Keystone, as those boundaries may change from time to time, shall be subject to this designation.

(b) The site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems within the incorporated boundaries of the Town of Keystone, as those boundaries may change from time to time, shall be subject to this designation.

(c) The site selection and construction of major facilities of a public utility within the incorporated boundaries of the Town of Keystone, as those boundaries may change from time to time, shall be subject to this designation.

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Section 3. Adoption of Guidelines and Regulations For Areas and Activities of State Interest. The Town of Keystone Areas and Activities of State Interest dated November 12, 2024, is hereby enacted and adopted by reference as the Town of Keystone Guidelines and Regulations For Areas and Activities of State Interest as if fully set out in this section without further additional, deletions, insertions, or changes.

Section 4. Purpose of Guidelines and Regulations For Areas and Activities of State Interest. The purpose of The Town of Keystone Areas and Activities of State Interest is to provide a comprehensive set of rules and regulations designed and intended to identify and regulate projects that could cause excessive noise, water, and/or air pollution, or which would otherwise degrade or threaten the existing environmental quality within the Town, promote efficient and economical use of public resources, and protect the public health, safety, welfare and the environment.

Section 5. Availability of Copies of Codes Adopted Hereby. At least one (1) certified true copy of the Town of Keystone Areas and Activities of State Interest enacted by this Ordinance shall be on file in the office of the Town Clerk and available for inspection during regular business hours.

Section 6. Enforcement and Penalties. The penalty provisions set forth in Section 4-10 of The Town of Keystone Areas and Activities of State Interest apply to any violation of any provision of this Ordinance or of the guidelines and regulations enacted hereby. Those penalty provisions are set forth *verbatim*, as follows:

It is unlawful and a violation of these regulations for any person to engage in or to undertake any development in an area designated pursuant to these regulations, or to conduct an activity designated pursuant to these regulations, without a permit issued pursuant to these regulations, or to fail or refuse to comply with permit requirements, or to act outside the authority of the permit. A separate violation shall be deemed to occur on each day that violation of this provision occurs or continues.

Section 7. Penalty. Any person convicted in the Municipal Court of a violation of any provision of the Regulations for which a different penalty is not specifically provided may be punished by a fine not exceeding two thousand seven hundred dollars (\$2,700.00), as adjusted for inflation on January 1, 2018, and on January 1 of each year thereafter. In addition, such person shall pay all costs and expenses in the case. Each day such violation continues shall be considered a separate offense.

Section 8. Repealer. All ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or

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superseded.

Section 9. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 10. Codification. This ordinance may be codified and numbered for purposes of codification without the need for further approval by the Town Council.

Section 11. Effective Date. This ordinance shall take effect and be enforced thirty (30) days after final publication.

INTRODUCED, READ AND PASSED AS AN ORDINANCE, ON FIRST READING, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS 22ND DAY OF OCTOBER 2024.

Signed by:

Kenneth D. Riley

Kenneth D. Riley, Mayor

ATTEST:

DocuSigned by:

Madeleine Sielw

Town Clerk

APPROVED AS TO FORM:

Signed by:

Jennifer Madsen

Town Attorney

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READ, PASSED AND ADOPTED WITH A ROLL CALL VOTE OF 7 IN FAVOR AND 0 OPPOSED ON SECOND READING, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS 12TH DAY OF NOVEMBER 2024.

Signed by:
Kenneth D. Riley

FFCC105F18734F9
Kenneth D. Riley, Mayor

ATTEST:
Signed by:
Madeline Sielo

04E4BE3E50A1224...
Town Clerk

APPROVED AS TO FORM:
Signed by:
Jennifer Madsen

89751994A1B74EC...
Town Attorney

TOWN OF KEYSTONE, COLORADO

Areas and Activities of State Interest

**Published by the Town Council
Town of Keystone, Colorado**

Areas and Activities of State Interest

Article I General provisions

Sec. 1-10 Title

The regulations set forth below may be cited as the "Keystone Regulations for Areas and Activities of State Interest," or the "Keystone 1041 Regulations"¹ and may be referred to as "these Regulations."

Sec. 1-20 Purpose and findings.

(a) The purpose of these Regulations is to facilitate identification, designation, and administration of matters of state interest consistent with the statutory requirements and criteria set forth in Sections 24-65.1-101, *et seq.*, C.R.S. as amended.

(b) The specific purposes are to:

- (1) Regulate and provide for a permitting system to change the physical environment to facilitate a project and to impose substantive requirements on the permittee to provide mitigation measures that minimize the harm or negates the severity of the harm resulting from those changes, and to require the permittee to pay compensatory mitigation for the purposes of offsetting those changes that are unavoidable;
- (2) Promote efficient and economical use of public resources; and
- (3) Protect the public health, safety, welfare and the environment.

(c) The Town Council finds that:

- (1) The notice and public hearing requirements of Section 24-65.1-404, C.R.S., have been followed in adopting these Regulations;
- (2) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within the Town;
- (3) These Regulations are necessary to protect the public health, safety, welfare, the environment, and historic, cultural and wildlife resources;
- (4) These Regulations apply to the entire Town; and
- (5) These Regulations interpret and apply to any provisions adopted for specific areas of state interest and specific activities of state interest which have been, or may be, designated by the Town Council.

¹The reference to "1041 Regulations" stems from the numbering of the original state legislative bill, H.B. 74-1041 which bill enacted Article 65.1 of Title 24, C.R.S., titled *Areas and Activities of State Interest*.

Sec. 1-30 Authority.

These Regulations are authorized by Colorado Revised Statutes Sections 24-65.1-101, *et seq.*, 31-23-101, *et seq.*, 29-20-101, *et seq.*, 24-32-111, and Article 15 of Title 31, C.R.S.

Sec. 1-40 Applicability.

These Regulations shall apply to all proceedings concerning the identification and designation by the Town Council of any area or activity of state interest and the control of development in any area of state interest or the conduct of any activity of state interest which has been or may hereafter be designated by the Town Council in any area of the town, whether on public or private land.

Sec. 1-50 Permit Required.

Other than as stated in Section 1-40, 1-50, and 3-50, no person may conduct a designated activity of state interest or develop in a designated area of state interest within the Town without first obtaining a permit or a permit amendment under these Regulations.

Sec. 1-60 Exemptions.

These Regulations shall not apply to the following:

- (a) Any proposed development plan issued a FONSI pursuant to Section 3-50.
- (b) Any fully constructed and operating project or facility that was lawfully developed under prior law in effect before the effective date of these Regulations that would be subject to these Regulations if it were currently proposed, may continue to operate, except that enlargement or expansion of any such project or facility shall require a permit under these Regulations unless an exemption exists or a FONSI is issued. An enlargement or expansion requiring a permit shall not include the maintenance, repair or replacement of existing buildings or structures associated with an existing facility, including retrofitting or updating technology, provided any changes do not result in a material change as determined by the Town Manager. Enlargements or expansions not requiring a permit may still be subject to an applicable Land Use Code development review process.
- (c) Any development in an area of state interest or any activity of state interest if, on May 17, 1974:
 - (1) The specific development or activity was covered by a current building permit issued by the Town;
 - (2) The specific development or activity was directly approved by the electorate of the state or the Town; provided that, approval by the electorate of any bond issue by itself shall not be construed as approval of the specific development or activity;
 - (3) The specific development or activity is on land which had been finally approved, with or without conditions, for planned unit development or for a use other than a subdivision substantially the same as planned unit development;

- (4) The specific development or activity is on land which was either zoned or rezoned in response to an application which specifically contemplated said specific development or activity; or
- (5) The specific development or activity is on land with respect to which a final plat for a subdivision had been approved, with or without conditions.

Sec. 1-70 Interpretation with other enactments and plans.

- (a) Whenever any provision of these Regulations is found to be inconsistent with any other ordinance, code, regulation, other enactment, or the comprehensive plan, the enactment imposing the more restrictive standards or requirements shall control.
- (b) In the event that any provision of these Regulations is found to be less stringent than the statutory criteria for administration of matters of state interest set forth in Sections 24-65.1-202 through 204, C.R.S., the statutory criteria shall control.
- (c) Provisions of these Regulations relating to nonconforming uses shall apply as expressly set forth herein and shall, to that extent only, supersede and control over corresponding provisions of the Land Use Code of the Town of Keystone relating to nonconforming uses.

Sec. 1-80 Maps.

Each map referred to in any ordinance adopted by the Town Council designating or regulating a particular area or activity of state interest is deemed incorporated herein as if set out in full. Maps referred to in any such ordinance shall be filed with and be available for inspection at the Town of Keystone Town Hall, 1628 Sts John Road, Keystone, CO, 80435, or by contacting info@keystoneco.gov.

Sec. 1-90 Definitions.

- (a) The words and terms defined by Sections 24-65.1-102 through 24-65.1-103, C.R.S., shall have the meanings set for in such Sections unless a clear and unmistakable intent is provided by these Regulations.
- (b) The words and terms used in these regulations shall have the meanings set forth below unless the context requires otherwise:

"Applicant" means any person or entity applying for a permit under these regulations.

"Comprehensive plan" means for purpose of these Regulations, all of the following: (i) the comprehensive or master plan of the Town of Keystone prepared and adopted in accordance with the authority provided by article 23, Title 31, C.R.S., regardless of title of the plan, as it may be amended and supplemented from time to time; (ii) any Town-adopted policies, procedures, or guidelines which pertain to, guide, or regulate the use of land, development, culture, trails, open space, parks, streets, roads, and transportation facilities; and (iii) any land use plan or policy adopted in cooperation with Summit County or any other government or quasi-government pursuant to an intergovernmental agreement or other formal action by the Town.

"Designation" means the legal procedure specified by Sections 24-65.1-101, *et seq.*, C.R.S., carried out by the Town Council.

"Developer" means any person engaging or proposing to engage in development in an area of state interest or in conduct of an activity of state interest designated or proposed to be designated under these regulations.

Finding of no significant impact (or FONSI) shall mean the decision by the Town Manager, or Town Manager's designee, as to whether a proposed development plan or activity, not otherwise exempted under these Regulations, will not have a significant impact on the human environment and for which a 1041 permit therefore will not be required.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. the overflow of water from channels;
- b. the unusual and rapid accumulation of runoff or surface waters from any source; or
- c. mudslides (*i.e.* mudflows) which are proximately caused by flooding as defined in clause b. above and which are sufficiently fluid so as to flow on and over the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

"Flood hazard area" means an area containing or directly affected by a flood.

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

- a. Mainstream floodplains;
- b. Debris-fan floodplains; or
- c. Dry wash channels and dry wash floodplains.

Impact means the negative physical or environmental effect or consequence that is the natural, necessary, and reasonable result of development, and can include non-environmental effects that are proximately related to the change in the physical environment.

"*Interceptor main*" means a pipeline that receives wastewater flows from collector sewers to a wastewater treatment facility or to another interceptor line or meeting other requirements of the Colorado Department of Public Health and Environment to be classified as an interceptor.

"*Layman's description*" means a general, nonlegal description and the popular name, if any, of the tract of land upon which the activity or development is to be conducted. The term "general description" means "layman's description."

"*Legal description*" is any description from which it is possible to locate accurately on the ground the boundaries of the land being described.

"*Mainstream floodplain*" means an area adjacent to a perennial stream, which area is subject to periodic flooding.

"Major new domestic water system" shall mean:

- (1) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained, stored, and sold or distributed for domestic uses; or
- (2) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained that will be used directly or by trade, substitution, augmentation, or exchange for water that will be used for human consumption or household use.

And all or part of a system described in (1) or (2) above meets one or more of the following criteria:

- a. Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan; or
- b. Will require a new, or utilize an existing, easement within any Town natural area or conserved land greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan.

In determining whether a proposed development plan is a major new domestic water supply system, the Town Manager may consider water rights decrees, pending water rights applications, intergovernmental agreements, treaties, water supply contracts and any other evidence of the ultimate use of the water for domestic, human consumption or household use. Domestic water supply systems shall not include that portion of a system that serves agricultural customers, irrigation facilities or stormwater infrastructure.

"Major extension of an existing domestic water treatment system" shall mean the expansion of an existing domestic water treatment plant or capacity for storage that will result in a material change, or the extension or upgrade of existing transmission mains, distribution mains, or new pump stations that will result in a material change. Major extension of an existing domestic water treatment system shall exclude the following:

- a. Any maintenance, repair, adjustment;
- b. Existing pipeline or the relocation, or enlargement of an existing pipeline within the same public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;
- c. A new pipeline or facility within an existing public right-of-way;
- d. A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less; or
- e. A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less.

"Major new sewage system" shall mean:

- (1) A new wastewater treatment plant;
- (2) A new lift station; or
- (3) An interceptor main or collector sewer used for the purposes of transporting wastewater that meets one or more of the following criteria:
 - a. Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan; or
 - b. Will require a new, or utilize an existing, easement within any Town natural area or conserved land greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan.

"Major extension of an existing sewage treatment system" shall mean any modification of an existing wastewater treatment plant or lift station that will result in a material change, or any extension or upgrade of existing interceptor main or collector sewer that will result in a material change. Major extension of an existing sewage treatment system shall exclude the following:

- a. Any maintenance, repair, adjustment;
- b. Existing pipeline or the relocation, or enlargement of an existing pipeline within the same public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;
- c. A new pipeline or facility within an existing public right-of-way;
- d. A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less; or
- e. A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less; or
- f. Any sewage system facility that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

"Major facilities of a public utility" means central office buildings of telephone utilities; transmission lines, power plants, and substations of electrical utilities; and pipelines and storage areas of utilities providing natural gas or other petroleum derivatives.

"Matter of state interest" means an area of state interest or an activity of state interest or both as defined under Section 24-65.1-101, et seq., C.R.S.

"Material change" means any change in a development plan approved under these Regulations which significantly expands the scale, magnitude, or nature of the approved development plan or the significant impacts considered in approval of the original permit.

"Mudflow" means the downward movement of mud in a mountain watershed because of peculiar characteristics of extremely high sediment yield and occasional high runoff.

"*Natural hazard*" means a geologic hazard or a flood.

"*Person*" means any individual, limited liability company, partnership, corporation, association, company, or other public or corporate body, and includes without limitation any political subdivision, agency, instrumentality, or corporation of the State or the United States government.

"*Planning and Zoning Commission*" means the Town of Keystone Planning and Zoning Commission.

"*Public right-of-way*" shall mean an area dedicated to public use or impressed with an easement for public use which is owned or maintained by the Town and is primarily used for pedestrian or vehicular travel for public utilities or other infrastructure. Right-of-way shall include, but not be limited to, the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking area and any other public way.

