

TOWN OF BLUE RIVER, COLORADO

Chapter 22 Blue River Municipal Code

Areas and Activities of State Interest



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Table of Contents

Article I General provisions	1
Sec. 22-1-10 Title	1
Sec. 22-1-20 Purpose and findings.	1
Sec. 22-1-30 Authority.....	1
Sec. 22-1-40 Applicability.....	1
Sec. 22-1-50 Exemptions.....	2
Sec. 22-1-60 Interpretation with other enactments and plans.....	2
Sec. 22-1-70 Maps.....	2
Sec. 22-1-80 Definitions.....	3 Sec. 22-1-90
Administrative Interpretations	
Article II Designation of matters of state interest.....	5
Sec. 22-2-10 Designation of matters of state interest.	5
Sec. 22-2-20 Inclusion in comprehensive plan.	5
Sec. 22-2-30 Moratorium.....	5
Sec. 22-2-40 Public hearing, mailing list, publication.....	6
Sec. 22-2-50 Matters to be considered at designation hearings.....	7
Sec. 22-2-60 Record of designation proceeding.....	7
Sec. 22-2-70 Adoption of designation and regulations.....	7
Sec. 22-2-80 Recording of notice of designation.....	8
Sec. 22-2-90 Combined designation and permit hearing.....	8
Article III Permits.....	9
Sec. 22-3-10 Permits required after designation; receipt of application form.	9
Sec. 22-3-20 Application fee.	9
Sec. 22-3-30 General Process Outline.....	9
Sec. 22-3-40 Preapplication Conference.....	10
Sec. 22-3-50 Application Submittal Requirements.....	11
Sec. 22-3-60 Number of copies.	16
Sec. 22-3-70 Consultants.....	16
Sec. 22-3-80 Agency referrals; notice of filing.....	17
Sec. 22-3-90 Notice of permit hearing.....	18
Sec. 22-3-100 Conduct of permit hearing.....	19
Sec. 22-3-110 Standards for approval of a permit application.....	19
Sec. 22-3-120 Issuance of permits.....	24
Sec. 22-3-130 Financial security.....	24
Article IV Administration, enforcement, penalties, and judicial review	27
Sec. 22-4-30 Town Manager authority; right of entry.....	27
Sec. 22-4-50 Cure of violations.....	28
Sec. 22-4-90 Town Manager authority; appeal.....	29
Article V Site selection of arterial highways, interchanges and collector highways.....	30
Sec. 22-5-20 Reasons for designation.....	30
Sec. 22-5-30 Applicability.....	30
Sec. 22-5-40 Purpose and intent.....	31
Sec. 22-5-70 Relationship to other regulations.....	34

Sec. 22-5-110. Waiver of submission requirements. 37
Sec. 22-5-120. Town Manager review..... 38

Chapter 22

Areas and Activities of State Interest

Article I General provisions

Sec. 22-1-10 Title

The regulations in this Chapter may be cited as the "Blue River Regulations for Areas and Activities of State Interest," or the "Blue River 1041 Regulations"¹ and may be referred to in this Chapter as "these regulations."

Sec. 22-1-20 Purpose and findings.

(a) The purpose of this Chapter 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 and intent are as follows:

- (1) Regulate projects that would otherwise cause excessive noise, water, and/or air pollution, or which would otherwise degrade or threaten the existing environmental quality within the Town;
- (2) Promote efficient and economical use of public resources; and
- (3) Protect the public health, safety, welfare and the environment.

(c) The Board of Trustees finds that:

- (1) These regulations are necessary because of the intensity of current and foreseeable development pressures on and within the Town;
- (2) These regulations apply to the entire Town; and
- (3) This Chapter interprets and applies 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 Board of Trustees.

Sec. 22-1-30 Authority.

This Chapter is 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. 22-1-40 Applicability.

