

**SUMMIT COUNTY LAND USE AND DEVELOPMENT CODE
CHAPTER 13: Public Hearings and Appeals**

DEVELOPMENT CODE REVISIONS CHAPTER 13¹			
CASE#	RESO #	SECTION/DESCRIPTION	DATE
88-76	88-74	13004.07, 13501.02, 13503.01.B.4, 13503.01.B.5, 13503.01.B.7, 13601.01.B, 13601.01.D, 13604.01.B, 13610	12/12/88
89-20	89-19	13501.02	04/10/89
89-79	89-84	13503.01.C	12/11/89
94-28	94-102	Added sections 13650 thru 13659	12/11/89
94-37	95-53	13004.01, 13004.05, 13105.01, 13105.05	06/12/95
99-104	99-100	13601.02	08/23/99
99-74	99-166	13503.01B.5	12/20/99
99-237	00-52	13500 (public hearings)	05/08/00
00-08	00-51	13503 (noticing of public hearings)	05/08/00
01-133	01-127	13105.04	10/22/01
03-135	03-110	13501.02, 13501.05, 13501.06, 13503.03, 13601.01, 13601.02, 13601.03, 13601.04, 13609.02	12/15/03
04-077	07-44	Comprehensive Amendments to the Code	5/22/07
09-097	10-07	13202 (Appeals)	1/26/10
10-143	13-74	Comprehensive Amendments to the Code	10/8/13
15-36	15-44	Section 13103.01: Distribution of Public Notices	6/23/15

¹ The Sections referenced above were the Sections in effect at the time the Development Code was amended. Subsequent amendments to the Development Code may have resulted in section numbers being modified and may no longer be applicable.

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13000: AGENDAS

All items listed as being reviewed as Public Hearings conducted by the Board of Adjustment, the Board of County Commissioners, and the Planning Commission as provided for in Chapter 13, shall be placed on the agenda as a Public Hearing. Items not required to be reviewed as a public hearing shall be placed on the agenda as follows:

- A. New Business Items
 - 1. General Subdivision Exemptions as provided for in Section 8400 et. seq.
 - 2. Work sessions as provided for in Section 12000.C.3 et. seq.
 - 3. Final Plats as provided for in Section 8300 et. seq.
 - 4. Appeal of the Planning Director's determination of whether a proposed modification is "minor" or "major" as provided for in Section 12200 et seq.
 - 5. Appeal of a Class 2 administrative decision.
- B. Consent Agenda Items
 - 1. Lot Line Vacations as provided for in Section 8400 et. seq.
 - 2. Adjustment and Vacations of Lot Lines or Easements as provided for in Section 8400 at.seq.
 - 3. Alterations or Elimination of Plat Notes on Recorded Plats as provided for in Section 8400 et. seq.
 - 4. Right-of-Way Dedication Plat as provided for in Section 8500
 - 5. Backcountry Zoning District Parcel Assemblages as provided for in Section 3514.05.B.4 et seq.

13100: PUBLIC HEARINGS

This section includes procedures and requirements for the conduct of public hearings.

13101: Responsibility for Public Hearings

The body responsible for conducting public hearings shall depend on the class of application under review. Please refer to the appropriate section of the Code to determine which class of application must be submitted, and the corresponding process to determine if a public hearing is required.

13101.01: Hearings Conducted by Board of Adjustment

The Board of Adjustment ("BOA") shall be responsible for conducting public hearings on requests for variances from:

- A. Development standards and regulations, except site area requirements (Chapters 3 and 4).
- B. Floodplain Regulations (Section 4100 et seq.).
- C. Administrative decisions made by the County in implementing the requirements of this Code unless another body is designated by this Code to hear an appeal of an administrative decision.
- D. Variances from County Sign Regulations (Chapter 9).
- E. Provisions of this Code where the hearing authority is not specified or is not expressly stated herein.
- F. Appeals as provided for in Section 13200 et. seq.

13101.02: Hearings Conducted by The Board of County Commissioners

The Board of County Commissioners ("BOCC") shall be responsible for conducting public hearings on the following items:

- A. Code amendments as provided for in Section 1450 et seq.
- B. Preliminary and final zoning amendments as provided for in Sections 12104 and 12105 et seq.
- C. Preliminary and final zoning amendments to create a Planned Unit Development ("PUD") as provided for in Sections 12200 and 12201 et seq.
- D. Major PUD modifications as provided for in Section 12202 et seq.
- E. Minor PUD modifications as provided for in Section 12203 et seq.

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- F. Preliminary plats as provided for in Sections 8250 et seq.
- G. Site-specific development plans as provided for in Section 12700 et seq.
- H. Development agreements as provided for in Section 12800 et seq.
- I. Areas and activities of state interest (1041 Permits) as provided for in Chapter 10.
- J. Formation and consolidation of special districts as provided for in State Statutes.
- K. Lot split on wells subdivision exemptions as provided for in Section 8400.
- L. Rural land use subdivisions as provided for in Section 8420 et seq.
- M. Quasi-legislative amendments to the official Zoning maps as provided for in Section 12106.
- N. Appeals as provided for in Section 13200 et. seq.
- O. Other development reviews as may be expressly and specifically required by this Code.

13101.03: Hearings Conducted by the Planning Commission

The Planning Commission shall be responsible for conducting public hearings on the following items:

- A. Master plans and master plan amendments as provided for in Chapter 2.
- B. Zoning amendment work sessions as provided for in Section 12000.C.3 and Section 12103 et seq.
- C. Preliminary zoning amendments as provided for in Section 12104 et seq.
- D. Preliminary zoning amendments to create a PUD as provided for in Section 12200 et seq.
- E. Major PUD modifications as provided for in Section 12202 et seq.
- F. Conditional use permits except where this Code assigns responsibility to the Code Administrator or Planning Department as provided for in Section 12300 et seq.
- G. Temporary use permits except where this Code assigns responsibility to the Code Administrator or Planning Department as provided for in Section 12400 et seq.
- H. Location and extent reviews as provided for in Section 121000 et seq.
- I. Site plan reviews except where this Code assigns responsibility to the Planning Department as provided in Section 12600 et seq.
- J. Rural land use subdivisions as provided for in Section 8420 et seq.
- K. Certain sign programs and sign program amendments as provided for in Chapter 9.
- L. Preliminary plats as provided for in Section 8250 et seq.
- M. 1041 permits as provided for in Chapter 10.
- N. Formation and consolidation of special districts as provided for in State Statutes.
- O. General subdivision exemption for a lot split on wells as provided for in Section 8400 et seq.
- P. Revocation hearings as provided for in Section 12000.19 et seq.
- Q. Code amendments as provided for in Section 1450 et seq.
- R. Quasi-legislative amendments to the official Zoning maps as provided for in Section 12106.
- S. Accessory apartments and caretaker units that cannot be administratively reviewed and approved as provided for in Section 12000.12.A.2.b.
- T. Objections to the Class 2 administrative review of accessory apartments and caretaker units as provided for in Section 12000.12.A.2.b.
- U. Other development reviews as may be expressly and specifically required by this Code.