"*Reservoir*" (except in the context of the separately defined term "major publicly owned reservoir") means an area of land where water is retained or an area intended for water retention, and which is used or proposed for use in whole or in part for the storage of municipal water supplies or of water which is part of a domestic water treatment system.

"*Slope*" means the gradient of the ground surface that is definable by degree or percent.

"*Town Council*" or "*Council*" means the governing body of the Town of Keystone.

"*Town Manager*" or "*Manager*" means the Town Manager for the Town of Keystone, or some other person designated by resolution or ordinance of the Town Council to be responsible for the administration and enforcement of the provisions of these Regulations.

"*Transmission main*" shall mean a domestic water supply system's line that is designed to transport raw or treated water from a water source to a water treatment plant, storage facility or distribution systems.

"*Treatment System*" shall mean either, or both, the water distribution system and wastewater collection system.

"*Unstable or potentially unstable slope*" means an area susceptible to a landslide, a mudflow, a rock fall, or accelerated creep of slope-forming materials.

"*Wastewater collection system*" means a system of pipes, conduits, and associated appurtenances that transports domestic wastewater from the point of entry to a domestic wastewater treatment facility. The term does not include collection systems that are within the property of the owner of the facility. The term is defined in Section 25-9-102(4.9), C.R.S., and as amended.

"*Wastewater treatment plant*" shall mean a facility or group of units used for treatment of industrial or domestic wastewater or the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units discharges into state waters. Wastewater treatment plant specifically excludes individual wastewater disposal systems such as septic tanks or leach fields.

"*Water distribution main*" shall mean a domestic water supply system's pipeline that is designed to transport treated water from a transmission main to individual water customers through service laterals.

"*Water distribution system*" shall mean a network of pipes and conduits through which water is piped for human consumption or a network of pipes and conduits through which water is piped in exchange or trade for human consumption.

"*Water diversion*" shall mean removing water from its natural course or location or controlling water in its natural course or location by means of a control structure, canal, flume, reservoir, bypass, pipeline, conduit, well, pump or other structure or device or by increasing the volume or timing of water flow above its natural (pre-diversion) levels.

"*Water treatment plant*" shall mean the facilities within the domestic water supply system that regulate the physical, chemical or bacteriological quality of the water.

Sec. 1-100 Administrative interpretations.

- (a) In consultation with the Town Attorney, the Town Manager is authorized to issue written administrative interpretations of these regulations. An administrative interpretation shall not grant any form of approval and shall not modify, waive, or amend a non-ambiguous provision of these regulations. An interpretation shall be limited to clarifying, restating, or assisting in identifying the proper application of these regulations in order to enable an applicant to conform to the requirements of these regulations. All administrative interpretations shall be collected and retained by the Town Manager and made available for public inspection. Following issuance of an administrative interpretation, the Town Manager shall promptly provide a copy of the interpretation to the Town Council and the Town Attorney.

- (b) Any person aggrieved by a final written administrative interpretation issued by the Town Manager may appeal such interpretation to the Town Council. Prior to scheduling an appeal before the Council, the aggrieved party shall provide to the Town Manager written argument and evidence as to why the Manager's administrative interpretation fails to reasonably conform with the purpose, language, or intent of these regulations or unlawfully conflicts with Sections 24-65.1-101, *et seq.*, C.R.S. In advance of the date of a scheduled appeal, the Town Manager shall provide to the Council the aggrieved party's written argument and evidence along with the Manager's argument and evidence supporting the Manager's interpretation. At the scheduled date of the appeal, the Council shall administratively consider and render a decision to uphold, amend, or nullify the Town Manager's administrative interpretation. All actions to appeal an administrative decision shall be administrative in nature and decisions of the Town Council shall be final and not subject to further appeal.

Article II
Procedures for Designating Matters of State Interest

Sec. 2-10 Designation of matters of state interest.

Designations and amendments or revocations of designations may be initiated in any of the following ways:

- (a) Upon a determination by the Town Council to proceed on its own initiative.
- (b) Upon the entry of a court order requiring designation of any matter of state interest by the Town, in which event the Town Council shall hold proceedings to adopt such designation. At any time after the designation of any matter of state interest by the Town Council pursuant to court order, proceedings to revoke or amend any such designation may be held upon the subsequent order of the same court which ordered the designation.

Sec. 2-20 Inclusion in comprehensive plan.

After designation of an area or activity of state interest as provided in these Regulations, the Town Council shall initiate procedures to incorporate such designation into the comprehensive plan. The "careful and comprehensive surveys and studies" upon which the comprehensive plan must be based according to Section 31-23-207, C.R.S., shall consist of the record of the designation hearing prepared pursuant to these Regulations.

Sec. 2-30 Moratorium.

- (a) The Town Council may, in its discretion, legislatively impose a moratorium on development in an area of state interest or on conducting an activity of state interest by ordinance at any time prior to its designation pursuant to these Regulations.
- (b) The Town Council may, in its legislative discretion, provide for a special exception to any moratorium issued pursuant to subsection (a), above, pursuant to the following procedures:
 - (1) The person proposing development in a designated area of state interest or to undertake a designated activity of state interest may submit a written request seeking the Town Council consideration of a grant of a special exception. Such request shall indicate the purpose of the proposed development or activity and stating with particularity the substantial hardship that the requesting party will suffer if the special exception is not granted.
 - (2) Within forty-five (45) days after receipt of the request, the Town Council shall either: (i) summarily reject consideration of the requested exemption; or (ii) schedule the Council's consideration of the requested exemption; and (iii) in the Council's discretion, schedule a legislative hearing to receive testimony and comment on the requested exemption. The Town may extend the date for consideration or the date of a hearing for an additional forty-five (45) days if the meeting at which the consideration or hearing is scheduled is cancelled or postponed due to lack of quorum or other reason. No notice is required for the Council's consideration of a request for an exemption. If the Council elects to conduct a hearing on the requested exemption, notice of the date, time, place, and

general purpose of the hearing shall be given at least fourteen (14) days in advance of such hearing as follows:

- a. The party requesting consideration of an exemption shall be notified of the hearing by the deposit of notice in the regular U.S. mail; and
- b. Notice of the hearing shall be published in a newspaper of general circulation.
- c. Property owners deemed by the Town as potentially, directly, or substantially affected by any requested exemption may be notified by the sending of a courtesy notice. A courtesy notice is not a prerequisite or requirement for the conduct of a hearing. The method or manner for sending a courtesy notice shall be subject to the discretion of the Town.

Failure to receive a properly mailed notice, or the Town's decision to forego sending one or more courtesy notices or to elect to send courtesy notices to only some but not all owners, shall not constitute cause for vacating or rescheduling a hearing.

- (3) The Town Council may grant the special exception and order the issuance of a building permit if the Council finds all of the following:
 - a. That the development or activity is necessary to prevent an undue and significant hardship on the party requesting the exemption;
 - b. That the development or activity will not adversely affect the public interest or the purposes of the moratorium; and
 - c. That the development or activity would otherwise be lawful, proper, and in accordance with all of the ordinances and regulations of the Town if the moratorium were not in effect.

- (c) No moratorium imposed pursuant to subsection (a) above shall prohibit the continuation of any legal nonconforming use.
- (d) All actions concerning the imposition of a moratorium and the consideration, hearing, denial, or grant of a requested special exemption shall be legislative in nature.

Sec. 2-40 Public hearing, mailing list, publication.

- (a) The Town Council shall hold a public hearing before designating any matter of state interest and adopting regulations for the administration thereof.
- (b) The Town Manager shall prepare a notice of the designation hearing which shall include:
 - (1) The time and place of the hearing;
 - (2) The place at which materials relating to the matter to be designated and any provisions for the administration thereof may be examined;

- (3) If less than the entire Town, a description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property which would be included or affected. The notice shall include either a legal description or a general or layman's description of the property.
- (c) At least thirty (30) days but no more than sixty (60) days before the public hearing, the Town Manager shall publish the notice in a newspaper of general circulation in the Town.

Sec. 2-50 Matters to be considered at designation hearings.

At the public hearing described above, the Town Council shall consider such evidence as may appear appropriate including, at a minimum:

- (a) The intensity of current and foreseeable development pressures;
- (b) The matters and considerations set forth in any applicable guidelines for identification and designation;
- (c) Recommendations from state agencies, if appropriate;
- (d) The boundaries of the proposed area;
- (e) Reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner;
- (f) Any master or comprehensive plan pertaining to or affected by the area or activity under consideration.
- (g) Recommendations of the Planning and Zoning Commission and any designated citizen advisory committee, if any; and
- (h) Other relevant testimony and documents presented.

Sec. 2-60 Record of designation proceeding.

- (a) The Town Manager shall provide for recording of the designation hearing by audiotape, stenographer, or other appropriate means.
- (b) The Town Manager shall collect and preserve the following record of the public hearing, at a minimum:
 - (1) Notice of hearing;
 - (2) Certificate of publication of the notice;
 - (3) Names and addresses of persons making written or oral statements, appearing as witnesses, or offering documentary evidence;

- (4) Evidence relating to the identification of the matter of state interest proposed to be designated;
- (5) Written findings concerning each of the matters referred to in section 2-50, above;
- (6) Written minutes of the decision-maker relating to the public hearing; and
- (7) The recording prepared pursuant to subsection (a), above, provided that the Town is under no obligation to transcribe such recording unless requested and paid for by a requesting party.

Sec. 2-70 Adoption of designation and regulations.

- (a) At the conclusion of the public hearing, the Town Council may adopt, adopt with modifications, or reject the proposed designation and associated provisions which were the subject of the public hearing.
- (b) Any designation shall be made by ordinance approved by a majority of a quorum of the Town Council present and voting. Rejection of a proposed designation shall be by written resolution or ordinance.
- (c) Each designation ordinance adopted by the Town Council shall, at a minimum:
 - (1) Specify the boundaries of the designated area of state interest or the boundary of the area in which an activity of state interest has been designated. Boundaries of such area shall include either a legal description or a general or layman's description of the property, as deemed appropriate by the Council. If the designation is applicable to the entire Town, the notice shall so state and no other description of the property included in the designation shall be required.
 - (2) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner; and
 - (3) Set forth in full detail the regulations applicable to the designated matter of state interest.

Sec. 2-80 Recording of notice of designation.

A notice of the designation shall be certified by the Town to the Summit County clerk and recorder for filing in the real property records of Summit County.

Sec. 2-90 Combined designation and permit hearing.

If a person proposes to engage in development in an area of state interest or to conduct an activity of state interest not previously identified, designated, or for which regulations have not been adopted, the Town Council alone may hold one hearing for determination of identification, designation and regulations as well as for granting or denying the permit. No permit that is granted at the conclusion of any such hearing

shall authorize the applicant to engage in development or to conduct an activity until the identification, designation and regulations are finally determined.

Article III
Permits

Sec. 3-10 Permits required after designation; receipt of application form.

- (a) Any person who desires to engage in development within an area designated pursuant to these Regulations or to conduct an activity designated pursuant to these Regulations shall first apply for and obtain a permit as provided in these Regulations.
- (b) An application for a permit for such development or activity pursuant to these Regulations shall not be accepted unless it is complete and is in form and content as required by state law and these Regulations. If the application is considered incomplete by the Town Manager, the Town Manager shall specify what additional information is required. When a submitted application is considered to be complete by the Town Manager, the Town Manager shall note upon the application the date of its receipt.
- (c) When the applicant seeks a permit to engage in development in more than one area of state interest, to conduct more than one activity of state interest, or to engage in development in an area of state interest and to conduct an activity of state interest, a single application may be completed for all such activities or developments and may be reviewed by the Town Council in one consolidated hearing.
- (d) For any application to be considered complete under these Regulations, in addition to meeting the requirements of 3-70, below, the application shall include and cover the entire development as presently contemplated and reasonably foreseeable for the subject property or activity for a period not less than five years following the date of the application. For purposes of this subsection, the subject property is the property on which the development is located, and any other contiguous property which is under the developer's ownership or control and is otherwise subject to regulatory jurisdiction under these Regulations. The application shall describe and cover all development planned for the subject property within the said five-year period. The purpose of this requirement is to assure that the application is reviewed in a rational context of reasonably foreseeable development for the property, to avoid piecemeal analysis of applications, and to allow for a comprehensive consideration of the cumulative impacts of development under these regulations.
- (e) The Town Manager's determination regarding whether a permit application is complete may be appealed to the Town Council by the applicant in accordance with section 5-90 below.

Sec. 3-20 Application fee.

Any person who applies for a permit under these Regulations shall pay all of the actual costs incurred by the Town to review and act upon said application including any consultant costs deemed necessary by the Town Manager to assist in reviewing an application. If requested by the Town, the applicant shall deposit an amount reasonably estimated by the Town to cover such costs when the application is filed. The Town need not perform or continue any review or consideration of the application without an adequate amount to pay the costs therefor being on deposit. Any unused portion of the deposit will be refunded, and any deficit will be invoiced to the applicant and shall be paid in full prior to the Town's issuance of any permit.

Sec. 3-30 General Process Outline.

The following is a general outline of the steps required for any permit decision under these regulations. Specific information regarding each of the referenced steps follows this section.

- (a) Preapplication conference;
- (b) Finding of no significant impact (FONSI) determination;
- (c) Application submission and completeness review;
- (d) Town Manager review and agency referrals;
- (e) Review and recommendation from the Planning & Zoning Commission;
- (f) Public hearing and decision on issuance of permit by Town Council.

Sec. 3-40 Preapplication Conference.

- (a) A pre-application conference is required of all applicants.
 - (1) The applicant shall contact the Town Manager to schedule a pre-application conference within sixty (60) days after the proposal is complete to the extent of 30 percent (30%) of engineering design.
 - (2) The preapplication conference shall be held between the applicant and the Town Manager. The applicant or the applicant's authorized representative shall attend the conference. The Town Manager may require the attendance of other Town staff, Town contractors, engineers, planners, or attorneys as deemed necessary or desirable by the Town Manager.
 - a. This conference is intended to determine if a permit is required for the proposed development plan, application submittal requirements, procedural requirements, and relevant agencies to coordinate with as part of any permit review process.
 - b. The Town Manager will explain the application procedures and the materials required for submittal of an application.
 - c. The applicant or applicant's representative shall present a conceptual site plan at the conference and any other available materials that will best enable a fuller understanding of the proposal.
 - (3) If the Town Manager believes that the proposal raises any questions or impact regarding the following issues, areas, topics, or matters, the Town Manager may require the applicant to also meet with members of the appropriate Town departments, Town staff, Town contractors, or appropriate Town or citizen committees, boards, or commissions, or private landowners, or neighborhood or homeowner associations to discuss the proposal.