This Chapter shall apply to all proceedings concerning the identification and designation by the Board of Trustees of any area or activity of state interest and the control of development in any area of state interest

¹ The 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*.

or the conduct of any activity of state interest which has been or may hereafter be designated by the Board of Trustees in any area of the town, whether on public or private land.

Sec. 22-1-50 Exemptions.

The provisions of this Chapter shall not apply to any development in an area of state interest or any activity of state interest if, on May 17, 1974:

- (a) The specific development or activity was covered by a current building permit issued by the Town;
- (b) 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;
- (c) 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;
- (d) 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
- (e) 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. 22-1-60 Interpretation with other enactments and plans.

- (a) Whenever any provision of this Chapter 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 this Chapter 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 this Chapter 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 zoning provisions in Chapter 16 of the Blue River Municipal Code relating to nonconforming uses.

Sec. 22-1-70 Maps.

Each map referred to in any ordinance adopted by the Board of Trustees 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 Blue River Town Hall, 0110 Whispering Pines Circle, Blue River, Colorado 80424, or by contacting info@townofblueriver.org.

Sec. 22-1-80 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 this Chapter.

(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.

"*Board of Trustees*" or "Board" means the governing body of the Town of Blue River.

"*Comprehensive plan*" means for purpose of this Chapter, all of the following: (i) the comprehensive or master plan of the Town of Blue River 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 Board of Trustees.

"*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.

"*Extension*" means the construction or installation of a new facility; an increase in hydraulic capacity; an upgrade in treatment or transmission capability; an increase in facility size; a physical addition to or expansion of a facility to enable or permit greater capacity, to manage or modify capacity, or to allow additional services to be provided by the facility; a physical enlargement of an existing facility, or a replacement of an existing facility.

"*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; and
- c. Dry wash channels and dry wash floodplains.

"*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.

"*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.

"*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 Blue River Planning and Zoning Commission.

"*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 Manager*" or "*Manager*" means the Town Manager for the Town of Blue River, or some other person designated by resolution or ordinance of the Board of Trustees to be responsible for the administration and enforcement of the provisions of this Chapter.

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

Sec. 22-1-90 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 Board of Trustees 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 Board of Trustees. Prior to scheduling an appeal before the Board, 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 Board 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 Board 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 Board of Trustees shall be final and not subject to further appeal.

Article II
Designation of matters of state interest

Sec. 22-2-10 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 Board of Trustees 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 Board of Trustees shall hold proceedings to adopt such designation. At any time after the designation of any matter of state interest by the Board of Trustees 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. 22-2-20 Inclusion in comprehensive plan.

After designation of an area or activity of state interest as provided in this Chapter, the Board of Trustees 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 this Chapter.

Sec. 22-2-30 Moratorium.

(a) The Board of Trustees 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 this Chapter.

(b) The Board of Trustees 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 Board of Trustees 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 Board of Trustees shall either: (i) summarily reject consideration of the requested exemption; or (ii) schedule the Board's consideration of the requested exemption; and (iii) in the Board'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 Board's consideration of a request for an exemption. If the Board 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 Board of Trustees may grant the special exception and order the issuance of a building permit if the Board 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. 22-2-40 Public hearing, mailing list, publication.

(a) The Board of Trustees 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. 22-2-50 Matters to be considered at designation hearings.

At the public hearing described above, the Board of Trustees 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. 22-2-60 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 22-2-50, above;
- (6) Written minutes of the Board of Trustees 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. 22-2-70 Adoption of designation and regulations.

(a) At the conclusion of the public hearing, the Board of Trustees 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 Board of Trustees present and voting. Rejection of a proposed designation shall be by written resolution or ordinance.

(c) Each designation ordinance adopted by the Board of Trustees 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 Board. 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. 22-2-80 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. 22-2-90 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 Board of Trustees 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. 22-3-10 Permits required after designation; receipt of application form.