13101.04: Items Exempt from Public Hearing or Public Meeting Requirement

This section lists the development review processes, which, by virtue of the provisions of this Code separate from this section, do not require a public hearing or public meeting prior to action. Where a conflict exists between this section and provisions elsewhere in this Code, the more restrictive provisions shall govern. The Planning Director may require that adjacent property owners be given a notice and that the affected property be posted for items exempt from the hearing requirement.

- A. Access permits as provided for in Chapter 5.
- B. Floodplain development permits as provided for in Chapter 4.
- C. Grading permits as provided for in Chapter 6.

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- D. Road cut permits as provided for in Chapter 5.
- E. Sign permits issued by the Planning Department as provided for in Chapter 9.
- F. Site plan reviews acted on by the Planning Department as provided for in Section 12600 et seq.
- G. Temporary use permits acted on by the Planning Department as provided for in Section 12400 et seq.
- H. Minor revisions or modifications as provided for in Section 12001 et seq.
- I. Renewals as provided for in Section 12002 et seq.
- J. Right-of-Way Dedication Plats as provided for in Section 8500 et seq.
- K. Class 1 or Class 2 permits reviewed and acted on by the Planning Department.
- L. Variances to Road and Bridge Standards as provided for in Section 5600.
- M. Other development reviews as may be expressly and specifically exempt by this Code.
- N. Correction Plats.

13102: Scheduling of Public Hearings

The Planning Department shall be responsible for the scheduling of public hearings in accordance with the specific requirements for each class of application as provide for in this section and in Section 12000.09 et seq.

13103: Noticing of Public Hearings

This section sets forth the standards for noticing of various public hearings as provided for in this Code. Unless specifically stated, such notice provisions are intended to be substantially complied with and strict adherence to such notice requirements is not mandated in order to allow review of applications to proceed. Moreover, the County may recognize actual or implicit notice as sufficient to establish jurisdiction over an application.

13103.01: Distribution of Public Notices

A. General Provisions:

1. Source of Adjacent Property Owner Lists: Adjacent property owner lists and addresses and property owner lists and addresses within a PUD must be obtained from the County Assessor's records within 30 calendar days of the date of the initial hearing or meeting. If more than 60 calendar days has passed after the date an adjacent property owner list was provided to the Planning Department as required by this section, an applicant must provide an updated list to the Planning Department based on the most recent County Assessor records no less than seven (7) calendar days prior to the date that a notice must be mailed. Adjacent property owner lists shall be compiled by measuring a set radial distance from all the property boundaries of a project as set forth in Section 13103.01.B. Where there are multiple owners of a property, such as a timeshare, notification shall only be required to be sent to the manager of the timeshare or to the primary contact of record according to County records.
2. Notice: Notice of public hearings shall be deemed given and effective upon substantial compliance with the requirements for notice as set forth in this section, including, without limitation, the procedural requirements for mailing notice and the substantive requirements regarding the information to be contained in such notices. Upon substantial compliance with the requirement for notice as set forth in Section 13100 et seq., any failure of the County, applicant or other party to strictly comply with the noticing requirement set forth in this Section 13100 et seq. for any public hearing, public work session or other public review shall not deprive the Review Authority of jurisdiction to hear the matter at such public hearing, public work session or other public review or in any other manner invalidate actions taken by such Review Authority at such meeting. Actual or implicit notice may be recognized as sufficient to satisfy these noticing requirements.
3. Notwithstanding the foregoing, the requirements for the timing of the notice and for specifying the time, date and place of a hearing, public work session or other public review shall be strictly construed. The description of the property shall be sufficiently accurate to allow a reasonable person to determine the location of the property in question. If questions arise at a Review Authority's hearing regarding the adequacy of notice in relationship to specific requirements of this Code, the Review Authority shall make a

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formal finding regarding whether there was substantial compliance with the notice requirements of the Code before proceeding with the hearing, public work session or other public review. All objections to such noticing provisions shall be made at the commencement of any such hearing or else shall be deemed waived. Failure of a party to receive written notice after it is mailed shall not invalidate any subsequent action taken by a Review Authority.