- (4) Topics of discussion may include, as relevant to the specific application, but are not limited to:
- a. Characteristics of the activity, including its location, proximity to natural and human-made features; the size and accessibility of the site; surrounding development and land uses; and its potential impact on surrounding areas, including potential environmental effects and planned mitigation strategies;
 - b. Flood conditions, floodway, or floodplain;
 - c. Highway, street, roadway, access, traffic concerns, parking design and engineering, and all vehicular movement patterns and volumes;
 - d. Water supply, sanitation, water quality, or other public health concerns;
 - e. Fire hazards;
 - f. Open space, parks, or trails;
 - g. Quiet enjoyment of private property or residential neighborhoods; or
 - h. Environmental, wildlife, geologic, soil, snow loading, view plane, lighting, aesthetics, or resource or community concerns;
 - i. Siting and design alternatives and reasons why such alternatives are not feasible; and
 - j. Any additional information requested by the Director as necessary to make a FONSI determination pursuant to Section 6-50.
- (b) Any comments or commitments made by any member of the Town staff during the preapplication conference are only preliminary in nature and should not be relied upon by the applicant. Formal or binding comments cannot be made by Town staff, contractors, or others until after the application is submitted and adjacent and/or nearby property owners and referral agencies have had an opportunity to respond.
- (c) Preapplication conferences may be held individually with each department, or a joint conference for all, or some, of the departments may be scheduled.
- (d) Town staff will endeavor to make available to the applicant any public information regarding the application which is in the Town's possession.

Sec. 3-50 FONSI Determination.

- (a) Upon the Manager deeming the application for a pre-application conference as complete, written notice shall be mailed to the applicant.
- (b) The Manager shall make a finding related to whether the proposed project:
 - (1) Is appropriately categorically exempt;
 - (2) Is not likely to have significant effects or the significance of the effects is unknown (FONSI) and, therefore, a permit is not required; or
 - (3) Is likely to have significant effects and, therefore, a permit is required.

The Manager shall make this determination within twenty-eight (28) days after the date the preapplication review has occurred or any requested additional information or third-party consultation is received, whichever is later.

- (c) *Significance determination —context and intensity.* In considering whether an adverse effect of the proposed development plan is significant, the Town Manager shall examine both the context of the action and the intensity of the effect. In assessing context and intensity, the Town Manager should consider the duration of the effect. The Town Manager may also consider the extent to which an effect is adverse at some points in time and beneficial in others.
 - (1) The Town Manager shall analyze the significance of the proposed development plan in several contexts. The Town Manager should consider the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities. Depending on the scope of the project, the Town Manager should consider the potential regional and local contexts as well as the duration, including short-and long-term effects. The Town Manager shall also consider the following factors:
 - a. Whether the project is located wholly or partly on, under, over or within an existing or planned future Town natural area or park, whether developed or undeveloped;
 - b. Whether the project is located wholly or partly on, under, over or within a Town-owned, non-right-of-way, property or current or anticipated Town building site, whether developed or undeveloped.
 - (2) The Town Manager shall analyze the intensity of effects considering the following factors, as applicable to the proposed development plan and in relationship to one another:
 - a. The degree to which the activity or development plan may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

- b. Whether the action may violate relevant federal, state or local laws or other requirements or be inconsistent with federal, state or local policies designed for the protection of the environment.
 - c. The degree to which the potential effects on the human environment are highly uncertain.
 - d. The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973.
- (d) If the Manager issues a FONSI, the applicant does not need to submit a permit application under these Regulations. However, issuance of a FONSI does not exempt the proposed development plan from all Town of Keystone Land Use Code requirements, and an alternative review process may be required.
- (e) If the Manager issues a FONSI and the applicant subsequently makes material changes to the development plan, the applicant is required to schedule another pre-application conference pursuant to Section 3-40 to discuss the changes. Based on the new information and whether the revised development could result in significant impacts, the Manager may rescind the FONSI by issuing a written determination pursuant to below Subsection (h) and require a permit under these Regulations.
- (f) *Permit Not Required.* If the Manager has made a finding of no significant impacts, or FONSI, a permit pursuant to these Regulations is not required.
- (g) *Permit Required.* If the Manager determines a FONSI is not appropriate, the proposed development plan requires a permit and is subject to these Regulations. The Manager shall provide the applicant with written comments, to the extent such comments differ from comments provided for any conceptual review, regarding the proposal to inform and assist the applicant in preparing components of the permit application; including a submittal checklist, additional research questions to address common review standards or any additional information needed to deem a permit application complete, including additional scope of analysis needed to review.
- (h) *Notice of Manager's Determination.* The Manager's determination to either issue a FONSI and not require a permit or to not issue a FONSI and require a permit shall be in writing and describe in detail the reasons for the determination. The Director shall provide the written determination to the applicant by email if an email address has been provided and promptly mail a copy of the written determination to the applicant.
- (i) *Appeal of the Manager's Determination.* The Manager's determination not to issue a FONSI is subject to appeal to the Planning and Zoning Commission pursuant to Section 3-60. After the filing of a timely notice of appeal pursuant to Section 3-60, the Manager shall not accept any application that may be affected by an appeal decision and, if an application has been accepted, shall cease processing such application until the appeal has been decided, which in the case of an appeal to Planning and Zoning Commission shall be the date of adoption of the appeal resolution. The filing of a timely notice of appeal shall reset any time period set forth in 3-80 (Completeness) and 3-110 (Hearing Procedures) and such time period shall begin from the date the appeal is decided as previously described.

Sec. 3-60 Appeal of FONSI Determination.

The Manager's determination pursuant to Section 3-50 that a proposed development plan would have no significant impact and would not require a permit pursuant to these Regulations, or that a proposed development plan would have a significant impact and must obtain a permit pursuant to these Regulations may be appealed to the Planning and Zoning Commission as follows:

- (a) *Parties Eligible to File Appeal.* The applicant is the only party eligible to file an appeal of the Manager's determination that a proposed development plan would have a significant impact.
- (b) *Filing Notice of Appeal.* An appeal shall be commenced by filing a notice of appeal with the Manager within fourteen (14) calendar days after the date of the written final determination on a FONSI application. Such notice of appeal shall be on a form provided by the Manager, shall be signed by each person joining the appeal ("appellant"), and shall include the following:
 - (1) The name, address, email address, and telephone number of each person joining the appeal;
 - (2) The specific reasons why the appellant believes the Director's determination is incorrect; and
 - (3) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the Town to the appellant.

The Manager shall reject any notice of appeal that is not timely filed, does not contain the information set forth in (1) - (3) above, or is not filed by a party with standing to file an appeal. The decision to reject a notice of appeal is not subject to appeal. Should multiple notices of appeal be filed, a single hearing shall be held.

- (c) The Planning and Zoning Commission shall complete its review at a public meeting and render its decision to uphold or deny the Manager's decision within thirty (30) days of the filing of the notice of appeal. The Planning and Zoning Commission's review shall be limited to consideration only of the record before the Manager. The standard of review for such an appeal shall be limited to an "abuse of discretion." Under this standard, the Planning and Zoning Commission may only overturn the Manager's decision if it finds that the Manager abused such person's exercise of discretion.
 - (1) While the Planning and Zoning Commission will not be considering any new evidence or information, the appellant has submitted an appeal request containing written argument, and the appellant will have an opportunity to submit arguments orally to the Planning and Zoning Commission regarding its position in the appeal.

- (2) The chair may place reasonable restrictions on such arguments, but the decision to place any such limits or specific parameters on the conduct of the proceeding is entirely up to the chair. For example, the chair may limit the length of time for appellant's initial oral argument to thirty (30) minutes as well as limit the length of time for the Planning and Zoning Commission 's questioning of the appellant to thirty (30) minutes.
 - (3) An appellant shall be notified in writing of any such limitations in advance. Furthermore, an appellant shall be given an opportunity to reserve any portion of their time allotted for initial oral argument for use during the period of Planning and Zoning Commission questioning or to make final statements after Planning and Zoning Commission questioning (for example, the appellant may only want to use ten (10) of their thirty (30) minutes to make their initial arguments, and reserve ten (10) of the remaining twenty (20) minutes for use to address questions and ten (10) minutes for their final statement to the Planning and Zoning Commission after addressing its questions.
 - (4) Finally, the appellant shall be entitled to make a closing argument before the Planning and Zoning Commission's deliberation.
- (d) *Effect of decision.* The Planning and Zoning Commission's decision shall be final and appealable and shall be to the courts pursuant to the applicable Colorado Rules of Civil Procedure .

Sec. 3-70 Application Submittal Requirements.

- (a) *Application.* In addition to specific submission requirements for the activities addressed in Article VI, VII and VIII, all applications for a permit under these Regulations shall be accompanied by the following materials:
- (1) The application must include an application form designating any persons authorized to act as agent for the applicant in connection with the application, exhibit the applicant's or agent's signature, and supply all required information. The form shall be accompanied by all fees, maps, plans, and reports required by these regulations.
 - (2) The signature on an application form evidences the applicant's approval of and concurrence with all statements and commitments contained in the application.
 - (3) The application shall provide a written description of the development or activity, including any capital improvements plan, facilities plan, or other planning document which the applicant has prepared for its use, covering at a minimum a period of five years from the date of the application.
 - (4) If the application anticipates new surface development, it shall include written certification of compliance with the provisions of Article 65.5 of Title 24, C.R.S., that require examination of the public records to determine the existence and identity of owners and lessees of severed mineral interests in the property covered by the application. The application shall inform the Town of the results of such examination. If such examination reveals the existence of any such owners or

lessees the application shall include a complete list of the names and addresses of such persons and describe the severed mineral interests owned or leased by each. In accordance with section 3-110(c) below, the public hearing on the application will not be held unless the applicant furnishes the Town with signed certification confirming that the applicant has, at least 30 days prior to the said public hearing, transmitted to the Town and to the affected mineral estate owners and lessees the notices required by Article 65.5 of Title 24, C.R.S.

- (5) The applicant shall furnish a detailed description of the need for the proposed development or activity, including but not limited to: (i) the present and projected population of the area to be served, (ii) the predominant types of users or communities to be served by the proposal, (iii) the percentage of the design capacity at which the current system is now operating, and (iv) the relationship of the proposal to the applicant's long-range planning and capital improvements programs, including specific reference to the plan(s) required to be submitted pursuant to 3-70(a)(3) above.
 - (6) An environmental impact statement prepared pursuant to section 3-70(b), below.
- (b) *Environmental Impact Statement.* The applicant shall prepare and submit a complete report, evaluation, and impact analysis of the proposed development or activity, discussing the effects in proportion to their significance, which shall include all of the documents and information set forth below:
- (1) Purpose and need statement: briefly summarize and explain the reasons the applicant is proposing the project and what the applicant expects to achieve.
 - (2) Ownership and control:
 - a. Specify whether the applicant owns in fee simple or controls (e.g., lease, license, easement) all or any portion of the property on which the proposed development or activity will be conducted, including any areas proposed for mitigation, management, utility services, and access.
 - b. For property not owned or controlled by the applicant, specify how the applicant proposes to obtain necessary ownership or control and a timeline or proposal to acquire ownership or control.
 - c. Provide documentation to support the statements and conclusions made in the report, evaluation, or analysis concerning ownership and control.
 - (3) Range of Alternatives: identify the reasonably foreseeable environmental effects of the proposed project and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment (3-70(b)(4)) and the environmental consequences (3-70(b)(5)). In doing so, the analysis should sharply define the issues for the decision maker and provide a clear basis for choice among options. In this section, the applicant shall:
 - a. Rigorously explore and objectively evaluate reasonable alternatives to the proposed action, and, for alternatives that the applicant eliminated from

detailed study, briefly discuss the reasons for their elimination. The applicant need not consider every conceivable alternative to a proposed action; rather, it shall consider a reasonable range of alternatives that will foster informed decision making.

- b. Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.
- c. Include the no action alternative.
- d. Identify the applicant's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- e. Include appropriate mitigation measures not already included in the proposed action or alternatives.
- f. Identify the environmentally preferable alternative or alternatives amongst the alternatives considered in the environmental impact statement. The environmentally preferable alternative will best promote the environmental policies expressed in the Town's Comprehensive Plan by maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities; protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources; or causing the least damage to the biological and physical environment. The environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative.

(4) Affected Environment:

- a. Succinctly describe the environment of the area(s) to be affected by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s).
- b. Use high-quality information, including reliable data and resources, and models to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment, and when such information is incomplete or unavailable, provide relevant information consistent with section 3-70(b)(6). This description of the affected environment, including existing environmental conditions, reasonably foreseeable trends, and planned actions in the area, should inform the applicant's analysis of environmental consequences and mitigation measures section 3-70(b)(5).
- c. The environmental impact statement may combine the description of the affected environment with evaluation of the environmental consequences section 3-70(b)(5). The description should be no longer than necessary to understand the relevant affected environment and the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the effect, with less important material summarized,

consolidated, or simply referenced. An applicant shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

(5) Environmental Consequences: An analysis of:

- a. Any reasonably foreseeable environmental effects of the proposed development plan, including without limitation impacts to threatened or endangered species, air and water quality impacts, impacts to historical and cultural sites, particularly sites of significance for indigenous peoples, and economical impacts to local communities, including housing stock, businesses, property values, and considerations of aesthetics and noise expected.
- b. Any reasonably foreseeable adverse environmental effects that cannot be avoided should the proposal be implemented;
- c. The effects of the no action alternative, including any adverse environmental effects;
- d. The relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity;
- e. Any irreversible or irretrievable commitments of the applicant's resources that would be involved in the proposal should it be implemented;
- f. Where applicable, possible conflicts between the proposed action and the objectives of federal, state, and local plans, policies, and controls for the area concerned, including those addressing climate change;
- g. Where applicable, climate change-related effects, including, where feasible, quantification of greenhouse gas emissions, from the proposed action and alternatives and the effects of climate change on the proposed development plan and alternatives;
- h. Where applicable, energy requirements and conservation potential of various alternatives and mitigation measures;
- i. Where applicable, natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;
- j. Where applicable, relevant risk reduction, resiliency, or adaptation measures incorporated into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions;
- k. Where applicable, urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;

- l. Means to mitigate adverse environmental effects;
 - m. Where applicable, economic and technical considerations, including the economic benefits of the proposed action; and
 - n. Where applicable, disproportionate and adverse human health and environmental effects on communities.
- (6) Incomplete or unavailable information.
- a. When an applicant is evaluating reasonably foreseeable significant effects on the human environment in an environmental impact statement, and there is incomplete or unavailable information, the agency shall make clear that such information is lacking.
 - b. If the incomplete information relevant to reasonably foreseeable significant effects is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable, the applicant shall include the information in the environmental impact statement.
 - c. If the information relevant to reasonably foreseeable significant effects cannot be obtained because the overall costs of obtaining it are unreasonable or the means to obtain it are not known, the applicant shall include within the environmental impact statement:
 - 1. A statement that such information is incomplete or unavailable;
 - 2. A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant effects on the human environment;
 - 3. A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant effects on the human environment; and
 - 4. The applicant's evaluation of such effects based upon theoretical approaches or research methods generally accepted in the scientific community.
 - d. For the purposes of this section, "reasonably foreseeable" includes effects that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the effects is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.
- (7) Cost-benefit analysis. If an applicant is considering a cost-benefit analysis for the proposed action relevant to the choice among alternatives with different environmental effects, the applicant shall incorporate the cost-benefit analysis by reference or append it to the statement as an aid in evaluating the environmental consequences. In such cases, to assess the adequacy of compliance with these

Regulations, the statement shall discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with these Regulations, an applicant need not display the weighing of the merits and drawbacks of the various alternatives in a monetary cost-benefit analysis and should not do so when there are important qualitative considerations. However, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, that are likely to be relevant and important to a decision.