(a) Any person who desires to engage in development within an area designated pursuant to this Chapter or to conduct an activity designated pursuant to this Chapter shall first apply for and obtain a permit as provided in this Chapter.

(b) An application for a permit for such development or activity pursuant to this Chapter shall not be accepted unless it is complete and is in form and content as required by state law and this Chapter. 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 Board of Trustees in one consolidated hearing.

(d) For any application to be considered complete under these Regulations, in addition to meeting the requirements of Section 22-3-50, 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 this Chapter. 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 Board of Trustees by any person aggrieved by the determination in accordance with section 22-4-90 below.

Sec. 22-3-20 Application fee.

Any person who applies for a permit under this Chapter 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. 22-3-30 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) Application
- (c) Town Manager review
- (d) Agency referrals
- (e) Public hearing and consideration by the Board of Trustees
- (f) Post-approval requirements

Sec. 22-3-40 Preapplication Conference.

- (a) A preapplication conference is required of all applicants.

(1) 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 provide an understanding of the applicable review procedures, requirements, and standards, and provide information pertinent to the proposal and the geographical area affected by the application.

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.

(2) If the Town Manager feels 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:

- a. Flood conditions, floodway, or floodplain;
- b. Highway, street, roadway, access, traffic concerns, parking design and engineering, and all vehicular movement patterns and volumes;
- c. Water supply, sanitation, water quality, or other public health concerns;
- d. Fire hazards;
- e. Open space, parks, or trails;
- f. Quiet enjoyment of private property or residential neighborhoods; or

g. Environmental, wildlife, geologic, soil, snow loading, view plane, lighting, aesthetics, or resource or community concerns.

(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. 22-3-50 Application Submittal Requirements.

(a) Application. Before any request for Town approval under these regulations may be processed, a complete application meeting the requirements of this Section 22-3-50 must be filed with the Town.

(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 22-3-90(c) below, 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.

(b) 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 22-3-10(d) and 22-3-50(a)(3) above.

(c) The applicant shall prepare and submit a complete report, evaluation, and impact analysis of the proposed development or activity including all of the documents and information set forth below:

(1) 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.

(2) Land use:

a. Specify whether, in the applicant's opinion, the proposal conforms to the Town's zoning and subdivision regulations, planning policies, and comprehensive plan or, where the applicant identifies a conflict or potential conflict, how the applicant proposes to address the conflict by rezoning the property, obtaining subdivision approval, or proposing or accepting certain conditions of approval that will address the conflict(s).

b. If the applicant asserts that the proposed development or activity is exempt from any prohibition or restrictions imposed by the existing Town zoning of the property, or exempt from any Town subdivision requirement, provide written legal authority and analysis supporting such exemption prepared by an attorney licensed to practice in the state of Colorado.

c. Specify how the proposed development will utilize existing easements or rights-of-way for any associated transmission, distribution or collector networks.

d. Specify any additional right-of-way or easements for new or expanded transportation facilities.

e. Identify residential properties (whether occupied or vacant) that may perceive or be impacted by reasonably anticipated noise, odor, smoke, exhaust, and fumes associated with the proposed development or activity.

f. Identify residential properties (whether occupied or vacant) that will be exposed to a view of the proposed development or activity, both during construction and when completed or commenced. The submission of photo simulations is highly recommended and may be required as the result of application reviewed where the proposed development or activity will present significant or substantial visual impacts on adjacent or neighboring properties.

(3) 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. Describe the impacts and net effect of the activity on wetlands and riparian areas.

1. 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.

2. 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.).

3. Describe impacts and the net effect that the project would have on the wetlands and riparian areas.

(4) 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.

c. Describe the impacts and net effect that the activity would have on terrestrial and aquatic animals, habitat and food chain.

(5) 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.

b. Describe the impacts and net effect that the activity would have on terrestrial and aquatic plant life.