- B. **Public Noticing Requirements:** Applications shall be noticed in substantial compliance with the following provisions:
1. **Class 1 Applications:** No legal notice of this administrative application process is required.
 2. **Class 2 Applications:** Certain Class 2 development review applications per the provisions of Section 12000.10.B require a posting notice in accordance with Section 13103.01.E. For Class 2 Development Review Applications that require posting per Section 12000.10, the posted notice shall serve as the notice of action to the public by including the date the decisions will be rendered and a date by which appeals must be submitted to the Planning Department. Not all Class 2 development review applications require noticing.
 3. **Class 3 Applications:** Notice of the work session shall be: 1) sent to all property owners within 300 feet of the property boundary in accordance with Section 13103.01.F; 2) posted in accordance with Section 13103.01.E; and, 3) published as a legal advertisement in accordance with Section 13103.01.D.
 4. **Class 4 and 5 Applications:** Notice of the public hearing shall be: 1) sent to all property owners within 300 feet of the property boundary in accordance with Section 13103.01.F; 2) posted in accordance with Section 13103.01.E; and 3) published as a legal advertisement in accordance with Section 13103.01.D. Notwithstanding the foregoing, a quasi-legislative amendment to the Official Zoning Maps only has to comply with the noticing provisions contained in Section 13103.01.C.6.
 5. **Class 6 Applications:** No legal notice of these applications is required except for: 1) final plats and final rezonings to PUD not concurrently heard and noticed with the required Class 5 application; 2) minor PUD modifications; 3) Backcountry Zoning District Parcel Assemblages; and, 4) Class 6 development review process for the alterations or elimination of plat notes. For final plats and final zonings not being concurrently heard with the Class 5 preliminary review applications, notice of the BOCC's public hearing shall be: 1) sent to all property owners within 300 feet of the property boundary in accordance with Section 13103.01.F; 2) posted in accordance with Section 13103.01.E; and, 3) published as a legal advertisement in accordance with Section 13103.01.D. For Backcountry Zoning District Parcel Assemblages, notice of the Class 6 development review process shall be sent to all property owners within 300 feet of the proposed development parcel's property boundary in accordance with Section 13103.01.F. The Class 6 development review process for the alterations or elimination of plat notes shall be 1) noticed to all property owners within the affected subdivision, as well as any other direct beneficiaries or other parties directly affected by such notes, both in accordance with Section 13103.01.F, and 2) posted in accordance with Section 13103.01.E.
 6. **Extension of Noticing Area:** The Planning Director may extend the radius used for noticing as required by this section up to 2,000 feet based on the nature of the proposal, its potential impacts and the general character of the area.
 7. **Code Administrator Decisions on Code Interpretations and Use Determinations:** Notice of the Code Administrator decisions on Code interpretations and use determinations may, at the discretion of the Code Administrator, be posted on the property impacted by such a decision in accordance with Section 13103.01.E.
 8. **Mineral Estate Notification:** An applicant shall provide notice to mineral estate owners as required by C.R.S. § 24-65.5-100 et seq. as currently affected or hereinafter amended. Where an applicant provides any notice as may be required by C.R.S. § 24-65.5-100 et seq. and a mineral estate owner is notified, the County shall provide notice of subsequent hearings.
- C. **Alternative Public Notice Requirements for Specific Development Review Applications:**
1. **PUD Modifications:**
 - a. **Major Modifications:** In addition to the public notice required for Class 5 applications under Section 13103.01.B, written notice of the public hearing shall also be mailed in accordance with the provisions of 13103.01.F to all the property owners within the boundaries of the PUD and to all homeowners

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- associations within the PUD registered with the Planning Department.
- b. **Minor Modifications:** In addition to the public notice required for Class 6 applications under Section 13103.01.B, written notice of the BOCC's public hearing shall be mailed to any homeowner's associations within the PUD registered with the Planning Department. If the Code Administrator determines that a minor modification potentially affects surrounding properties or properties within a PUD, then notice may be provided to the potentially affected property owners.
 - c. **Limiting the Area of Notice for Major or Minor Amendments:** If the Planning Director determines that a PUD modification affects only a portion of the property within a PUD, and therefore the noticing requirements of subsection a above, then, notwithstanding any other provisions of this section, mailed notice shall be mailed to landowners owning property within 300 feet of the site(s) being affected or to those owners of property that are determined to be potentially affected (as so determined by the Planning Director).
2. **County-initiated Zoning Amendments:** In addition to the public notice required for Class 5 applications under Section 13103.01.B, written notice of the Planning Commission's review and the BOCC's public hearing shall be mailed to landowners owning property that would be subject to a change in zoning district classification in accordance with Section 13103.01.F.
 3. **Development Code Amendments:** For any Development Code amendments which would change the provisions of this Code, including but not limited to the land use and development regulations or modified zoning district regulations, public notice shall be provided by: 1) a display advertisement measuring at least 24 square inches published at least once in a legal newspaper of general circulation in the County; and, 2) published as a legal ad in accordance with Section 13103.01.D.
 4. **Area or Activity of State Interest (1041) Permit or Lineal Facility:** Where a hearing is required for an area or activity of state interest (1041 permit) or a lineal facility, including but not limited to a transmission line, pipeline or other lineal facility, notice of the hearing shall be in substantial accordance with the noticing requirements contained in Chapter 10.
 5. **Adoption or Amendments to Master plans:** Notice of the Review Authority's public hearing shall be: 1) published as a legal advertisement in accordance with Section 13103.01.D, and 2) published at least once in a legal newspaper of general circulation in the county an advertisement of the hearing measuring at least 24 square inches.
 6. **Quasi-legislative Zoning Amendments to the Official Zoning Maps:** Notice of the Review Authority's public hearing shall be as follows:
 - a. Notification of the Review Authority's public hearing shall be published at least three (3) times in a newspaper of general circulation in the County, using display advertisements measuring at a minimum 24 square inches, and at least once in the legal advertisements section of such newspaper in accordance with Section 13103.01.D.
 - b. Affected owner notification shall occur as provided herein only if an application for a quasi-legislative zoning amendment to the Official Zoning Maps will directly change the zoning district classification on properties as shown on the Official Zoning Maps and further change either: 1) the permitted density as outlined in the Code by changing the permitted number of units per acre or amount of floor area, or 2) the permitted uses as allowed by Figure 3-2. The Planning Department shall make a good-faith effort to notify affected property owners. However, failure to notify shall not provide grounds for a challenge to the hearing or invalidate any action taken.
 - c. Except as provided for in this subsection, quasi-legislative zoning amendments to the Official Zoning Maps, including but not limited to the BOCC's re-adoption of the Official Zoning Maps from time-to-time, do not require any direct property owner notification.
- D. **Newspaper Notice:**
On or before the appropriate deadline set forth in Section 13103.02, the Planning Department shall place an advertisement in the legal section at least once in a newspaper of general circulation in the County. The newspaper placing such a legal ad shall provide the publisher's affidavit of said published notice to the Planning Department as soon as practicable following publication.
- E. **Posted Notice:**
 1. On or before the appropriate deadline set forth in Section 13103.02, the applicant shall post a notice on the

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property being affected by the proposed application, with at least one (1) sign measuring a minimum of 20 inches by 17 inches, posted within ten (10) feet of an abutting public or private street or public way, or if the property is not within ten (10) feet of a public or private street or public way, then such sign shall either be posted on the property or at another mutually-agreed upon location as determined by the County and the applicant, where the applicant has a right to post the sign. The Planning Department shall provide the sign to the applicant for posting as required by this section. The applicant shall provide an affidavit of posting the sign per the requirements of this section prior to the Review Authority's public hearing.