- (8) Monitoring and compliance plan. Applicant shall prepare and incorporate a monitoring and compliance plan for mitigation when the analysis of the reasonably foreseeable effects of a proposed action in the environmental impact statement is based on implementation of mitigation. The contents of the plan shall include:
 - a. A basic description of the mitigation measure or measures;
 - b. The parties responsible for monitoring and implementing the mitigation;
 - c. How monitoring information will be made available;
 - d. The anticipated timeframe for implementing and completing mitigation;
 - e. The standards for determining compliance with the mitigation and the consequences of non-compliance; and
 - f. How the mitigation will be funded.

(c) *Mapping Requirements.* The following are general requirements for any map or plan required as part of the application. Minimum requirements include:

- (1) The name of the proposed development or use and total number of acres under consideration.
- (2) Because all maps and plans may be used for public presentation, the map scale and size should be large enough for effective presentation and should accurately illustrate the application.
- (3) Name, address, and telephone number of the applicant, designer, engineer, surveyor, and any other consultants of the applicant.
- (4) Date of preparation, revision box, written scale, graphic scale, and north arrow for each map
- (5) Name of specific project or file.
- (6) Water resources:
 - a. On the same, or another appropriate map, indicate any flood hazard area associated with the proposal. Documentation of historical flooding activity on the parcel where the activity or development will be located, and on other property affected by the activity or development, should be included.

Detail potential, adverse impacts related to the associated flood hazard area.

- b. Map and describe all surface waters, including applicable state water quality standards, to be affected by the project.
- c. Describe the immediate and long-term impact and net effects that the activity would have on the quantity and quality of surface water under both average and worst-case conditions.
- d. Map and describe all groundwater, including any aquifers. Describe the impacts and net effect of the activity on groundwater. At a minimum, the description should include:
 - 1. Seasonal water levels in each subdivision of the aquifer affected by the activity.
 - 2. Artesian pressure in aquifers.
 - 3. Groundwater flow directions and levels.
 - 4. Existing aquifer recharge rates and methodology used to calculate recharge to the aquifer from any recharge sources.
 - 5. For aquifers to be used as part of a water storage system, methodology and results of tests used to determine the ability of aquifer to impound groundwater and aquifer storage capacity.
 - 6. Seepage losses expected at any subsurface dam and at stream-aquifer interfaces and methodology used to calculate seepage losses in the affected streams, including description and location of measuring devices.
 - 7. Existing groundwater quality and classification.
 - 8. Location of all water wells and their uses.
- e. Map and describe wetlands, and riparian areas to be affected by the activity, including a description of each type of wetlands, species composition, and biomass.
 - 1. Describe the source of water interacting with the surface systems to create each wetland (i.e., side-slope runoff, over-bank flooding, groundwater seepage, etc.).

(7) Terrestrial and Aquatic Animals and Habitat.

- a. Map and describe terrestrial and aquatic animals including the status and relative importance of game and non-game wildlife, livestock and other animals; a description of stream flows and lake levels needed to protect

the aquatic environment; description of threatened or endangered animal species and their habitat.

- b. Map and describe critical wildlife habitat and livestock range to be affected by the activity including migration routes, calving areas, summer and winter range, and spawning beds.

(8) Threatened and endangered species

- a. Map and describe terrestrial and aquatic plant life including the type and density, and threatened and endangered plant species and habitat.

(9) Significant environmentally sensitive factors. Map of appropriate scale the juxtaposition of any of the following features present in the proposed development or activity and its environs, and detail the potential impact of the proposal upon each feature:

- a. Potential natural hazards;
- b. Public outdoor recreation and open space areas; and
- c. Unique areas of geologic, historic and archaeological importance.

- (d) Additional materials may be required by the Manager for a particular type of proposed development plan. To the extent an applicant has prepared or submitted materials for a federal, state, or county permit which are substantially the same as required herein, a copy of those materials may be submitted to satisfy the corresponding requirement below.

Sec. 3-80 Completeness Determination.

- (a) No permit application may be processed, nor shall a permit be deemed received pursuant to Section 24-65.1-501(2)(a), C.R.S., until the Manager has determined it to be complete. The applicant may submit a permit application only after at least fifteen (15) days have passed since the FONSI determination. Upon submittal of the application, the Applicant shall determine whether the application is complete or whether additional information is required, and if so, shall inform the applicant and pause the completeness review until information is received. Any request for waiver of a submission requirement shall be processed prior to the Manager making a determination that an application is complete. The Manager may retain at the applicant's cost third-party consultants necessary to assist the Manager with the completeness review. If the Manager retains a third-party consultant for permit review, the scope of work will be available for review by the applicant.
- (b) No determination of completeness may exceed sixty (60) days unless one or more of the following occurs
- (c) When the Manager has determined that a submitted application is complete, or the time limit for making the completeness determination has elapsed even though the application may not be complete, the Manager shall inform the applicant in writing of the date of its receipt. Only upon the Manager's determination that an application is complete, or the time limit for making the completeness determination has elapsed even though the application

may not be complete, may the Town's formal review process commence pursuant to these Regulations.

Sec. 3-90 Consultants.

- (a) If the Town does not have qualified staff to review certain elements of an application, or referral agencies are not able to adequately advise the Town regarding certain elements of an application, the Town Manager in consultation with the Town Council may authorize the review be performed by a consultant to be engaged or approved by the Town Manager. The Town Manager, in consultation with the Town Council shall have the discretion to decide whether the applicant shall pay all, part of, or none of the consultants' fees, based upon the nature and extent of consulting expertise required.
- (b) If a referral agency imposes a fee for its review of the application, the public hearing on the application will not be held until such referral agency's fees have been paid in full.

Sec. 3-100 Agency referrals; notice of filing.

- (a) Referral of Applications. When an application meeting the requirements of these Regulations is filed with the Town, relevant portions of the application materials as determined by the Town Manager shall be referred to the agencies listed below. Based on the specifics of the application, the Town Manager may waive referrals that are not necessary to a complete review of the application.
 - (1) The State Engineer shall review the application to ensure conformity with all applicable regulations of the Colorado Division of Water Resources and for comment on applicable water rights administration and determination concerns.
 - (2) The Colorado Department of Public Health and Environment and Summit County Health Department shall review the application for conformity with all applicable State and County health related regulations.
 - (3) The Colorado Geological Survey may evaluate those geologic factors which would have a significant impact on the proposed use of the land.
 - (4) CDOT shall review the application for conformity to the State Highway Access Code, STIP and the regulations relative to the administration of state and federal transportation systems.
 - (5) The Colorado Division of Wildlife and the Colorado Natural Areas Council shall review all applications in areas affecting natural resources of statewide importance.
 - (6) The Town may engage an engineering consultant to review all engineering aspects of the proposal, including referral responses and other relevant evidence, and shall transmit findings and preliminary recommendations to the Town Manager.
 - (7) The Town Manager shall review the application for open space and environmental impacts.

- (8) The Town Manager shall evaluate the application for conformance with the Comprehensive Plan, these regulations, sound planning, and comments from the referral agencies and individuals.
- (9) The Colorado Water Conservation Board shall review the application for flood hazard impacts.
- (b) Notice of filing. On or before the date on which the first referral made pursuant to subsection (a) above is sent, notice of the filing of the application and of its availability for inspection and copying by the public shall be posted at town hall and posted on any website maintained by the Town. Such notice shall include the name of the proposal, the general location of property affected by the proposal, the proposed uses and impacts of the proposal, and any other information deemed appropriate by the Town Manager.
- (c) Referral responses. Referral responses must be received by the Town Manager within 20 days after referral in order to ensure that recommendations and findings are considered. Failure of any referral agency to respond within the above-mentioned time period, or within the period of any extension granted by the Town Manager, may be regarded as a lack of response and not as a response that the proposal presents no conflict.
- (d) Post Referral Action. If referral comments received by the Town require response from the applicant, the following actions shall occur:
 - (1) The Town Manager will send the relevant comments from referral agencies to the applicant as soon as possible following the Town's receipt of the comments.
 - (2) Within 14 days after transmittal of comments, or by a later date specified by the Town Manager, the applicant shall respond in writing to those issues raised during the referral process that are identified by the Town Manager for applicant response.
 - a. Such response shall be considered an amendment to the application and shall be made part of the application to be used as a basis for a final recommendation by the Town Manager.
 - b. If the Town Manager finds that this new information results in a substantial change in the proposal, the Town Manager may re-refer the amended application and supporting materials to the referral agencies. The processing schedule will be amended accordingly.
 - c. If the applicant is unable to supply responses within the 14 days allowed, then the applicant may request, in writing, a delay in processing the application for up to 90 days.
 - d. If the applicant fails to supply satisfactory responses within the specified time, the Town Manager may either base the Town Manager's recommendation on review of the file as it exists or reject the application as a result of the failure to provide information necessary to its proper review.

- (e) The Town Manager shall transmit the referral comments and the applicant's responses thereto to the Planning and Zoning Commission and the Town Council for their consideration at their respective consideration on the application.

Sec. 3-110 Notice of permit hearing.

- (a) Not later than thirty (30) days after receipt of a completed application for a permit, the Town Council shall set and publish notice of a date, time, and place for a hearing before it on said application. Such notice shall be published once in a newspaper of general circulation in the Town, not less than thirty (30) nor more than sixty (60) days before the date set for hearing. On or before the date of publication said notice shall also be mailed to the applicant, posted at town hall, and posted on any website maintained by the Town.
- (b) At least fourteen (14) days prior to the Town Council's hearing, the Manager shall mail notice to the applicant of a date, time, and place for a review without a public hearing before the Planning and Zoning Commission where a recommendation will be made on said application. Such notice shall also be published once in a newspaper of general circulation in the Town at least seven (7) days before the date set for hearing. The Manager shall also mail written notice to the owners of record of all real property within eight hundred (800) feet (exclusive of public rights-of-way, public facilities, parks or public open space) in all directions of the location of the proposed development plan.
 - (1) The Planning and Zoning Commission shall conduct its review of the application at a public meeting. In conducting the review, the Planning and Zoning Commission shall review the application materials and the applicable review criteria as a business item only, and shall not receive testimony from interested parties—including the general public—on the application. The Planning and Zoning Commission shall recommend that the Town Council approve, approve with conditions, or deny the application based on the applicable approval criteria.
- (c) Notwithstanding any other provision of these Regulations, the applicant shall be solely responsible for complying with any applicable requirements of Article 65.5 of Title 24, C.R.S. Therefore, if the application is one for surface development which requires compliance with Article 65.5 of Title 24, C.R.S., and if the applicant has certified as part of its application submittal that mineral estate owners or lessees owning less than full fee title in the property which is the subject of the application exist, the public hearing on the application before Town Council shall not be held unless the applicant provides signed certification confirming that the applicant has, at least 30 days prior to the said public hearing, transmitted to the Town and to the affected mineral estate owners and lessees the notices required by Article 65.5 of Title 24, C.R.S.
- (d) If the applicant has failed to provide notice of the public hearing on its application as required Article 65.5 of Title 24, C.R.S. at least 30 days prior to the said public hearing, the Town Council, or the Town Manager on behalf of the Town Council, may continue, reschedule, or vacate the public hearing to allow proper notice to be provided under Article 65.5 of Title 24, C.R.S.

Sec. 3-120 Conduct of permit hearing.

- (a) The decision-maker conducting the hearing shall hear relevant oral and documentary evidence, including any recommendations of the Town Manager and the Planning and Zoning Commission.
- (b) The Town Manager shall provide for recording of the hearing by audiotape, stenographer, or other appropriate means within the Town Manager's sole discretion.
- (c) The Town Manager shall collect and preserve the following record of the public hearing:
 - (1) The permit application;
 - (2) The names and addresses of all persons making oral or written statements, appearing as witnesses, or offering documentary evidence;
 - (3) Any documentary evidence or written statements or testimony presented in support of or in opposition to the permit application;
 - (4) The recording and any transcript of the hearing as provided in subsection (b), above, provided that the Town is under no obligation to transcribe the recording unless requested and paid for by the requesting party;
 - (5) Written minutes of the decision-maker relating to the public hearing;
 - (6) The resolution of the decision-maker; and
 - (7) A copy of the permit, if issued.

Sec. 3-130 Approval or denial of a permit application.

- (a) The burden of proof shall be upon the applicant to show compliance with all applicable standards of the Regulations. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.
- (b) If the decision-maker finds that there is insufficient information concerning any material feature of a proposed development or activity, the decision-maker may deny the application, approve with conditions which, if fulfilled, would bring the development plan into compliance with all applicable standards or may continue the hearing until the additional information has been received to reopen a previously closed public hearing for additional information to be received. No such continuance may exceed sixty (60) days unless agreed to by the applicant.
- (c) The decision-maker may approve an application for a permit to engage in development in an area of state interest or for the conduct of an activity of state interest if the applicant satisfactorily demonstrates that the development plan, in consideration of all proposed mitigation measures and any conditions, complies with all applicable standards. If the proposed development does not comply with such provisions, the permit shall be denied. The decision-maker may, at its sole discretion, elect to impose reasonable conditions and requirements upon approval of the permit to assure compliance with such provisions (a

“conditional approval”). An applicant’s express rejection of a condition or requirement imposed upon an approval shall authorize the decision-maker to reconsider the conditional approval and enter a decision to deny the application.