(6) Air quality:

a. Detail how many average daily trips will be generated by the proposal.

b. Explain any other adverse impacts on air quality anticipated from the proposal.

c. Describe how any state or federal air quality standards will be impacted and if the proposed transportation facility has been included in the region's air quality models to verify conformity with the air quality plan.

d. Describe the airsheds to be affected by the activity, including the seasonal pattern of air circulation and microclimates.

e. Describe the impacts and net effect that the activity would have on air quality during both construction and operation under both average and worst case conditions.

(7) Significant environmentally sensitive factors. Identify and locate on a 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.

c. Unique areas of geologic, historic and archaeological importance.

(8) Visual aesthetics and nuisance factors:

a. Identify viewsheds, scenic vistas, unique landscapes or land formations.

b. Identify any significant deterioration of existing natural aesthetics, creation of visual blight, light pollution, noise pollution or obnoxious odors which may stem from the proposal.

c. Identify and describe any structures, excavations and embankments that will be visible as a result of this project.

d.

(9) 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.
- f. Submittal of a benefit/cost analysis of the proposed transportation improvements and identify the distribution of the burden of the cost for the proposed improvements to the project as well as the adjacent state or local road system.

(10) Less damaging alternatives:

a. If the Town Manager determines that the nature or extent of the proposal involves the potential for significant damage to cultural or historic resources, or for significant environmental damage and warrants examination of one or more specific, less environmentally damaging alternatives, or appropriate mitigation, the Town Manager may request that the Board of Trustees require the applicant to evaluate and present information on such alternatives or mitigation as part of the application.

b. Required information on alternatives or mitigation measures may include, but shall not be limited to, information on the environmental impacts or adverse impacts upon historic or cultural resources, and cost-effectiveness of the alternative or mitigation measure in relationship to the proposal presented.

(d) 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.

(e) Professional Qualifications

(1) A professional consultant may not be necessary for all applications. Only the following will require professional assistance.

a. Improvement plans and reports for water supply, sanitation, drainage, utilities, soils, grading, roads, structures, transportation modeling, transportation planning, transit planning, air quality planning or modeling, floods and floodplains, and other civil engineering work must be certified by a registered Colorado Professional Engineer, or other qualified professional engineer exempted from licensing requirements by state statute.

b. All documents containing land survey descriptions must be certified by a registered Colorado Professional Land Surveyor, or other qualified professional surveyor exempted from licensing requirements by state statute.

c. Geology reports shall be prepared by either a member of the American Institute of Professional Geologists, a member of the Association of Engineering Geologists, an individual registered as a geologist by a state, or other qualified professional geologist exempted from licensing requirements by state statute.

(2) All documents described in paragraph (1) above submitted for review must show the formal education and relevant experience of the individual in charge of the work.

Sec. 22-3-60 Number of copies.

Within twenty (20) days following conclusion of the preapplication conference, the Town Manager shall by administrative order determine the number of copies of documents that must be submitted as and with permit applications, based upon the number of referrals needed for consideration of the application and other reasonable criteria, such determination to be made according to the type of permit for which application is to be made. The Town Manager may in the exercise of reasonable discretion reduce the number of copies normally required for a permit application in cases where it is clear that the number normally required will not be needed for a specific application.

Sec. 22-3-70 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 Board of Trustees 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 Board of Trustees 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. 22-3-80 Agency referrals; notice of filing.

(a) Referral of Applications. When an application meeting the requirements of Section 22-3-50 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 insure 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 Board of Trustees for its consideration at the public hearing on the application.

Sec. 22-3-90 Notice of permit hearing.

(a) Not later than thirty (30) days after receipt of a completed application for a permit, the Board of Trustees shall set and publish notice of a date, time, and place for a hearing before Board of Trustees 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) Notwithstanding any other provision of this Chapter, 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 Board of Trustees 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.

(c) 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 Board of Trustees, or the Town Manager on behalf of the Board of Trustees, 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. 22-3-100 Conduct of permit hearing.