2. Posted notice shall be placed adjacent to all rights-of-way immediately adjacent to an affected property. Notwithstanding anything to the contrary, with respect to PUD modifications, notice need not be posted on every right-of-way within the boundaries of the PUD being modified so long as the required notice is posted adjacent to the primary means of ingress and egress.

F. Mailed Notice:

1. Each property owner shall be solely responsible for ensuring that their current address is set forth completely and accurately in the County Assessor's records. Neither the Planning Department nor the applicant shall be required to ensure the addresses provided by the County Assessor are complete or accurate.
2. Whenever notices of public hearings are to be sent or mailed to any property owner, then for all purposes under this section, the addresses obtained in accordance with Section 13103.01.A.1 shall be deemed to be the accurate and complete list of all addresses of parties entitled to receive such notice.
3. Notices of public hearings required to be sent or mailed under Section 13100 et seq. shall be deemed properly given and effective upon substantial compliance with each of the following requirements:
 - a. The applicant provides to the County Assessor a description of adjacent property and/or property within a PUD for which the owners thereof are entitled to receive mailed notice as determined under Section 13103.01.B;
 - b. The list of addresses to which such notices are to be sent is obtained from the County Assessor in accordance with Section 13103.01.A.1;
 - c. The applicant provides to the Planning Department a notarized affidavit in a form approved by the Planning Department wherein the applicant attests to the date upon which such addresses were obtained from the County Assessor;
 - d. The applicant provides to the Planning Department: 1) a list of the adjacent property and/or property for which public notice is required; and 2) either a) postage pre-paid, by means of stamped envelopes that are also (i) addressed to the addresses and in the format obtained from the County Assessor, and (ii) listing thereon the address of the Summit County Planning Department as the return address; or b) if approved by the Planning Department, a computer file and/or labels of the adjacent property and/or property for which public notice is required for the Planning Department to send out notice;
 - e. Notices containing the information required under Section 13103.01.G are placed in such envelopes (or, when postcards are used instead of envelopes, printed thereon); and,
 - f. Such envelopes (or postcards) are mailed by the Planning Department or its designee on or prior to the deadline for giving such notice as set forth in Section 13103.02.
4. Notices to be mailed shall be deemed given when deposited for delivery with the United States Postal Service.

G. Information in Public Hearing Notices:

Public notices, including but not limited to notices given or sent by mail and posted notices (signs) and newspaper notices (legal advertisements), shall substantially include the following components:

1. A brief description of the project sufficient to inform the public as to: 1) the type of development review; 2) approximate number(s) and type(s) of units proposed for development; 3) approximate square footage for nonresidential development; and 4) approximate acreage.
2. Property legal description or township, section and range or legal address.
3. The project's approximate location, containing sufficient detail to reasonably notify potentially affected persons and the general public of the general location of the proposed development relative to landmarks or cross-streets, if available.
4. Applicant's name.

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5. Hearing body or Review Authority (Planning Commission, BOCC, BOA, etc.).
6. Hearing date, location and time.
7. For quasi-legislative zoning amendments to the official zoning maps, a location where the proposed amendments to such maps can be viewed.

Minor defects in a notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Failure of a party to receive written notice after it is mailed shall not invalidate any subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date and place of a hearing and the general location of the subject property shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall make a formal finding regarding whether there was substantial compliance with the notice requirements of this Code before proceeding with the hearing. If a Review Authority determines that notice has not been substantially provided as required in this section, a Review Authority shall continue the public hearing as provided for in Chapter 12, and may only open the public hearing for the limited purpose of allowing comments from public where a hardship would otherwise result from a continuance.

13103.02: Length of Notice

Notice as required in Section 13100 et seq. shall be given at least 15 calendar days prior to the initial public hearing or meeting held by the Review Authority or 15 calendar days prior to the administrative decisions for Class 2 development review applications when posting is required by the provisions of Section 12000.10 et seq., whichever situation applies.

13103.03: Waiver of Notice

Any person who attends a public hearing shall be deemed to have obtained actual notice of such proceedings and thereby waives such person's right to challenge the compliance with the notice requirements in this section for such public hearing, unless at such public hearing such person expressly asserts on the record such person's objections to the noticing for such hearing.

13103.04: Payment of Costs

- A. This section applies when the County prepares the mailed notice as outlined in Section 13103.01.F and an applicant provides either a computer file or labels for the Planning Department to create the mailed notice.
- B. Where the number of property owners to be noticed exceeds 50 owners, the applicant shall pay the cost of printing and mailing of public notices in excess of 50 owners (A portion of the fee charged for the review of development proposals is used to pay the cost of noticing adjacent property owners). Payment shall be made at the time of submittal of a development application. A development application shall not be scheduled for review by the Review Authority unless the requirement for paying printing and mailing of the public notice has been met.

13104: Testimony at Public Hearings

The body responsible for conducting a public hearing shall allow an opportunity during the hearing for the Planning Department, the applicant (including consultants) and any member of the public to offer either written or oral testimony regarding the proposal under consideration.

13105: Official Record of Public Hearings

The official record of a public hearing shall consist of all submittal materials received from the applicant, responses from referral agencies, correspondence received concerning the proposal, testimony offered at the hearing, minutes, resolutions or official actions and any exhibits entered into the record as part of the hearing. The official hearing record shall be maintained on file in the Planning Department and shall be open to public review.

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13106: Acceptance of Exhibits

The applicant or any member of the public may offer exhibits to be placed in the official record of a public hearing at that hearing during the appropriate testimony period. Acceptance of such exhibits is entirely subject to the acceptance of the same by the Review Authority as a part of the public hearing(s).

13107: Continued and Tabled Hearings

The Review Authority responsible for conducting a public hearing may continue the public hearing to a subsequent regular meeting or special meeting called by that body for this purpose, subject to any time limits and necessary permissions listed under Section 12000 et seq. The Review Authority responsible for conducting a public hearing may also continue the public hearing to a definitive date if an application needs a significant amount of time to address issues, subject to any time limits and necessary permissions listed under Section 12000 et seq. Public hearings continued to a date certain need not be renoticed. Hearings continued to an indefinite date shall be renoticed in accordance with the public noticing requirements listed in Section 13103 et seq.