- (d) The Town Council shall reach a decision on a permit application within 90 days after the completion of the permit hearing, or the permit shall be deemed approved. To the extent the public hearing is reopened and closed, the closing date of the public hearing shall be measured from the most recent closing date.
- (e) Final action approving or denying a permit application shall be by resolution stating the Town Council's reasons for its decision and its findings and conclusions.

Sec. 3-140 Issuance of permits; conditions.

- (a) The permit shall be issued in the form adopted by the Town Manager.
- (b) The permit shall set forth in detail all conditions imposed upon the development by Town Council to ensure that the purpose, requirements, and standards of these Regulations are continuously met throughout the development, execution, operational life, and any decommissioning period.
- (c) The Town Council may establish and set forth in the permit the time or times within which substantial development activity subject to the permit must commence, or within which specified and defined substantial progress with a designated activity must occur.
- (d) Issuance of a permit signifies only that a development plan has satisfied, or conditionally satisfied, the applicable Regulations, and prior to commencing any development, conditions of the permit, additional Land Use and Development Code, other town requirements, or other state or federal requirements, may need to be met.
- (e) A certified copy of the permit shall be recorded in the real property records of the clerk and recorder of Summit County.

Sec. 3-150 Financial security.

- (a) As a condition of issuing any permit, the Town Council may, in its discretion, require the applicant to file a guarantee of financial security deemed adequate by the Town Council and payable to the Town.
- (b) The purpose of such financial guarantee shall be to ensure that the permittee shall faithfully perform all requirements of the permit and any conditions imposed by the Town Council.
- (c) The amount of such financial guarantee shall be established by the Town Council upon consideration of the following criteria:
 - (1) The estimated cost of returning the site of the permitted development or activity to its original condition or to a condition acceptable to the Town for the matter of state interest for which the permit is being granted; and
 - (2) The estimated cost of completing the permitted development or activity; and

- (3) The estimated cost of complying with all requirements of the permit.
- (d) The financial guarantee may be in the form of an irrevocable letter of credit, performance bond, or escrow of either cash or corporate or municipal bonds rated at least AA by Standard and Poor's or an equivalent rating by Moody's, with such escrow agreement as is acceptable to the Town Attorney, subject to the following terms and conditions:
- (1) The Town Council may require that a cash deposit in an amount up to ten percent (10%) of the financial guarantee be provided to the town Treasurer to be placed in a separate interest-bearing account.
 - (2) The irrevocable letter of credit, performance bond, or escrow shall provide a financial guarantee that the permittee will fulfill all obligations under the terms of the permit. Letters of credit acceptable hereunder shall have an expiration date no sooner than six months following the scheduled completion of the permitted development.
 - (3) The surety issuing a performance bond shall have at least an "A" Rating from Moody's or an equivalent rating as designated by a nationally recognized rating firm and shall additionally be included in the most recent listing of companies holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, Department of Treasury, Circular 570.
 - (4) The surety issuing an irrevocable letter of credit must maintain an office or corresponding bank within seventy-five (150) miles of the Town and shall otherwise be approved by the Manager.
 - (5) The permittee shall not have greater than a ten percent (10%) ownership or managerial control over the surety issuing any financial guarantee.
 - (6) The permittee may request, and the Town shall grant, reductions in the financial guarantee for development constructed and initially accepted by the Town, provided, however, that sufficient security remains to ensure completion of all remaining obligations.
- (e) The financial guarantee may be released only when:
- (1) The permit has been surrendered to the Town Council before commencement of any physical activity on the site of the permitted development or activity;
 - (2) The development or activity has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Town Council in accordance with standards adopted by Town Council for the matter of state interest for which the permit is being granted;
 - (3) The project has been satisfactorily completed; or
 - (4) Applicable guaranteed conditions have been satisfied.

- (f) Any financial guarantee may be cancelled by a surety only upon receipt of the town Council's written consent, which consent may be granted only when such cancellation will not compromise the purposes of the security.
- (g) In the event that, prior to release of a financial guarantee filed pursuant to these Regulations, the license to do business in Colorado of the surety upon financial guarantee is suspended or revoked by any state authority, the financial guarantee should expire, the surety issuing the financial guarantee becomes nonqualifying, or the cost of completing the permitted development, or returning the site to an acceptable condition, is reasonably determined by the Town to be greater than the amount of the financial guarantee provided, then the Town shall furnish the permittee with written notice of such conditions, and within thirty (30) days of receipt mailing of such notice, the permittee shall provide the Town with a substituted qualifying financial guarantee, or augment the deficient security to achieve the required security. If such financial guarantee is not timely furnished, then the permit may be suspended by the Town pending compliance herewith.
- (h) If the Town Council determines that a financial guarantee should be forfeited because of any violation of the permit or any applicable provisions adopted by the Town Council, it shall provide written notice to the surety and to the permittee and shall order the financial guarantee forfeited.
- (i) The cash deposit described in subsection (d)(1) may be used by the Town in the event of the default or alleged default of the permit holder only for the purpose of recovering on the surety or fulfilling the permit obligations of the permit holder. In the event that a reviewing court determines that there has been no default by the permit holder, that portion of any moneys expended by the Town shall be replaced in the separate interest-bearing account described in subsection (d)(1) by the Town immediately following such determination. The Town may arrange with a lending institution, which provides money for the permit holder, that said institution may hold in escrow any funds required for said cash deposit. Funds shall be disbursed out of escrow by the institution to the Town upon the Town Council's demand for the purposes specified in this section.
- (j) If the forfeiture results in inadequate funds to cover the costs of accomplishing the purposes of the financial guarantee, the Town shall take such steps as it deems appropriate to recover such costs where recovery is deemed possible.

Article IV
Common Review Standards

Sec. 4-10 Review Standards for All Applications.

In addition to the review standards for specific activities listed at Article VI, VII, and VIII, all applications under these Regulations, in consideration of proposed mitigation measures, shall be evaluated against the following general standards, to the extent applicable or relevant to the development plan, in Town Council's reasonable judgment. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. The common review standards are as follows:

- (a) The applicant has obtained or will obtain all property rights and private landowner approvals necessary for the proposal, including surface, mineral, and water rights.
- (b) The applicant has the necessary expertise and financial capability to develop and operate the proposal consistent with all requirements and conditions.
- (c) The applicant has the necessary expertise and financial capability to implement mitigation measures established in the permit and the environmental impact statement.
- (d) The proposed development in an area of state interest or for the conduct of an activity of state interest will comply with the applicable zone district for the property or the applicant has demonstrated in writing, which demonstration accepted as legally sufficient by the Town Attorney, that the zone district designation does not legally restrict the proposed development or activity.
- (e) The proposal represents the least damaging alternative of reasonable cost among the alternatives analyzed in the environmental impact statement and, if not, the benefits of the proposal outweigh the benefits of the least damaging alternative of reasonable cost.
- (f) The applicant has, where relevant and appropriate, adopted and incorporated into its development plan all practicable mitigation measures that address or ameliorate significant environmental harms or effects from the proposal, including those measures recommended in its environmental impact statement.
- (g) The proposal is not subject to risk from landslides and rock slides, subsidence, wildfire, flood, or other natural or human-caused environmental hazards.
- (h) The development plan will not have a significant impact on the capability of local governments affected by the development plan to provide local infrastructure and services or exceed the capacity of service delivery systems. The determination of the effects of the development plan on local government services may include but is not limited to the following considerations:
 - (1) Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, and other local government facilities and

services necessary to accommodate development, and the impact of the development plan upon the current and projected capacity;

- (2) Need for temporary roads or other infrastructure to serve the development plan for construction and maintenance.
 - (i) Where relevant and appropriate, the applicant has obtained or will obtain the appropriate air quality permit from the State air pollution control division or other appropriate regulatory authority within the State department of public health and environment, and the development plan demonstrates the proposal will comply with all applicable standards under the Colorado Air Pollution Prevention and Control Act, Section 25-7-101 *et seq.*, C.R.S.
 - (j) Where relevant and appropriate, the applicant has obtained or will obtain the appropriate water quality permit from the State water quality control division or other appropriate regulatory authority within the State department of public health and environment, and the development plan demonstrates the proposal will comply with all applicable standards under the Colorado Water Quality Control Act, Section 25-8-101 *et seq.*, C.R.S.
 - (k) Where relevant and appropriate, the applicant has obtained or will obtain the appropriate dredge and fill permits from the U.S. Army Corps of Engineers and State water quality control division, and the development plan demonstrates the proposal will comply with all requirements and conditions of such permits.
 - (l) Where relevant and appropriate, the applicant has obtained or will obtain the appropriate permit from the U.S. Fish and Wildlife Service or National Marine Fisheries Service for any “take” (as defined under the Endangered Species Act) of an endangered or threatened species, including terrestrial and aquatic plant and animal life, and the development plan demonstrates the proposal will comply with all requirements and conditions of such permits.
 - (m) Where relevant and appropriate, the applicant has obtained or will obtain the appropriate federal and state permits for the handling, storage, disposal, and transportation of hazardous materials or regulated substances, and the development plan demonstrates the proposal will comply with all requirements and conditions of such permits and all applicable standards under the federal and State Resource Conservation and Recovery Act regulations.
 - (n) Where relevant and appropriate, the applicant has obtained all other permits and approvals from the appropriate regulatory authority for the proposal.
 - (o) The proposal is not subject to risk of releases or threatened releases of hazardous waste and substances, or becoming the subject of a National Priorities List or cleanup response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
 - (p) The development plan will not cause a nuisance. The determination of nuisance impacts of the development plan may include but is not limited to the following considerations: increase in odors, dust, fumes, glare, heat, noise, vibration or artificial light.

- (q) The proposal will not cause unreasonable loss of significant cultural resources, including but not necessarily limited to historical resources or sites and archaeological artifacts or sites.

- (r) The proposal represents the complete, reasonably foreseeable development for the subject property as required under Section 3-10(d), above, except that the Town Council may approve development constituting less than the complete development provided that the applicant clearly demonstrates that a lesser proposal constitutes a discrete phase of the complete development as supported by the applicable master planning document required under Subsection 3-10(d), which can be logically and adequately reviewed as a separate project under the applicable criteria of these Regulations.

Article V
Administration, enforcement, penalties, and judicial review

Sec. 5-10 Enforcement and penalties.

It is unlawful and a violation of these Regulations for any person to engage in or to undertake any development in an area designated pursuant to these Regulations, or to conduct an activity designated pursuant to these Regulations, without a permit issued pursuant to Article III of these Regulations, or to fail or refuse to comply with permit requirements, or to act outside the authority of the permit. A separate violation shall be deemed to occur on each day that violation of this provision occurs or continues.

Sec. 5-20 Mapping disputes.

Where interpretation is needed as to the exact location of the boundary of any designated area and where there appears to be a conflict between a mapped boundary and actual field conditions, the Town Manager shall make the necessary determination of the boundary. Any person contesting the location of the boundary shall be given an opportunity to present his case to the Town Manager.

Sec. 5-30 Town Manager authority; right of entry.

The Town Manager is hereby authorized and directed to inspect and examine the use, occupation or development of or activity in each and every area or activity designated pursuant to these Regulations for the purpose of determining from time to time whether or not any use, occupation, development or activity is in violation of any of the provisions of these Regulations or of any permit issued or required pursuant hereto. Duly authorized representatives of the Town, bearing proper credentials and identification, shall be permitted to enter upon all property at reasonable times for the purpose of inspecting, observing, measuring, sampling and testing in connection with the enforcement and administration of these Regulations or any permit issued pursuant hereto, and for the performance of any duty or function authorized to or required of the Town pursuant to these Regulations.

Sec. 5-40 Revocation or suspension of permits.

In addition to and without waiving any other available remedy, the Town shall have and may exercise the right to suspend or revoke any permit issued pursuant to these Regulations when any violation of these Regulations or the terms or conditions of such permit occurs or continues, including without limitation the failure of the permittee to proceed with development in a designated area or with a designated activity within the times specified in the permit, in accordance with the following:

- (a) Immediate suspension or revocation. The Town Manager may immediately suspend a permit when such suspension is necessary to stop or prevent an actual or threatened imminent endangerment to the health or welfare of any person or to the environment, or interference with or damage to Town facilities. The permittee shall have the right to a prompt hearing following such termination or suspension as provided in subsection (b) below.
- (b) Notice and opportunity for hearing.
 - (1) When it appears that any cause for suspension or revocation of a permit exists, the Town Manager may mail or deliver to the permittee a notice advising him of the following:

- a. The alleged violation;
 - b. That the permit will be suspended or revoked on account of such violation on a date not less than thirty (30) days from the date of the notice unless the stated violation is sooner cured;
 - c. That there is right to a hearing before the Town Council at which the permittee may be heard concerning the alleged violation; and
 - d. That if the permittee desires a hearing, he must request the same in writing before the suspension or revocation date specified in the notice.
- (2) Delivering or mailing the notice to the address given for the permittee on the permit shall constitute delivery thereof to the owner.
 - (3) If the permittee does not cure the stated violation or request a hearing within the time provided, the Town shall forthwith order the permit suspended or revoked, as appropriate.
 - (4) If the permittee makes timely request for hearing, the Town Council shall promptly schedule and hold such hearing. The Town Council shall issue a written findings and order stating the reasons supporting its decision. Except as provided in subsection (a) above, suspension or revocation of the permit shall be stayed until the Town Council holds the hearing and renders its decision.
- (c) Execution of order. Any person notified of a suspension or revocation of his permit shall immediately cease and desist from all actions or undertakings for which the permit was required. The Town shall be entitled to exercise such remedies as deemed necessary, including injunctive relief, to enforce the suspension or revocation.
 - (d) Grounds for revocation; effect. A permit shall be revoked and not merely suspended if the violation is of such a nature that it or its adverse effects cannot be cured or reasonably mitigated, or if the permit was suspended at least two (2) times within the preceding five (5) years as a consequence of the acts or omissions of the same permittee. Any permit revoked pursuant to this section may not be reinstated. The holder of a permit which has been revoked may apply for a new permit pursuant to these Regulations.
 - (e) Reinstatement of suspended permit. Any suspension shall be rescinded by the Town upon a determination that the violation forming the basis for such suspension has been cured and that no further or other nonconforming conditions or uses by the permittee are evident. The Town shall not reinstate a permit until the person requesting reinstatement has paid the full amount of any applicable charges and any amounts expended by the Town to cure the violation or enforce the terms of these Regulations or the permit.