(a) The Board of Trustees 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 Board of Trustees relating to the public hearing;

(6) The resolution of the Board of Trustees granting or denying the permit application; and

(7) A copy of the permit, if issued.

Sec. 22-3-110 Standards for approval of a permit application.

(a) General provisions

(1) If the Board of Trustees finds that there is not sufficient information concerning any material feature of a proposed development or activity, the Board of Trustees may deny the application or the Board may continue the hearing until the additional information has been received. No such continuance may exceed sixty (60) days unless agreed to by the applicant.

(2) The Board of Trustees 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 proposed development or activity is found by the Board to comply with the provisions of this Chapter governing such area or activity. If the proposed development does not comply with such provisions, the permit shall be denied. The Board of Trustees may, at its 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 Board to reconsider the conditional approval and enter a decision to deny the application.

(3) The Board of Trustees shall reach a decision on a permit application within 120 days after the completion of the permit hearing, or the permit shall be deemed approved. Final action approving or denying a permit application shall be by resolution stating the Board of Trustees' reasons for its decision and its findings and conclusions.

(b) Approval criteria. The Board of Trustees shall approve an application that meets the requirements of paragraph (a)(2) above and in addition meets all of the following criteria:

(1) The applicant has obtained or will obtain all property rights, permits, and approvals necessary for the proposal, including surface, mineral, and water rights. The Board of Trustees may, in its discretion, defer making a final decision on the application until necessary property rights, permits and approvals for the proposal are obtained.

(2) The applicant has the necessary expertise and financial capability to develop and operate the proposal consistent with all requirements and conditions.

(3) 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.

(4) Adequate water supplies are available for the proposal if applicable.

(5) The proposal will not cause unreasonable loss of significant agricultural lands as identified in the comprehensive plan, or identifiable on or near the site.

(6) The proposal will not significantly degrade or pose a significant hazard to any aspect of the environment, including environmental resources and open space areas as identified in the comprehensive plan, and other features or elements that are deemed to be significant components of the natural environment worthy of preservation. For purposes of this section, the following aspects of the environment shall be considered:

a. Air quality: The proposal will not significantly deteriorate air quality. In determining impacts to air quality, the Board of Trustees shall apply the following considerations:

- i. Changes to seasonal ambient air quality.
- ii. Changes in visibility and microclimates.
- iii. Applicable air quality standards.

b. Visual quality. The proposal will not significantly degrade visual quality. In determining impacts to visual quality, the Board of Trustees shall apply the following considerations:

- i. Visual changes to ground cover and vegetation, waterfalls and streams, or other natural features.
- ii. Interference with viewsheds and scenic vistas.
- iii. Changes in appearances of forest canopies.
- iv. Changes in landscape character types or unique land formations.
- v. Compatibility of building and structure design and materials with surrounding land uses.

vi. Impacts on properties exposed to a view of the project.

c. Surface water quality. The proposal will not significantly degrade surface water quality. In determining impacts to surface water quality, the Board of Trustees shall apply the following considerations:

i. Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended Particulates and clarity, odor, color or taste of water.

ii. Applicable narrative and numeric water quality standards.

iii. Increases in point and non-point source pollution loads.

iv. Increase in erosion.

v. Increases in sediment loading to waterbodies.

vi. Changes in stream channel or shoreline stability.

vii. Changes in stormwater runoff flows.

viii. Changes in trophic status or in eutrophication rates in lakes and reservoirs.

ix. Changes in the capacity or functioning of streams, lakes or reservoirs.

x. Changes in flushing flows.

xi. Changes in dilution rates of mine waste, agricultural runoff and other unregulated sources of pollutants.

d. Groundwater quality. The proposal will not significantly degrade groundwater quality. In determining impacts to groundwater quality, the Board of Trustees shall apply the following considerations:

i. Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.

ii. Changes in capacity and function of wells within the impact area.

iii. Changes in quality of well water within the impact area.

e. Wetlands and riparian areas. The proposal will not significantly degrade the quality of wetlands and riparian areas. In determining impacts to wetlands and riparian areas, the Board of Trustees shall apply the following considerations:

i. Changes in the structure and function of wetlands.

ii. Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.