13200: APPEALS

13201: Responsibility for Hearings on Appeals

The body responsible for conducting hearings on appeals shall depend on the type of appeal.

13201.01: Appeals Heard by the Board of County Commissioners

The BOCC shall be responsible for hearing appeals of the following items:

- A. Code Administrator decisions on:
 - 1. Revocation of conditional use permits for which the Code Administrator was the Review Authority that approved the original request.
 - 2. Determination of fair market value (see Section 14104).
 - 3. Determinations of the designation of a PUD modification as either a major or minor PUD amendment, per Section 12202.04.
 - 4. Other decisions by the Code Administrator as provided by this Code.
- B. County Manager decisions on variances from the Grading and Excavation Regulations (Chapter 6).
- C. Planning Commission decisions on:
 - 1. Class 4 development review applications as provided for in Section 12000 et seq.
 - 2. Other decisions by the Planning Commission as allowed by this Code.
- D. Planning Department decisions on Class 2 development review applications as provided for in Section 12000 et seq.
- E. Appeal of the Planning Department's decision on townhouse plats, duplex subdivisions, condominium maps and townhouse plats as provided for in Section 8400 et seq.
- F. Public Health Department determinations on hardship regarding the allowance for the installation of cisterns per Section 3504.07.C.
- G. Engineering Department decisions as provided for in Sections 5106 et. seq, 5600 et seq., and 6500 et seq., and other decisions by the Engineering Department as provided by this Code.

13201.02: Appeals Heard by the Board of Adjustment

The BOA shall be responsible for hearing appeals of the following items:

- A. **Planning Department Decisions on:**

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1. Administrative relief.
2. Use determinations.
3. Application and interpretations of County Zoning Regulations or other regulations of this Code that are administered by the Planning Department.
4. Other administrative decisions of the Planning Department as allowed by this Code (except decisions on Class 2 development review applications which action would be appealed to the BOCC).

B. GIS Department decisions on:

1. Subdivision names
2. Project names

13202: Filing of Appeals

Appeals may only be filed by (1) persons who are determined to be materially and adversely affected by the decision of a Review Authority, including but not limited to the applicant or surrounding property owners; or (2) the BOCC or any individual member of the BOCC, County Manager or the Planning Director. Notwithstanding the foregoing, only an applicant for a Class 2 development review application for a condominium map, townhouse plat or duplex subdivision exemption, the County Manager, Planning Director, the BOCC, or any member of the BOCC may appeal the decision on such plats. The determination that a person(s) is materially and adversely affected by the decision of a Review Authority shall be made by the Planning Director, who may consult with the County Attorney's Office in making such determination. If a person disputes the determination made by the Planning Director in such regard, the BOCC shall rule upon the propriety of that determination as a "new business" item. Appeals must be filed with the Planning Department within seven (7) calendar days from the date the action appealed from is taken. Appeals must be accompanied by a written statement outlining the manner in which the appellant has been materially or adversely affected, the grounds for the appeal and payment of the fees for such an appeal per the Planning department Fee Schedule then in effect.

13203: Scheduling of Hearings on Appeals

The Planning Department shall be responsible for scheduling hearings on appeals. Appeals shall be heard at the next regular meeting of the body responsible for the appeal where notice can be provided in accordance with the Length of Notice requirements contained in Section 13103.02. Notwithstanding the foregoing, under no circumstances shall appeals be scheduled until all appropriate fees have been submitted by the appellant.

13204: Noticing of Hearings on Appeals

Public notice on appeals shall be as provided for the original application as set forth in Section 13100 et seq., with the noticing requirements based on the class of application under appeal or closest class of application, whichever situation applies as determined by the Planning Department. For appeals of Class 2 applications, noticing shall be conducted per the noticing requirements for the type of application in accordance with Section 12000.10. Notwithstanding the foregoing, (1) notice of the appeal shall also be mailed to (a) any person who attended the meeting at which the decision under appeal was made and who filled out the official meeting attendance/sign in sheets for that meeting (which requires name and address information), and (b) the members of the Review Authority whose decision is under appeal; and (2) within seven calendar days of the close of the appeal period, the notice of the appeal must be posted on the affected property in accordance with 13103.01.E, and mailed to (a) adjacent property owners as required under the initial public hearings, and (b) persons who attended the meeting and filled in the meeting attendance/sign in sheets.

13205: Testimony at Appeal Hearings

The body responsible for conducting an appeal hearing shall allow an opportunity during the hearing for County Staff, the appellant and any member of the public to offer either written or oral testimony regarding the proposal under consideration.

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13206: Official Record of Appeal Hearing

The official record of an appeal hearing shall consist of materials submitted by the appellant, correspondence received concerning the proposal, testimony offered at the hearing, any exhibits entered into the record as part of the hearing, minutes and resolutions or official actions. The official hearing record shall be maintained on file in the County Planning Department and shall be open to public review.

13207: Continued and Tabled Appeal Hearings

The Review Authority responsible for hearing an appeal may continue the hearing to a subsequent regular meeting or special meeting called by that body for this purpose. Hearings continued to a time, date and place certain need not be renoticed. The Review Authority responsible for conducting a public hearing may also table the public hearing if an application needs a significant amount of time to address issues, subject to any time limits and necessary permissions listed under Section 12000 et seq. Hearings continued to an indefinite date or hearings closed and then reopened shall be renoticed in accordance with Section 13204.

13208: Decisions on Appeals

13208.01: General

Except as otherwise provided in this section, the body responsible for hearing an appeal shall take action by resolution, with appropriate findings, to uphold, deny, or remand an appeal. Appeals that approve a project shall be deemed a valid approval. The Review Authority's action on appeals shall be effective as of the date the action was taken.

13208.02: Scope of Review

- A. The BOCC, by its adoption of these regulations, has delegated authority to act on certain development applications to either the Planning Commission, Chairman of the BOCC, County Manager, Code Administrator or Planning Department Staff. When decisions are appealed, the BOCC shall review all such matters on a de novo basis and retain the authority to reopen consideration of the request, hear any new evidence or testimony in such regard, establish conditions of approval and take action on the request in accordance with the requirements of this Code. The BOCC's review and action shall be in accordance with the procedures, standards and criteria for decision established in these regulations for the type of application being appealed.
- B. The review Authority may remand any matter on appeal back to the lower decision making review authority for 1) consideration of new or omitted or overlooked evidence; or 2) clarification on any matters subject to the initial review.