Sec. 5-50 Cure of violations.

- (a) Order to cure. If the Town determines that the holder of any permit issued pursuant to these Regulations is using or developing property or is conducting an activity subject to the permit in a way that is not in conformity with these Regulations or with the terms or conditions of the permit, it may give written notice thereof to the permit holder. Such notice shall specify the nonconformity, direct the permittee at its cost to perform specified curative work, and specify the period of time determined by the Town to be reasonably necessary for completion of the curative work.
- (b) Town cure at owner cost. If the permittee fails within the specified time following such notice to cure the nonconformity stated therein, the Town may, in addition to and without waiving any other remedy, perform the work and charge the permittee for its actual costs incurred in connection therewith. The costs so charged shall be a perpetual lien against any property subject to the permit until paid in full.

Sec. 5-60 Civil damages.

In addition to and without waiving any other available remedy, the Town may recover civil damages from any person liable to the Town under the laws of the United States or the State as a result of any violation of these Regulations or any permit issued pursuant hereto, or any other unlawful act or omission. Such damages shall include the Town's actual costs of discovering, investigating, curing, mitigating and repairing the consequences of such violation or other unlawful acts or omissions, including the Town's reasonable attorney fees.

Sec. 5-70 Injunctive relief.

In addition to and without waiving any other available remedy, the Town may obtain injunctive relief from or to cure any act or omission which violates these Regulations or any permit issued pursuant hereto, or which otherwise jeopardizes the property or health of any person, including the Town.

Sec. 5-80 Remedies cumulative.

The remedies available to the Town under these Regulations, and under state and federal law, shall be deemed cumulative, and the utilization by the Town of any single such remedy or combination thereof shall not preclude the Town from utilizing any other remedy or combination thereof.

Sec. 5-90 Town Manager authority; appeal.

- (a) Subject to the provisions of subsection (b) of this section, the Town Manager shall have the authority to administer, interpret and enforce the provisions of these Regulations on behalf of the Town.
- (b) Any orders, directives, determinations or decisions of the Town Manager relating to the administration, interpretation or enforcement of these Regulations may be appealed in writing to the Town Council, within thirty (30) days after the date of the order, directive or decision. The appeal shall state the specific claims of error asserted, with citations to relevant provisions of these Regulations or other relevant legal authority. The person appealing such order, directive or decision shall have the burden of demonstrating that the Town Manager abused his or her discretion, acted outside his or her authority, or that the

said order, directive or decision was plainly unreasonable and contrary to the purposes and intent of these Regulations. The order, directive or decision shall be upheld if the person appealing same fails to meet this standard to the reasonable satisfaction of Town Council.

Article VI
Site selection of arterial highways, interchanges and collector highways

Sec. 6-10 Designation.

The Town Council, having considered the intensity of current and foreseeable development pressures and applicable guidelines for identification and designation, as well as the other relevant factors set forth in Section 22-2-50, above, at a duly noticed public hearing held in accordance with Part IV of Article 65.1, Title 24, C.R.S., does hereby find and declare the site selection of arterial highways, interchanges and collector highways to be a matter of state interest and does hereby adopt the accompanying regulations requiring permits for this activity as set forth in this Article VI. The conduct of this activity within the boundaries of the Town shall be subject to this designation.

Sec. 6-20 Reasons for designation.

The site selection of arterial highways, interchanges and collector highways has been designated as a matter of state interest for the reasons set forth in section 6-10 and for the following additional specific reasons:

- (1) The historic and cultural significance of Keystone is not limited to a single structure or thoroughfare. The primary matter of state interest is the continued preservation of the historic landscape of the Town. The location of arterial highways, interchanges and collector highways within that landscape has a high potential for significant adverse impacts upon this landscape and this establishes the primary basis its designation as an activity of state interest.
- (2) The location of arterial highways, interchanges and collector highways has a high potential for significant adverse impacts upon air and water quality in the Town and this establishes a basis for its designation as an activity of state interest.
- (3) The location of arterial highways, interchanges and collector highways has a high potential for significant adverse impacts upon levels of noise in the Town and this establishes a basis for its designation as an activity of state interest.
- (4) The location of arterial highways, interchanges and collector highways has a high potential for significant adverse impacts upon the quality of life in the Town and this establishes a basis for its designation as an activity of state interest.
- (5) The location of arterial highways, interchanges and collector highways has a high potential for significant adverse impacts upon the natural, rural, and mountain character of the Town and significant adverse impacts on the visual qualities that are deemed an essential element that defines the Town.

Sec. 6-30 Applicability.

- (a) These regulations shall apply to the site selection of all arterial highways or interchange or collector highways within the Town.

- (b) Any person seeking to select a site for an arterial highway or interchange or collector highway in the Town shall obtain a permit pursuant to these regulations. The permit shall be effective only for the period of time specified by the permit.

Sec. 6-40 Purpose and intent.

The purpose and intent of the designation and regulations contained in this Article VI shall be to:

- (1) Enable and facilitate the local administration of site selection of arterial highways, interchanges and collector highways by establishing requirements that must be met before a site may be selected, to the end that any such site selected will conform to the permit approval criteria set forth in Article IV and this Article VI;
- (2) Ensure that site selection of arterial highways, interchanges and collector highways occurs so that community land use, economic development and traffic needs are met, property values are preserved, desirable community patterns are not disrupted, natural, and archaeological values are preserved and such site selection conforms to the Town's comprehensive plan, as well as regional and state master plans;
- (3) Ensure that community traffic capacity, flow and safety needs are met;
- (4) Provide for the continuation of desirable local and regional community patterns in the face of regional development pressures;
- (5) Discourage expansion of demand for government services beyond the reasonable capacity of the community or region to provide such services;
- (6) Prevent direct conflicts with local, regional, and state master plans;
- (7) Ensure that highway development is compatible with surrounding land uses;
- (8) Encourage the coordination of highway planning with the comprehensive plan and avoid highway construction which divides existing communities;
- (9) Discourage traffic hazards and congestion;
- (10) Ensure that traffic noise, air, light pollution and water pollution remain at acceptable levels;
- (11) Protect property values; and
- (12) Protect scenic, recreational, natural, historical, and archaeological resources, including the character of the Town and its mountain backdrop.

Sec. 6-50 Definitions.

Defined terms used in this Article VI shall have the meanings set forth in section 1-80, and as set forth below.

- (a) "*Applicant*" means any person, including a local, metropolitan, state or federal entity, proposing to locate an arterial highway, interchange or collector highway within the Town.

- (b) *"Arterial highway"* means any limited-access highway which is part of the federal-aid interstate system or any limited-access highway constructed under the supervision of the Colorado Department of Transportation, including any substantial modification or expansion thereof that involves a site selection or corridor location process.
- (c) *"Alternative mode of transportation"* means any mode of transportation other than a single occupancy vehicle.
- (d) *"Collector highway"* means a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers that is constructed under guidelines and standards established by, or under the supervision of, the Colorado Department of Transportation, including any modification or expansion thereof. "Collector highway" does not include a Town street or local service road or a county road designed for local service and constructed under the supervision of a local government.
- (e) *"Constructed under guidelines and standards established by"* or *"constructed under the supervision of" the Colorado Department of Transportation* shall each include, without limitation, any of the below listed forms of participation by the Colorado Department of Transportation:
 - (1) The Colorado Department of Transportation, or any entity formed directly or indirectly by it or the Colorado Transportation Commission, or formed by contract or agreement with it or the Colorado Transportation Commission (including, without limitation, any enterprise formed under Article IV of Title 43 of the Colorado Revised Statutes or non-profit entity formed by such enterprise):
 - a. is an applicant; or
 - b. sells, leases, loans, donates, grants, conveys, assigns, transfers or otherwise provides any real or personal property or interests therein used or to be used in the proposed construction, modification or expansion of the arterial highway or interchange or collector highway including transfer or assignment of any contract to the applicant that may have been awarded for the proposed construction, modification or expansion of the arterial highway or interchange or collector highway; or
 - c. delegates authority to the applicant or is a signatory to any intergovernmental agreement or other form of contract, agreement, conveyance, delegation or authorization required for the applicant to construct, modify or expand the arterial highway or interchange or collector highway; or
 - d. performs or funds any planning, design, study, construction, supervision or maintenance functions associated with all or any portion of the construction, modification or expansion of the arterial highway or interchange or collector highway.
 - (2) A state highway access permit from the Colorado Department of Transportation is necessary for access from the proposed construction, modification or expansion of

the arterial highway or interchange or collector highway to a state highway either within or outside the Town limits;

- (f) "*Corridor*" means any area, measured both horizontally and vertically, within which highway facilities may be located and which the applicant proposes to recommend to the Federal Highway Administration or Colorado Department of Transportation for approval under the corridor location phase of highway development.
- (g) "*Impact area*" means that area within the corporate limits of the Town which is served or potentially could be served by the highway facility, or which would be impacted in other ways, direct, indirect or cumulative, by the location of an arterial highway, interchange or collector highway.
- (h) "*Interchange*" means the intersection of two or more highways, roads, or streets at least one of which is an arterial highway. At such intersection there must be direct access to and from the arterial highway.
- (i) "*Limited-access highway*" means a highway which gives preference to through traffic by providing access connection with selected roads only. A highway may be considered a "limited access highway" even though it has some crossings at grade and private driveway connections.
- (j) "*Locate*" as used in this Article V is synonymous with "select a site" for, or "site selection" of an arterial highway or interchange or collector highway.
- (k) "*Non-conforming use*" means a use in existence at the time of the adoption of these Regulations which use, were it a new use, would be one for which a permit would be required under these Regulations.
- (l) "*Rapid transit*" means the element of a mass transit system involving a mechanical conveyance on an exclusive land or guideway constructed solely for that purpose.
- (m) "*Site selection*" means the determination, through a corridor location study, memorandum, letter determination or other document, of a specific corridor or facility location in which:
 - (1) Construction of an arterial highway or interchange or collector highway is proposed; or
 - (2) Expansion or modification of an existing arterial highway, interchange or collector highway is proposed that would result in:
 - a. an increase in highway capacity by at least one lane through widening or alternative lane configurations, or an equivalent increase in capacity produced by access controls, technological or other types of highway improvements; or
 - b. the elimination of direct, at grade access from a public road or street within the Town to such existing arterial or collector highway; or
 - c. the addition of parking, stopping, maintenance, or other facilities, including rest areas, scenic viewpoints, and chain-up stations, for highway

users adjacent to, near, or accessible from an existing arterial or collector highway.

- (3) Expansion or modification of an existing highway is proposed which would result in a change in classification to "collector highway" or "arterial highway" as defined in these Regulations.

Sec. 6-60 Authority.

These regulations and the guidelines and requirements contained in this Article are adopted in furtherance of the authority set forth in Title 24, Article 65.1 of the Colorado Revised Statutes and under the authority cited in Section 1-30, above. To the extent that this Article VI contains requirements that are more stringent than the requirements of the criteria listed in C.R.S. 24-65.1-204, reference is made to the authority set forth in C.R.S. 24-65.1-402(3).

Sec. 6-70 Relationship to other regulations.

- (a) Nothing in this Article VI shall be construed as exempting an applicant for a permit under this Article VI from any other obligations or requirements of the Town or other state or federal laws and regulations. In no event shall the approval of a permit under this Article VI be considered a representation by the Town, its staff members or consultants or the Town Council members that the proposed construction, modification or expansion complies generally with such federal, state or local guidelines and regulations, nor shall such approval otherwise give rise to any claim against the Town, its staff members or consultants or Town Council members related to the failure of an applicant to comply therewith.
- (b) To the extent that the requirements of these Regulations differ from any other applicable requirements, the more restrictive requirements shall apply.

Sec. 6-80. Permit procedure.

- (a) The procedures and requirements set forth in Article III of these Regulations and in this Article VI shall govern applications for permits to engage in the site selection of arterial highways, interchanges and collector highways. The provisions of this Article VI shall control in the event of any conflict or inconsistency between the provisions of Article III and this Article VI.
- (b) Any person subject to the requirements of this Article VI shall submit its application for a permit under this Article VI within sixty (60) days after final adjudication of the FONSI determination.

Sec. 6-100. Submission requirements.

In addition to the requirements set forth in section 3-70 above, an application for a permit to locate or engage in the site selection of an arterial highway or interchange or collector highway shall include and be accompanied by the following documents and information.