- iii. Changes to aerial extent of wetlands.
- iv. Changes in species' characteristics and diversity.
- v. Transition from wetland to upland species.
- vi. Changes in function and aerial extent of floodplains.

f. Terrestrial and aquatic animal life. The proposal will not significantly degrade the quality of terrestrial and aquatic animal life. In determining impacts to terrestrial and aquatic animal life, the Board of Trustees shall apply the following considerations:

- i. Changes that result in loss of oxygen for aquatic life.
- ii. Changes in flushing flows.
- iii. Changes in species composition or density.
- iv. Changes in number of threatened or endangered species.
- v. Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration or common travel routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.
- vi. Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species.
- vii. Changes to the aquatic and terrestrial food webs.
- viii. Changes to existing levels of human engagement and interference with terrestrial and aquatic animal life.

g. Terrestrial and aquatic plant life. The proposal will not significantly degrade the quality of terrestrial and aquatic plant life. In determining impacts to terrestrial and aquatic animal life, the Board of Trustees shall apply the following considerations:

- i. Changes to habitat of threatened or endangered plant species.
- ii. Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.
- iii. Changes in advancement or succession of desirable and less desirable species, including noxious weeds.
- iv. Changes in threatened or endangered species.

h. Soils and geologic conditions. The proposal will not significantly degrade soils and geologic conditions. In determining impacts on soils and geologic conditions, the Board of Trustees shall apply the following considerations:

- i. Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and flood hazard areas.
- ii. Changes to stream sedimentation, geomorphology, and channel stability.
- iii. Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.
- iv. Changes to avalanche areas, mudflows and debris fans, and other unstable and potentially unstable slopes.
- v. Exacerbation of seismic concerns and subsidence.

(7) The proposal will not have a significant adverse effect on the quality or quantity of recreational opportunities and experience.

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

(9) The proposal or its associated transmission collector or distribution system will not create blight or cause other nuisance factors such as excessive noise or obnoxious odors.

(10) The proposal will not degrade the natural, rural, mountain character of the Town or present objectionable views from residential properties which views are inconsistent with the natural, rural, mountain character of the Town

(11) The proposal will not be subject to significant risk from floods, fires, earthquakes or other disasters or natural hazards.

(12) 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.

(13) The proposal will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.

(14) The planning, design and operation of the proposal will reflect appropriate principles of resource conservation, energy efficiency and recycling or reuse.

(15) For those applications for which the Town Manager has required information on the environmental impacts and costs of alternatives under Section 22-3-50(c)(9) above, the proposal represents the least damaging alternative of reasonable cost among the alternatives analyzed.

(16) The proposal is in accordance with the comprehensive plan, zoning and any other applicable land use designations and requirements, and any applicable intergovernmental agreement affecting land use and development.

(17) The proposal represents the complete, reasonably foreseeable development for the subject property as required under Section 22-3-10(d), above, except that the Board of Trustees 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 22-3-10(d), which can be logically and adequately reviewed as a separate project under the applicable criteria of these regulations.

Sec. 22-3-120 Issuance of permits.

(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 Board of Trustees to eliminate, minimize or mitigate adverse effects and impacts of such development.

(c) The Board of Trustees 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) A certified copy of the permit shall be recorded in the real property records of the clerk and recorder of Summit County.

Sec. 22-3-130 Financial security.

(a) As a condition of issuing any permit, the Board of Trustees may, in its discretion, require the applicant to file a guarantee of financial security deemed adequate by the Board of Trustees and payable to the Town.

(b) The purpose of such financial guarantee shall be to assure that the permittee shall faithfully perform all requirements of the permit and any conditions imposed by the Board of Trustees.