13209: Notice of Decision

The Planning Department shall send written notification of a decision on an appeal by either the United States Postal Service, fax or e-mail to 1) the Review Authority whose decision was appealed, 2) the appellant and, 3) the applicant who filed the request which is under appeal, within two (2) calendar days of the date of the decision. Failure to give such a written notification within two (2) calendar days shall not invalidate the action taken.

13210: Length of Validity

The Review Authority's decision that results in an approval for a project shall be valid for 18 months from the date action was taken, unless such decision is duly renewed in accordance with Section 12002 et seq.

13300: ADMINISTRATIVE APPEALS FOR TAKINGS/ECONOMIC HARDSHIP AND VESTED RIGHTS

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13301: Purpose and Intent

It is possible that certain regulatory actions and decisions made in applying the Code may, in limited unique circumstances, result in a potential denial of all reasonable use of private property (aka "takings") or deprivation of vested rights. Given the increasing scope of local land use and environmental regulations adopted in response to legitimate environmental concerns and community goals, it is recognized that the potential for a claim based on takings or vested rights may be increased. In response, the BOCC finds that establishing an appeals process which attempts to resolve such claims through Staff review and a hearing may reduce litigation and promote better land use decisions which are consistent with the constitutional rights of property owners and meet community goals.

13302: Applicability/Authority to Initiate

13302.01: Landowner/Developer/Applicant Initiated

Any landowner, developer or applicant who believes that a final decision made or final action taken by the BOCC, Planning Commission, BOA, or other Review Authority in applying the Code results in a denial of all reasonable use of property or deprivation of a vested right may file an appeal petition with the Planning Department seeking a review of such decision or action.

13302.02: County Initiated

- A. If, during the course of review of a development application, a vested rights question is raised and it is determined that there is a substantial possibility that vested rights may exist relative to the decision or action being contemplated, an interlocutory appeal may be initiated prior to a final decision or final action. Any application subject to such action shall be either continued or tabled until such time as said interlocutory appeal is processed and determined. Under these conditions, such an appeal may be initiated by the BOCC, Planning Commission, BOA or other Review Authority with responsibility for making a recommendation, taking final action or making a final decision when it is determined that the vested rights question must be resolved.
- B. A County initiated appeal shall be processed in the same manner as a landowner/developer/applicant appeal. The landowner/developer/applicant shall provide all the information necessary for the review to be completed pursuant to Section 13303.03. Processing and/or review of the development application shall be postponed until the appeal is resolved through the review process pursuant to Section 13300 et seq.

13303: Appeal Petition

13303.01: Notice of Intent to Appeal

Except as provided in Section 13302.02.B, a notice of intent to appeal shall be filed with the Planning Department no later than 30 calendar days following the final decision or final action taken by the Review Authority. The notice of intent shall include the name of the proposal, final action or final decision being appealed and information sufficient for the Planning Director to determine if the appeal pertains to an actionable property interest under the United States Constitution, the Colorado Constitution or a vested right pursuant to C.R.S. § 24-68-101 et seq.

13303.02: Final Decision/Final Action Defined

A final decision or final action shall be defined as the adoption of a resolution or the implementation of a final decision or action by the applicable decision making body on the following applications:

- A. Final Zoning Amendments.
- B. Preliminary Plats.
- C. Final Plats.
- D. Conditional Use Permits.
- E. Temporary Use Permits.

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- F. Final PUD Zoning Amendments.
- G. Final Major PUD Zoning Amendments.
- H. Variances.
- I. Sign Permits.
- J. Grading and Excavation Permits.
- K. Building Permits.
- L. 1041 Permits.
- M. Minor PUD Zoning Amendments.
- N. Quasi-legislative Amendments to the Official Zoning Maps.
- O. Code Amendments.
- P. Rural Land Use Subdivisions.
- Q. Other final decisions or actions by a Review Authority as provided for in this Code.

13303.03: Filing of Petition/Information Required

Within 30 calendar days of filing of a Notice of intended appeal, the appellant shall file a complete appeal petition with the Planning Department. Such petition shall include the following information:

- A. Name of the petitioner.
- B. Name and business address of the current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership or joint venture, name and address of all principal shareholders or partners.
- C. Price paid and other terms of sale of the property, the date of purchase and the name of the party from whom purchased, including the relationship, if any, between the petitioner and the party from whom the property was acquired.
- D. Nature of the potentially protected interest claimed to be affected, such as, but not limited to, fee simple ownership, lease hold interest.
- E. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property.
- F. All studies commissioned by the petitioner or agents of the petitioner within three (3) years of the date of application concerning the feasibility of development or utilization of the property.
- G. For appeals involving takings/denial of all reasonable use, the following information shall also be included:
 - 1. Terms, including sale price, of any previous purchase or sale of a full or partial interest in the property by the current owner, developer or applicant prior to the date of application.
 - 2. All appraisals of the property prepared for any purpose, including financing, offering for sale or ad valorem taxation which were prepared within three (3) years prior to the date of application.
 - 3. The assessed value of and ad valorem taxes on the property for the three (3) years prior to the date of application.
 - 4. All information concerning current mortgages or other loans secured by the property, including the name of the mortgagee or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to, right of purchasers to assume the loan.
 - 5. All listings of the property for sale or rent, price asked and offers received, if any, during the period of ownership or interest in the property.
 - 6. For income producing property, itemized income and expense statements from the property for the three (3) years prior to the date of application.
 - 7. Evidence and documentation of improvements, investments or expenditures for professional and other services related to the property made for the three (3) years prior to date of application.
 - 8. A narrative describing the basis for applicant's assertion that the denial at issue has or would act to eliminate all reasonable economic use of the property in question.
- H. For appeals involving deprivation of a vested right, the following information shall also be included:
 - 1. Evidence of the issuance by Summit County of any development, zoning, subdivision, other land-use permit or approval of any site specific or other development plan or specific representations by county officials indicating development approval relating to the subject property, and the date and terms thereof.