- (a) A list of all reasonable alternative corridor locations for the proposed arterial highway or interchange or collector highway; and

- (b) For the proposed and each alternative corridor location considered, including the no action alternative, the information specified below:
- (1) A general description of the proposal, with a discussion of the advantages and disadvantages of the alternative;
 - (2) Transportation impacts. Describe what impacts the proposal will have upon transportation patterns in the Town intended to be served or affected by the proposal through the submittal of a traffic impact analysis of the proposed transportation facilities. The traffic impact analysis should include but not be limited to the following:
 - a. Identify the facilities required to support the existing and future land uses being served by the proposed transportation facility.
 - b. Furnish the traffic model data verifying consistency with the most current Colorado Department of Transportation (CDOT) Statewide Transportation Improvement Program (STIP).
 - c. Provide the existing and proposed traffic volume impacts to the adjacent road system, including local roads.
 - d. Provide the existing and future Level of Service (LOS) and capacity of the transportation facilities before and after the proposed transportation project is completed.
 - e. All transportation access information as required by the most current edition of the CDOT State Highway Access Code.
 - (3) A discussion of social, economic, and environmental impacts whose significance is uncertain. The level of analysis should be sufficient to adequately identify the impacts and appropriate mitigation measures, and address known and foreseeable public concerns;
 - (4) A location map showing the corridor and general area;
 - (5) Any corridor location proposal, study, or other documentation which includes:
 - a. type, scale and appearance of the improvement;
 - b. cost estimate, including mitigation costs; and
 - c. approximate timetable for construction and right-of-way acquisition;
 - (6) Demographic information in the impact area and within the Town, including:
 - a. estimated current population and density;
 - b. total employment, occupation types, and major employer locations;
 - c. average family income; and

- d. population projections in five-year increments over the next twenty (20) years;
- (7) The need for the proposed arterial highway or interchange or collector highway;
- (8) Major traffic generators in the impact area and the Town;
- (9) The planned level of service in relationship to projected user demand within the Town;
- (10) A map(s) and description of existing land use in the impact area within the Town in relationship to the existing circulation system and the proposed arterial highway or interchange or collector highway;
- (11) A map(s) of the impact area within the Town showing planned, proposed, or expected land use at each year of population projection provided pursuant to subparagraph (8)d. above, with and without the proposed arterial highway or interchange or collector highway;
- (12) The approximate number of users of the proposed corridor or interchange location in terms of existing Town residents, new Town residents, and non-Town residents;
- (13) Plans for promoting the use of alternative modes of transportation;
- (14) Anticipated noise levels resulting from the arterial highway or interchange or collector highway including noise levels expressed through 8-hour and 24-hour Equivalent Sound Level metrics, as well as single event noise metrics;
- (15) A description of noise abatement measures that are proposed for each alternative, including for each alternative the estimated construction costs and costs of operations and maintenance, decibel reduction effectiveness, and height, length and material-type for barriers;
- (16) A description of resulting net shade and shadow impacts, after mitigation measures;
- (17) The local air quality impacts of the proposed arterial highway or interchange or collector highway including attainment of federal and state ambient air quality standards and risks to human health and the environment posed by air pollutants including, but not limited to, nitrogen oxides (NOx), ozone, PM-10, benzene, 1, 3-butadiene, and other fuel combustion by-products;
- (18) The impacts of the proposed arterial highway or interchange or collector highway on accessibility to and from existing public facilities, commercial and industrial facilities, and residential areas within the Town;
- (19) Any health and safety hazards, including exposure to hazardous materials, which may result from locating the proposed arterial highway or interchange or collector highway;

- (20) How the proposed arterial highway or interchange or collector highway and its impacts will conform to the Town comprehensive plan goals, objectives and policies;
- (21) How the proposed arterial highway or interchange or collector highway and its impacts will conform to any applicable state plans, goals, objectives, and policies;
- (22) The development potential that would result in the impact area and within the Town with and without the completion of the proposed arterial highway or interchange or collector highway, measured in terms of: land values, land availability, land use controls, vacancy rates, tax revenues, public expenditures, and indices of accessibility to school/education, utility service, other public and quasi-public services, local and regional amenities and employment opportunities and the demographic indices identified in subsection (8) above;
- (23) The increased demand that the potential development described in paragraph 21 above will place on the following public services within the Town: other roadways, mass transit, trail, bike paths and other transportation, housing, employment, schools, commercial services, health services, police and fire protection, solid waste disposal, water supply systems, wastewater collection and disposal systems, storm water collection and release systems, power, communications, parks, open-space and recreation, other public and quasi-public utilities, and other planned public services;
- (24) The costs and benefits to the Town resulting from the land use commitment necessitated or facilitated by the proposed the arterial highway or interchange or collector highway compared to alternative projected land uses in terms of land suitability, transportation, community services, utilities, and revenues;
- (25) Alternatives which may be utilized by the Town in planning for and controlling adjacent land use;
- (26) Local impacts of the proposed arterial highway or interchange or collector highway on water quality and water resources, including effects on floodplains and wetland values and functions;
- (27) The impact of the proposed arterial highway or interchange or collector highway on historic properties and districts or other historic resources in the Town;
- (28) The impact, including but not limited to the impact on property values and other economic indicators, of the proposed arterial highway or interchange or collector highway on sensitive, key commercial tourist or visitor areas or districts within the Town and the region;
- (29) Impacts of the proposed arterial highway or interchange or collector highway on wildlife and fisheries, sensitive, endangered or threatened species and scenic, parks, recreational, archeological, paleontological, or other natural resources, including, but not limited to, the mountain backdrop;

- (30) Impacts of the proposed arterial highway or interchange or collector highway on the character of adjacent or nearby neighborhoods or development, as well as the impacts of increased division or separation of neighborhoods caused by the proposed arterial highway or interchange or collector highway;
- (31) All feasible alternatives for mitigating adverse effects of the proposed arterial highway or interchange or collector highway described above including, but not limited to, effects on the level of public services, access to public services, division of existing communities, water quality, air quality, noise levels, and scenic, historical, recreational, archeological or natural resources. Mitigation alternatives to be considered include, but are not limited to:
 - a. alternative locations, configurations, and access for the highway or interchange, including, but not limited to, grade separated interchanges and complete or partial construction below grade with cover and landscaping suitable for recreational use or for construction of Town streets, bike paths or pedestrian walkways;
 - b. alternative pavement types;
 - c. alternative highway maintenance and snow removal methods;
 - d. sound walls and other sound mitigating structures, such as transparent noise barriers;
 - e. berms;
 - f. landscaping;
 - g. speed limits;
 - h. speed control devices;
 - i. limits on the use of compression brakes; and
 - j. wildlife crossings and pedestrian bridges.

Sec. 6-110. Waiver of submission requirements.

- (a) The Town Manager may waive any part but not all of the submission requirements imposed by Article III or section 6-100 upon written petition of the applicant. In considering the requested waiver, the Town Manager shall consider:
 - (1) The scope of the site selection proposal.
 - (2) Whether providing the information requested to be waived would be unduly burdensome to the applicant.
 - (3) Whether, without the information requested to be waived, the application contains sufficient information to allow the Town Council to reach a decision on all criteria necessary to issue a permit.

- (b) Submission requirements set out in subsections (b) and (c) of section 6-100 may be satisfied in whole or in part by submission of an environmental assessment or a draft or final environmental impact statement if (i) such assessment or statement is required for compliance with the National Environmental Policy Act or Federal Highway Administration regulations; (ii) the Town Manager determines that such assessment or statement provides substantially the same information required under subsections (b) and (c) of section 6-100; and (iii) such assessment or statement uses appropriate data and methodologies to allow adequate review of the permit application under these regulations.
- (c) Any waiver granted by the Town Manager shall not preclude the Town Council from requiring the submission of any additional information or materials related to the site selection proposal.

Sec. 6-120. Approval criteria.

The Town Council shall approve an application for a permit to locate an arterial highway or interchange or collector highway in the Town only if the proposed **location** complies with this Article VI, other relevant federal, state, and local guidelines and regulations, and meets all the following requirements and criteria:

- (a) All of the provisions of the permit application procedure have been complied with;
- (b) The proposed arterial highway or interchange or collector highway will be located so that community traffic needs are met;
- (c) The proposed arterial highway or interchange or collector highway will be located only in a corridor for which a clear and reasonable local and regional need for such highway facilities has been demonstrated;
- (d) Reasonable alternative modes of transportation will be incorporated into the highway proposal;
- (e) Desirable local and regional community land use patterns will not be disrupted by the location of the proposed arterial highway or interchange or collector highway;
- (f) The location of the proposed arterial highway or interchange or collector highway will not impede the delivery of essential community services and goods;
- (g) The location and access limitations for the arterial highway or interchange or collector highway will not isolate community neighborhoods from, and, where practicable, will enhance access from community neighborhoods to public facilities including the downtown area, schools, hospitals, mass transit, pedestrian walkways, and bikeways, recreational areas and open spaces;
- (h) The location and access limitations for the arterial highway or interchange or collector highway will not restrict access via other roadways, mass transit facilities, pedestrian walkways, and bikeways to the downtown area local commercial services, business, and employment centers, and public facilities including schools, hospitals, recreational areas and open spaces;

- (i) The location and access limitations for the arterial highway or interchange or collector highway will not create safety hazards to motorists, pedestrians, or bicyclists by causing or contributing to overuse, improper use, or congestion, or cause unnecessary diversion of regional traffic onto other Town roadways or inappropriate or inadequate connections to pedestrian and bicycle routes;
- (j) The location of the arterial highway or interchange or collector highways will not directly conflict with applicable local, regional, and state master plans, including, but not limited to transportation plans;
- (k) The proposed arterial highway or interchange or collector highway will be located and implemented in accordance with the comprehensive plan;
- (l) The location of the proposed arterial highway or interchange or collector highway will not contribute to the expansion of demand for public services beyond the reasonable capacity of the Town or the region to provide such services;
- (m) The location of the proposed arterial highway or interchange or collector highway will not contribute to the expansion of regional or local demand for public utilities beyond the reasonable capacity of the utility companies or authorities to provide such services;
- (n) The proposed arterial highway or interchange or collector highway will be located so as to complement the compact and efficient extension of planned public services, utilities, and development in general, both regionally and within the Town;
- (o) The site selection for the arterial highway or interchange or collector highway will adhere to the plan, process, procedure, and requirements of the State of Colorado and the Federal Highway Administration and such construction, expansion, or modification will be included in any then-current regional transportation plan;
- (p) The benefits to the Town of the proposed arterial highway or interchange or collector highway, including expected development in the regional and local impact areas, will outweigh the social, fiscal, and environmental impact and the loss of any scenic, historical, archeological, or natural resources or agricultural lands rendered unavailable as a result of the location of the proposed construction, expansion, or modification of the arterial highway or interchange or collector highway;
- (q) The proposed location of the arterial highway or interchange or collector highway will not increase water pollution levels in violation of applicable federal, state, and local water quality control standards and will result in no net loss of wetland values and functions;
- (r) The maximum anticipated use over the next twenty (20) years of the arterial highway or interchange or collector highway will not increase air pollution levels beyond applicable federal or state ambient air standards or to levels that pose unacceptable risks to human health and the environment, and will conform to the vehicle emissions budget of the State Implementation Plan for Colorado;
- (s) Noise levels caused by the arterial highway or interchange or collector highway will not exceed 55 decibels as measured by a 24-hour Equivalent Sound Level metric at the property line of any residence, school, church, or other noise-sensitive location nearest to

the proposed arterial highway or interchange or collector highway, unless the Town Council determines that meeting such sound level is infeasible, that all feasible avoidance or mitigation measures will be incorporated, and the public benefit of any new or modified arterial highway or interchange or collector highway necessitates the proposed construction, expansion or modification of the arterial highway or interchange or collector highway.

- (t) The proposed location of the arterial highway or interchange or collector highway will not result in the destruction, impairment, or significant alteration of historic properties or districts within the Town and will not impair the function or historic integrity of a historical resource of statewide importance;
- (u) The proposed location of the arterial highway or interchange or collector highway will not result in the destruction, impairment, or significant alteration of sensitive, key commercial, tourist or visitor areas or districts within the Town;
- (v) The proposed location of the arterial highway or interchange or collector highway will not contribute to a negative economic impact to commercial, tourist or visitor areas or districts within the Town;
- (w) The proposed location of the arterial highway or interchange or collector highway will not significantly or unnecessarily detract from the mountain backdrop or other significant scenic resources within the Town or the region;
- (x) The proposed arterial highway or interchange or collector highway will be designed to avoid or minimize visual impacts, including views of the highway or interchange from residential areas and designated historic districts in the Town, and to blend into the surroundings, yet will allow the Town to be seen from the highway. Interchanges will be attractively landscaped and will identify major gateways to the Town consistent with the comprehensive plan; and
- (y) If the proposed arterial highway or interchange or collector highway includes the imposition of tolls, any existing state roads which have historically provided free access within the Town limits will continue to provide free and non-tolled access; and
- (z) The proposed arterial highway or interchange or collector highway will not result in a design speed greater than fifty-five (55) miles per hour, unless the Town Council finds that achieving such design speed is infeasible and all feasible mitigation of the adverse effects of higher speeds (including, without limitation, noise levels, air quality and safety) will be incorporated, and the public benefit of any new or modified arterial highway or interchange or collector highway necessitates the proposed construction, expansion or modification of the arterial highway or interchange or collector highway.
- (aa) The applicant has adequately evaluated and considered reasonable siting and design alternatives within the Town and within three (3) miles of the boundaries of the Town and established why such alternatives are not available, not reasonably feasible, or would present greater adverse impacts to the Town. Increased cost or expense for the siting and design of an alternative shall not, by itself, render an alternative unavailable or not feasible unless the applicant establishes that such increase in cost or expense is unduly excessive in comparison to the proposed arterial highway or interchange or collector highway and to

the cost or expense of other similar completed projects in terms of scope, size, or extent, as adjusted for inflation.

- (bb) The proposed arterial highway or interchange or collector highway will not unreasonably, significantly, or substantially decrease the fair market value of private property located within 1000 feet of the outermost boundaries of the proposed arterial highway or interchange or collector highway.

Sec. 6-130. Denial of permit application.

The Town Council shall deny the permit if the proposed location of arterial highway or interchange or collector highway does not meet all of the criteria set out in section 6-130 above.

Sec. 6-140. Supplemental enforcement remedy.

In addition to any other remedies available to the Town, the Town shall be entitled to injunctive and other relief to enjoin or restrain any person who has not obtained a permit under this Article VI from constructing, installing or locating any facilities or improvements of any kind associated with an arterial highway or interchange or collector highway on any site selected for such facilities or improvements without or in violation of the terms of any permit required pursuant to this Article VI.

Article VII

Site selection and construction of major new domestic water and sewage treatment systems, and major extensions of such systems

Sec. 7-10 Designation.

The Town Council, having considered the intensity of current and foreseeable development pressures and applicable guidelines for identification and designation, as well as the other relevant factors set forth in Section 22-2-50, above, at a duly noticed public hearing held in accordance with Part IV of Article 65.1, Title 24, C.R.S., does hereby find and declare the site selection and construction of all major new domestic water and sewage treatment systems, and major extensions of such systems to be a matter of state interest and does hereby adopt the accompanying regulations requiring permits for this activity as set forth in this Article VII. The conduct of this activity within the boundaries of the Town shall be subject to this designation.

Sec. 7-20 Applicability.

- (a) These Regulations shall apply to the site selection of all major new domestic water and sewage treatment systems, and major extensions of such systems within the Town.
- (b) Any person seeking to select a site for all major new domestic water and sewage treatment systems, and major extensions of such systems in the Town shall obtain a permit pursuant to these regulations. The permit shall be effective only for the period of time specified by the permit.

Sec. 7-30 Purpose and intent.

The specific purpose and intent of this Article shall be to:

- (a) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are conducted in such a manner as to fully mitigate significant impacts associated with such development;
- (b) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are planned and developed in a manner so as not to impose an undue economic burden on existing or proposed communities within the Town; and
- (c) To ensure that the surface and groundwater resources of the Town are protected from any significant impact of the development of major water and sewage treatment systems and major extensions of such systems.

Sec. 7-40 Authority.