(c) The amount of such financial guarantee shall be established by the Board of Trustees 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 Board of Trustees 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 Board of Trustees 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 Board of Trustees in accordance with standards adopted by Board of Trustees 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 Board of Trustees' 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 this Chapter, 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 Board of Trustees determines that a financial guarantee should be forfeited because of any violation of the permit or any applicable provisions adopted by the Board of Trustees, 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 purposes 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 Board of Trustees' 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
Administration, enforcement, penalties, and judicial review

Sec. 22-4-10 Enforcement and penalties. It is unlawful and a violation of this Chapter for any person to engage in or to undertake any development in an area designated pursuant to this Chapter, or to conduct an activity designated pursuant to this Chapter, without a permit issued pursuant to Article III of this Chapter, 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. 22-4-20 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. 22-4-30 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 this Chapter 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 this Chapter 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 this Chapter or any permit issued pursuant hereto, and for the performance of any duty or function authorized to or required of the Town pursuant to this Chapter.

Sec. 22-4-40 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 this Chapter when any violation of this Chapter 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 he has the right to a hearing before the Board of Trustees at which he may be heard concerning the alleged violation; and

d. That if he 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 Board of Trustees shall promptly schedule and hold such hearing. The Board of Trustees 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 Board of Trustees 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 this Chapter.

(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 this Chapter or the permit.

Sec. 22-4-50 Cure of violations.

(a) Order to cure. If the Town determines that the holder of any permit issued pursuant to this Chapter is using or developing property or is conducting an activity subject to the permit in a way that is not in conformity with this Chapter 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. 22-4-60 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 this Chapter 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. 22-4-70 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 this Chapter or any permit issued pursuant hereto, or which otherwise jeopardizes the property or health of any person, including the Town.

Sec. 22-4-80 Remedies cumulative. The remedies available to the Town under this Chapter, 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. 22-4-90 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 this Chapter on behalf of the Town.

(b) Any orders, directives, determinations or decisions of the Town Manager relating to the administration, interpretation or enforcement of this Chapter may be appealed in writing to the Board of Trustees, 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 this Chapter 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 this Chapter. The order, directive or decision shall be upheld if the person appealing same fails to meet this standard to the reasonable satisfaction of Board of Trustees.

Article V

Site selection of arterial highways, interchanges and collector highways

Sec. 22-5-10 Designation. The Board of Trustees, 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 V. The conduct of this activity within the boundaries of the Town shall be subject to this designation.

Sec. 22-5-20 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 22-5-10 and for the following additional specific reasons:

(1) The historic and cultural significance of Blue River 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. 22-5-30 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. 22-5-40 Purpose and intent.

The purpose and intent of the designation and regulations contained in this Article V 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 III and this Article V;

(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. 22-5-50 Definitions. Defined terms used in this Article V shall have the meanings set forth in section 22-1-80, and as set forth below.

(b) "*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.

(c) "*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.

(d) "*Alternative mode of transportation*" means any mode of transportation other than a single occupancy vehicle.

(e) "*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.

(f) "*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;

(g) "*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.

(h) "*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.

(i) "*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.

(j) "*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.

(k) "*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.

(l) "*Non-conforming use*" means a use in existence at the time of the adoption of this Chapter which use, were it a new use, would be one for which a permit would be required under this Chapter.

(m) "*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.

(n) "*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 this Chapter.

Sec. 22-5-60 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 22-1-30, above. To the extent that this Article V 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. 22-5-70 Relationship to other regulations.

(a) Nothing in this Article V shall be construed as exempting an applicant for a permit under this Article V 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 V be considered a representation by the Town, its staff members or consultants or the Board of Trustees 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 Board of Trustees 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. 22-5-80. Permit procedure.