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2. Evidence of any detrimental reliance upon such permit or approval, including but not limited to expenditures for professional services, purchase of materials and other associated costs.
 3. Where steps in reliance cannot be shown, evidence demonstrating the petitioner would have taken steps in reliance except for improper delay or other improper action by Summit County in issuing a development permit or other land-use approval.
 4. A statement identifying changes in regulations, standards, or other action by Summit County allegedly depriving the petitioner of a vested right.
 5. A statement or evidence supporting a signed affidavit indicating that the petitioner acted without knowledge of any error, improper issuance or revocation associated with any development permit or land-use approval.
- I. The Planning Director or hearing officer may request additional information when it is determined to be reasonably necessary to arrive at a conclusion regarding the appeal petition.

13303.04: Failure to Provide Information

In the event that any of the information required to be submitted by the petitioner is not reasonably available, the petitioner shall file with the petition a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.

13304: Hearing Officer Review

13304.01: Hearing

A hearing shall be held by a hearing officer selected pursuant to Section 13304.02. Notice and scheduling of hearings shall be carried out using the same noticing requirements for the class of application under review as provided for in Section 13100 et seq. The hearing shall commence within 30 calendar days of submittal of the information required pursuant to Section 13303.03. The hearing shall be completed within 60 calendar days of the date of commencement, unless, in the opinion of the hearing officer, extenuating circumstances require a longer time period. The hearing officer shall allow an opportunity during the hearing for the petitioner and any member of the public to offer either written or oral testimony regarding the proposal under consideration.

13304.02: Qualifications and Selection of the Hearing Officer

- A. The BOCC shall appoint a roster of qualified hearing officers of no less than three (3) persons. Every appointed hearing officer shall have demonstrated experience in either development, real estate finance, real estate analysis, real estate consulting, real estate appraisal, planning, real estate or zoning law or in other real estate-related disciplines sufficient to allow an understanding, analysis and application of the takings/denial of all reasonable use and vested rights standards contained herein.
- B. The appellant may select from the roster of qualified hearing officers appointed by the BOCC. Prior to selection for an individual appeal, the hearing officer shall submit a statement of no potential or actual conflict of interest relative to the appeal. If it is determined by the BOCC that a conflict of interest may exist, then the appellant shall be given the opportunity to select another hearing officer from the roster. In any event, should the appellant fail to select a hearing officer within 30 calendar days of filing of the appeal petition, then the BOCC may select a hearing officer from the roster.

13305: Standards and Findings for Vested Rights

13305.01: Vested Rights Standard

For purposes of this section, a vested right shall be defined as a right to proceed with development under prior existing land use regulations or pursuant to an approved permit or site specific development plan where the aggrieved party can demonstrate it detrimentally changed position in justifiable reliance on representations made by Summit County or has met all the requirements of C.R.S. § 24-68-101 et seq.

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13305.02: Application of the Vested Rights Standard

In applying the vested rights standard in Section 13305.01 above, the hearing officer shall consider, among other items, the following information or evidence.

- A. Evidence of the issuance by Summit County of any development, zoning, subdivision, other land-use permit or approval of any site specific or other development plan or specific representations by County officials indicating development approval relating to the subject property and the date and terms thereof.
- B. Evidence of any detrimental reliance upon such permit or approval, including but not limited to expenditures for professional services, purchase of materials, other associated costs and actual construction.
- C. Where steps in reliance cannot be shown, evidence demonstrating the petitioner would have taken steps in reliance except for improper delay or improper action by Summit County in issuing a necessary development permit or approval.
- D. A statement identifying changes in regulations, standards or other action by Summit County allegedly depriving the petitioner of a vested right.
- E. A statement or evidence, as applicable, supporting a signed affidavit indicating that the petitioner acted without knowledge of any error, improper issuance or revocation associated with any development permit or approval.

13305.03: Burden of Proof

The petitioner shall have the burden of proving by a preponderance of the evidence the existence of a vested right and an abrogation thereof by Summit County.

13305.04: Findings of the Hearing Officer

The hearing officer shall, on the basis of the evidence and testimony presented, make the following specific findings. Such findings shall be included as part of its report and recommendations to the BOCC and other relevant bodies and agencies as set forth in Section 13300 et seq.

- A. Whether the petitioner has complied with the requirements for presenting the information to be submitted with a vested rights appeal petition;
- B. Whether the petitioner has a protected interest in property;
- C. The market value of the property considering the existing regulations;
- D. The market value of the property under the proposed use;
- E. Whether the petitioner has established the existence of a vested right;
- F. Whether the petitioner, in good faith, detrimentally relied on an approval, permit or representation made by Summit County;
- G. Whether Summit County has taken any action that abrogated an established vested right of the petitioner; and
- H. The specific scope, extent and nature of the vested right established by the petitioner, if any.

13306: Standards and Findings for Takings/Denial of All Reasonable Use

13306.01: Takings/Denial of All Reasonable Use Standard

For purposes of this section, a takings shall be defined as a denial of all reasonable economic use of the property in violation of the Fifth Amendment to the United States Constitution or Article II, Section 15 of the Colorado Constitution.

13306.02: Application of the Takings/Denial of All Reasonable Use Standard

In applying the takings/denial of all reasonable use standard, the hearing officer shall consider, among other items,

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the following information or evidence:

- A. Any estimates from contractors, appraisers, architects, real estate analysts, qualified developers or other competent and qualified real estate professionals concerning the feasibility or lack of feasibility of construction or development on the property, as of the date of the application and in the reasonably near future.
- B. Any evidence or testimony of the market value of the property both under the uses allowed by the existing regulations and any proposed use.
- C. Any evidence or testimony concerning the value or benefit to the petitioner from the availability of opportunities to transfer density or cluster development on the remaining contiguous property or within the same PUD owned by the petitioner eligible for such transfer.

13306.03: Findings of the Hearing Officer

The hearing officer shall, on the basis of the evidence and testimony presented, make the following specific findings. Such findings shall be included as part of its report and recommendations to the BOCC, Planning Commission, BOA or other Review Authority of Summit County as set forth below:

- A. Whether the petitioner has complied with the requirements for presenting the information to be submitted with a takings/denial of all reasonable use petition.
- B. Whether the petitioner has a protected interest in the property.
- C. The market value of the property considering the existing regulations.
- D. The market value of the property under the proposed use.
- E. Whether there exists a feasible alternative that could provide a reasonable economic use of the property.
- F. The market value of or benefit accruing from opportunities to transfer density or cluster development on other contiguous property or within the same PUD owned by the petitioner eligible for such transfer.
- G. Whether it was feasible to undertake construction on or development of the property, as of the date of the application or in the reasonably near future thereafter.
- H. Whether, in the opinion of the hearing officer, the denial of the permit or action as defined in Section 13303.02 would result in a taking as defined in Section 13306.01.