These regulations and the guidelines and requirements contained in this Article are adopted in furtherance of the authority set forth in Title 24, Article 65.1 of the Colorado Revised Statutes and under the authority cited in Section 1-30, above. To the extent that this Article VII contains requirements that are more stringent than the requirements of the criteria listed in C.R.S. 24-65.1-204, reference is made to the authority set forth in C.R.S. 24-65.1-402(3).

Sec. 7-50 Relationship to other regulations.

- (a) Nothing in this Article VII shall be construed as exempting an applicant for a permit under this Article VII from any other obligations or requirements of the Town or other state or federal laws and regulations. In no event shall the approval of a permit under this Article VII be considered a representation by the Town, its staff members or consultants or the Town Council members that the proposed construction, modification or expansion complies generally with such federal, state or local guidelines and regulations, nor shall such approval otherwise give rise to any claim against the Town, its staff members or consultants or Town Council members related to the failure of an applicant to comply therewith.
- (b) To the extent that the requirements of these Regulations differ from any other applicable requirements, the more restrictive requirements shall apply.

Sec. 7-60. Permit procedure.

- (a) The procedures and requirements set forth in Article III of these Regulations and in this Article VII shall govern applications for permits to engage in the site selection and construction of all major new domestic water and sewage treatment systems, and major extensions of such systems. The provisions of this Article VII shall control in the event of any conflict or inconsistency between the provisions of Article III and this Article VII.
- (b) Any person subject to the requirements of this Article VII shall submit its application for a permit under this Article VII within sixty (60) days after final adjudication of the FONSI determination.

Sec. 7-70. Waiver of submission requirements.

- (a) The Town Manager may waive any part but not all of the submission requirements imposed by Article III upon written petition of the applicant. In considering the requested waiver, the Town Manager shall consider:
 - (1) The scope of the site selection proposal.
 - (2) Whether providing the information requested to be waived would be unduly burdensome to the applicant.
 - (3) Whether, without the information requested to be waived, the application contains sufficient information to allow the Town Council to reach a decision on all criteria necessary to issue a permit.
- (b) Submission requirements set out in Article III may be satisfied in whole or in part by submission of an environmental assessment or a draft or final environmental impact statement if (i) such assessment or statement is required for compliance with the National Environmental Policy Act; (ii) the Town Manager determines that such assessment or statement provides substantially the same information required under Article III; and (iii) such assessment or statement uses appropriate data and methodologies to allow adequate review of the permit application under these regulations.

- (c) Any waiver granted by the Town Manager shall not preclude the Town Council from requiring the submission of any additional information or materials related to the site selection proposal.

Sec. 7-80. Approval criteria.

The Town Council shall approve an application for a permit to locate and construct a major new domestic water and/or sewage treatment system, and major extensions of such system(s) in the Town only if the proposed **site selection and construction** complies with these Regulations, other applicable federal, state, and local guidelines and regulations, and meets all the following guidelines and requirements:

- (a) The proposal or its associated transmission collector or distribution system will not create an undue financial burden on existing or future residents of the Town.
- (b) The proposal, if it involves a new domestic water or sewage treatment system, is being constructed in an area which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities.
- (c) Area and community development and population trends within the geographic context of the development plan demonstrate a need for such proposal.
- (d) The project emphasizes the most efficient use of water, including, to the extent permissible under existing law, the recycling, reuse, and conservation of water and will be consistent with any applicable water conservation plan.

Sec. 7-90. Denial of permit application.

The Town Council shall deny the permit if the proposed location does not meet all of the criteria set out in section 7-80 above.

Sec. 7-100. Supplemental enforcement remedy.

In addition to any other remedies available to the Town, the Town shall be entitled to injunctive and other relief to enjoin or restrain any person who has not obtained a permit under this Article VII from constructing, installing or locating any facilities or improvements of any kind associated with a major new domestic water and sewage treatment systems, and major extensions of such systems on any site selected for such facilities or improvements without or in violation of the terms of any permit required pursuant to this Article VII.

Article VIII
Site selection and construction of major facilities of a public utility

Sec. 8-10 Designation.

The Town Council, having considered the intensity of current and foreseeable development pressures and applicable guidelines for identification and designation, as well as the other relevant factors set forth in Section 22-2-50, above, at a duly noticed public hearing held in accordance with Part IV of Article 65.1, Title 24, C.R.S., does hereby find and declare the site selection and construction of major facilities of a public utility to be a matter of state interest and does hereby adopt the accompanying regulations requiring permits for this activity as set forth in this Article VIII. The conduct of this activity within the boundaries of the Town shall be subject to this designation.

Sec. 8-20 Applicability.

- (a) These Regulations shall apply to the site selection of all major facilities of a public utility within the Town.
- (b) Any person seeking to select a site for all major facilities of a public utility in the Town shall obtain a permit pursuant to these regulations. The permit shall be effective only for the period of time specified by the permit.

Sec. 8-30 Purpose and intent.

The specific purpose and intent of this Article shall be to:

- (a) To encourage the coordination of public utility facilities planning that are in the best interest of the residents of the Town;
- (b) To ensure that traffic noise, air, and water pollution remain at acceptable levels; and
- (c) To protect property values.

Sec. 8-40 Authority.

These regulations and the guidelines and requirements contained in this Article are adopted in furtherance of the authority set forth in Title 24, Article 65.1 of the Colorado Revised Statutes and under the authority cited in Section 1-30, above. To the extent that this Article VIII contains requirements that are more stringent than the requirements of the criteria listed in C.R.S. 24-65.1-204, reference is made to the authority set forth in C.R.S. 24-65.1-402(3).

Sec. 8-50 Relationship to other regulations.

- (a) Nothing in this Article VIII shall be construed as exempting an applicant for a permit under this Article VIII from any other obligations or requirements of the Town or other state or federal laws and regulations. In no event shall the approval of a permit under this Article VIII be considered a representation by the Town, its staff members or consultants or the Town Council members that the proposed construction, modification or expansion complies generally with such federal, state or local guidelines and regulations, nor shall such approval otherwise give rise to any claim against the Town, its staff members or

consultants or Town Council members related to the failure of an applicant to comply therewith.

- (b) To the extent that the requirements of these Regulations differ from any other applicable requirements, the more restrictive requirements shall apply.

Sec. 8-60 Definitions.

Defined terms used in this Article VI shall have the meanings set forth in section 1-80, and as set forth below:

"*Appurtenant facilities*" means any building, structure or other property which is incidental to, and customarily found in connection with, major facilities of public utilities and are operated and maintained for the benefit or convenience of the occupants, employees, customers or visitors of such major facilities.

"*Construction, modification, or expansion*" means any activity involved in constructing or reconstructing, or modifying or expanding an existing or proposed major facility of a public utility.

"*Impact area*" means that area within Town of Keystone which is served or potentially could be served by the existing or proposed major facility of a public utility.

"*Locate*" or "*location*" (as used in this Article VIII) is synonymous with selecting a site for or site selection and construction of a major facility of a public utility.

"*Pipelines*" mean any pipeline and appurtenant facilities thereto, designed for, or capable of, transporting natural gas, manufactured gas, or other petroleum derivatives of ten (10) inches or more in diameter.

"*Power plant*" means any of the following:

- (1) Any fossil fuel, biofuel, or similar electrical energy generating facility and any appurtenant facilities thereto, or any addition or series of additions thereto increasing the existing design capacity of the facility to seventy-three (73) megawatts or more.
- (2) Any solar or wind electrical energy generating facility with a generating capacity more than two (2) megawatts, and any appurtenant facilities thereto, or any addition or series of additions thereto increasing the existing design capacity of the facility in excess of two (2) megawatts. It does not include any solar or wind energy generation for on-site consumption by a consumer regardless of size.
- (3) Any nuclear or hydropower electrical generating facility.

"*Public utility*" means a public utility or power authority as those entities are defined by state law, and any local governments, cooperative, or other entity that owns and operates a power plant, electrical transmission lines, or natural gas for delivery to off-site consumers.

"*Site selection*" means the identification of a specific location located entirely or partially within the Town of Keystone in which:

- (1) Construction of a new major facility of a public utility is proposed; or

- (2) Expansion or modification of an existing major facility of a public utility would result in increased pole height, reactivation of a deactivated facility, or increase in transmission capacity (e.g., moving from 115 kilovolt to 230 kilovolt).

"*Storage area*" means any facility, including appurtenant facilities, designed to store eighty million (80,000,000) cubic feet or more of natural or manufactured gas, or thirty-five thousand (35,000) barrels or more of petroleum derivatives, or any expansion or series of expansions of an existing storage facility to accommodate eighty million (80,000,000) cubic feet or more of natural or manufactured gas, or thirty-five thousand (35,000) barrels or more of petroleum derivatives.

"*Substation*" means any facility designed to provide switching, voltage transmission, or voltage control required for the transmission of electricity at one hundred fifteen (115) kilovolts or more but does not have as a primary purpose the transformation of voltage to fifty (50) kilovolts or less for distribution purposes.

"*Transmission lines*" mean any electric transmission line and appurtenant facilities, which transmit electricity at one hundred fifteen (115) kilovolts or more.

Sec. 8-70. Permit procedure.

- (a) The procedures and requirements set forth in Article III of these Regulations and in this Article VIII shall govern applications for permits to engage in the site selection and construction of major facilities of a public utility. The provisions of this Article VIII shall control in the event of any conflict or inconsistency between the provisions of Article III and this Article VIII.
- (b) Any person subject to the requirements of this Article VIII shall submit its application for a permit under this Article VIII within sixty (60) days after final adjudication of the FONSI determination.

Sec. 8-80 Submission requirements.

In addition to the requirements set forth in section 3-70 above, an application for a permit to locate or engage in the site selection and construction of a major facility of a public utility shall contain the items listed below to be considered complete:

- (a) A sketch or map showing the following:
 - (1) If a power plant is proposed, the area is within 10 miles from the site.
 - (2) For transmission lines or pipelines, provide a map showing all existing transmission lines or pipelines for a distance of two miles beyond any reasonable alternative studied.
- (b) For upgrades of existing transmission lines, provide a sketch showing all existing transmission lines and pipelines within one mile on either side of the proposed alignment
- (c) For all other major facilities of a public utility, provide a sketch showing the area within five miles of the site if another major facility is proposed.
- (d) Type of facility - specify where applicable.

- (1) The voltages and lengths of transmission lines.
 - (2) Power source and generating capacity.
 - (3) The functions and sizes of substations.
 - (4) For pipeline projects, the diameters and lengths of pipeline.
 - (5) The capacities of the storage tanks and types of petroleum derivative to be stored.
 - (6) Corridor locations.
 - (7) Service area.
 - (8) Resource area (e.g., source of power being generated or transmitted, source of petroleum derivative being transported).
 - (9) Describe applicable support facilities (e.g., pollution control, parking areas, landscaping, etc.) to be provided.
- (e) Analysis of nonstructural alternatives to the project such as conservation of energy use, no development or management (different scheduling, conservation programs, facility design, land trades, etc.), if applicable.
- (f) Analysis of reasonable structural alternatives to the project such as alternate locations and routes, alternative types of facilities, use of existing rights-of-way, joint use of rights-of-way with other utilities and upgrading of existing facilities.

Sec. 8-90. Waiver of submission requirements.

- (a) The Town Manager may waive any part but not all of the submission requirements imposed by Article III or 7-80 upon written petition of the applicant. In considering the requested waiver, the Town Manager shall consider:
- (1) The scope of the site selection proposal.
 - (2) Whether providing the information requested to be waived would be unduly burdensome to the applicant.
 - (3) Whether, without the information requested to be waived, the application contains sufficient information to allow the Town Council to reach a decision on all criteria necessary to issue a permit.
- (b) Submission requirements set out in Article III or 7-80 may be satisfied in whole or in part by submission of an environmental assessment or a draft or final environmental impact statement if (i) such assessment or statement is required for compliance with the National Environmental Policy Act; (ii) the Town Manager determines that such assessment or statement provides substantially the same information required under Article III or 7-80; and (iii) such assessment or statement uses appropriate data and methodologies to allow adequate review of the permit application under these regulations.

- (c) Any waiver granted by the Town Manager shall not preclude the Town Council from requiring the submission of any additional information or materials related to the site selection proposal.

Sec. 8-100. Approval criteria.

The Town Council shall approve an application for a permit for the site selection and construction of a major facility of a public utility in the Town only if the proposed construction, modification, or expansion complies with these Regulations, other applicable federal, state, and local guidelines and regulations, and meets all the following guidelines and requirements:

- (a) If for a power plant project, the proposed natural gas and electric transmission facilities have been identified and included.
- (b) The facility site or expansion area is not in an area with general meteorological and climatological conditions which would unreasonably interfere with or obstruct normal operations and maintenance.
- (c) The nature and location of the facility or expansion will not unduly interfere with existing easements, rights-of-way, other utilities, canals, mineral claims, or roads
- (d) Where feasible, the nature and location of the facility or expansion avoids direct conflict with adopted local government, regional, and state master plans
- (e) Adequate electric, gas, telephone, water, sewage, and other utilities exist or shall be developed to service the site.
- (f) The scope and nature of the proposed project will not unnecessarily duplicate existing services within the City
- (g) Area and community development and population trends within the geographic context of the development plan demonstrate a need for such proposal.
- (h) The siting and design of the proposed location for electrical transmission lines addresses potential levels of electrical and magnetic fields (EMFs) through reasonable efforts or by exercising "prudent avoidance" to limit exposure.
- (i) Wind power plants must meet the following standards:
 - (1) All towers must be set back at least 750 feet from property lines and public rights-of-way.
 - (2) The wind generator turbines and towers must be painted or coated a nonreflective white, grey, or other neutral color.
 - (3) Facilities must not be artificially illuminated unless required by the FAA.
 - (4) Electrical controls must be wireless or underground and power lines must be underground except where the electrical collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network

- (5) Towers for wind generators must be constructed of a tubular design and include anti-climb features
- (6) The facility design must use best practices available to protect wildlife.

Sec. 8-110. Denial of permit application.

The Town Council shall deny the permit if the proposed location does not meet all of the criteria set out in section 7-100 above.

Sec. 8-120. Supplemental enforcement remedy.

In addition to any other remedies available to the Town, the Town shall be entitled to injunctive and other relief to enjoin or restrain any person who has not obtained a permit under this Article VIII from constructing, installing or locating any facilities or improvements of any kind associated with a major facility of a public utility on any site selected for such facilities or improvements without or in violation of the terms of any permit required pursuant to this Article VIII.