(a) The procedures and requirements set forth in Article III of this Chapter and in this Article V shall govern applications for permits to engage in the site selection of arterial highways, interchanges and collector highways. The provisions of this Article V shall control in the event of any conflict or inconsistency between the provisions of Article III and this Article V.

(b) Any person subject to the requirements of this Article V shall contact the Town Manager to schedule a pre-application conference within sixty (60) days after the proposal is complete to the extent of ten percent (10%) of engineering design, and upon the scheduling of such conference shall observe and follow the requirements set forth in section 22-3-40 above.

(c) Any person subject to the requirements of this Article V shall submit its application for a permit under this Article V within sixty (60) days after the proposed project is complete to the extent of sixty percent (60%) of engineering design.

Sec. 22-5-90. Determination of applicability. Any person seeking to choose an alignment or a site or location for an expansion or modification of an existing arterial highway, interchange or collector highway, or other major roadway within the Town, may seek a determination from the Town Manager as to whether the proposed undertaking qualifies as a "site selection" under the provisions of this Chapter, by providing to the Town Manager the information applicable to the proposed location set forth in paragraphs (1) through (4) of subsection 22-5-100(b). The Town Manager shall render a written determination on the matter within 30 days after receipt of the above information. An appeal of the Town Manager's determination may be made to the Board of Trustees.

Sec. 22-5-100. Submission requirements. In addition to the requirements set forth in section 22-3-50 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) 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;
- (3) A location map showing the corridor and general area;
- (4) 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;
- (5) 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;
- (6) The need for the proposed arterial highway or interchange or collector highway;
- (7) Major traffic generators in the impact area and the Town;
- (8) The planned level of service in relationship to projected user demand within the Town;
- (9) 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;
- (10) 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;
- (11) 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;
- (12) Plans for promoting the use of alternative modes of transportation;
- (13) 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;

(14) 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;

(15) A description of resulting net shade and shadow impacts, after mitigation measures;

(16) 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 (NO_x), ozone, PM-10, benzene, 1, 3-butadiene, and other fuel combustion by-products;

(17) 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;

(18) Any health and safety hazards, including exposure to hazardous materials, which may result from locating the proposed arterial highway or interchange or collector highway;

(19) How the proposed arterial highway or interchange or collector highway and its impacts will conform to the Town comprehensive plan goals, objectives and policies;

(20) How the proposed arterial highway or interchange or collector highway and its impacts will conform to any applicable state plans, goals, objectives, and policies;

(21) 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;

(22) The increased demand that the potential development described in paragraph 24 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;

(23) 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;

(24) Alternatives which may be utilized by the Town in planning for and controlling adjacent land use;

(25) 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;

(26) The impact of the proposed arterial highway or interchange or collector highway on historic properties and districts or other historic resources in the Town;

(27) 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;

(28) 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;

(29) 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;

(30) 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. 22-5-110. 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 22-5-100 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 Board of Trustees to reach a decision on all criteria necessary to issue a permit.

(b) Submission requirements set out in subsections (b) and (c) of section 22-5-100 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 22-5-100; 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 Board of Trustees from requiring the submission of any additional information or materials related to the site selection proposal.

Sec. 22-5-120. Town Manager review.

(a) Upon receipt of an application for a permit, the Town Manager shall prepare a written report addressing at a minimum the following:

- (1) Identification of adverse effects and advantages of each of the alternative locations identified in the application.
- (2) Evaluation of the character and degree of such adverse effects.
- (3) Recommendation of measures that might mitigate those adverse effects.

(b) The Town Manager's report shall also be included among the materials presented to Board of Trustees at the permit hearing.

Sec. 22-5-130. Approval criteria. The Board of Trustees 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 V, 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 Board of Trustees 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 an 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 Board of Trustees 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.

Sec. 22-5-140. Denial of permit application. The Board of Trustees 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 22-5-130 above.

Sec. 22-5-150. Supplemental enforcement remedy. In addition the 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 V 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 V.