13307: Decision and Recommendation of the Hearing Officer

13307.01: Decision

The hearing officer, based upon the evidence and testimony presented, shall render a decision as to the merits of the appeal petition.

13307.02: Recommendation

If the hearing officer finds that either a valid vested right has been abrogated or a takings/denial of all reasonable use has resulted from an action of Summit County, the hearing officer shall make recommendations to the BOCC, Planning Commission, BOA or other Review Authority of Summit County regarding additional relief to restore the valid vested rights or avoid a takings/denial of all reasonable use. The relief recommended shall be the minimum necessary to restore valid vested rights or avoid a takings/denial of all reasonable use. The types of relief that the hearing officer may consider include, but are not limited to, the following:

- A. A rezoning of the property to a more appropriate classification, issuance of a variance, approval of a development plan or other appropriate land-use regulatory action that will preserve or restore the petitioner's vested rights.
- B. An opportunity to transfer density or cluster development on other property.
- C. A waiver of permit fees.
- D. Development finance assistance.
- E. Acquisition of all or a portion of the property at market value.

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13307.03: Hearing Officer Report

The report and recommendation shall be submitted to the BOCC or other relevant bodies or agencies and mailed to the petitioner within 30 calendar days following conclusion of the public hearing.

13307.04: Hearing Officer Decision Not Final

Except as provided for in Section 13308.01.A, the decision of the hearing officer shall not become final until the BOCC or other relevant bodies or agencies shall have acted on the recommendations within 120 calendar days of the close of the hearing. Provided, however, that the BOCC or other review body or agency may extend this period upon a finding that due to the size and complexity of the development or proposal and similar factors that additional review time is necessary.

13307.05: Hearing Officer Compensation/Assignment of Costs

The hearing officer shall be compensated at their normal rate for professional services of a similar nature plus all travel and incidental expenses, including support staff as necessary. The party initiating the appeal shall be responsible for paying all costs associated with the hearing officer and conduct of the hearing. If the appeal is initiated by the landowner/developer/applicant, then such party shall deposit in advance with the county a fee to cover the cost of the hearing as estimated by the Planning Director and shall make periodic payments at the direction of the Planning Director to replenish the hearing fee fund if the initial fee is exhausted. If the appeal is initiated by the County, then the County shall be responsible for the cost of the hearing.

As part of the recommendation pursuant to 13307.02, the hearing officer shall assign responsibility for the cost of the hearing. In assigning responsibility, the hearing officer shall consider the merits of the claim.

13308: Action by the County

13308.01: Review of the Hearing Officer Report and Recommendations

- A. The Review Authority that made the decision that resulted in a takings or vested rights appeal, or other appropriate Review Authority, shall hold a public hearing, with public notice as required for the original approval, as provided for in Section 13100 et seq., to consider the report and recommendations of the hearing officer. The purpose of this hearing is to consider whether the recommendations of the hearing officer should be acted upon, not to reconsider the findings relative to the appeal. The recommendations of the hearing officer shall be approved, modified or disapproved within 120 calendar days following issuance of the hearing officer's report. Provided, however, if the Review Authority being appealed has rendered a decision and the recommendation of the hearing officer is that no taking or abrogation of a vested right has occurred, then the decision of the Review Authority which generated the appeal hereunder shall be deemed final upon issuance of the hearing officer's report and the hearing officer's recommendation shall therefore not be referred back to such Review Authority.
- B. If a public hearing is held by the Review Authority to consider the recommendations of the hearing officer, such public hearing shall be held within the 120-day period. The report and recommendation of the hearing office shall be incorporated as part of the public hearing record. The applicable Review Authority may adopt any incentive or measure within such authority's jurisdiction that is reasonably necessary to offset any deprivation of a vested right or avoid a takings/denial of all reasonable use and may condition any incentives upon approval of specific development plans.

13308.02: Time Limits/Transferal of Incentives

Any incentives or approvals adopted by the BOCC pursuant to this section may be transferred and utilized by successive owners of the property or parties in interest, but in no case shall the incentives be valid after the expiration date of the development approval.

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13309: Timing of the Appeal Process

The time frames established in this Section 13300 et seq. are considered maximums. It is recognized that it is in the community's best interests to resolve appeals in a timely manner. The County shall endeavor to complete its review, schedule hearings and initiate action in the shortest time period possible given the complexity of each case, the need to thoroughly review the facts and the need to make sound land use decisions.

13400: ADMINISTRATIVE RELIEF

13401: Purpose and Intent

Provision for administrative relief is intended to allow flexibility in development standards when application of certain standards is inappropriate for a specific use or development proposal. Administrative relief may be used only for those standards that expressly allow for such review.

13402: Application for Administrative Relief

Applicants seeking relief from standards shall submit a written request to the Code Administrator explaining the reasons for the request and how the findings required for granting relief can be met, unless otherwise provided by the Code. The Code Administrator may require any additional information necessary to make a decision on the request.

13403: Findings for Granting of Administrative Relief

The following findings must be made to grant a request for administrative relief:

- A. The intent of the County's development regulations and of the specific standard in question is being preserved.
- B. The type of land use proposed, or the design proposed by the applicant makes the strict application of the standard inappropriate.

13404: Action on Requests for Administrative Relief

The Code Administrator shall take action to either approve or deny requests for administrative relief and may impose any conditions necessary to ensure the intent of the County's development regulations are met.

13405: Notice of Action

The Planning Department shall send written notice of action taken on requests for administrative relief to the applicant within four calendar days from the date action is taken, posted in accordance with Section 13103.01.E and to adjacent, contiguous property owners. The notice shall state any conditions included in the action.

13406: Appeal of Action

The applicant or any person receiving notice of action per Section 13405 has the ability to file an appeal of the Code Administrator's decision on administrative relief with the BOA. Appeals must be filed, and hearings held on appeals must be conducted in accordance with Section 13200 et seq.