

public property, public structure or building or public utility. Disapproval may be overruled as described above.

5.

Failure of the planning commission to act within 30 days after the date of official submission to it is deemed approval unless a longer period is granted by the submitting board, body or official.

(Res. No. 11252014R001, Exh. A, 11-25-2014)

- **14.0. - AREAS AND ACTIVITIES OF STATE INTEREST**
- **14.1. - PURPOSE AND INTENT**

The purpose of this section is to facilitate the identification, designation and regulation of areas or activities of state interest consistent with applicable statutory requirements.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

- **14.2. - APPLICABILITY**

These regulations shall apply to all proceedings concerning the designation and regulation of any development in any area of state interest or any activity of state interest which has been or may hereafter be designated by the board of county commissioners, whether located on public or private land.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

- **14.3. - DESIGNATION PROCESS FOR MATTERS OF STATE INTEREST**

A.

The board of county commissioners may in its discretion designate and adopt regulations for the administration of any matter of state interest.

B.

Public hearing required.

1.

The board of county commissioners shall hold a public hearing before designating any matter of state interest and adopting regulations for the administration thereof. No less than 30 calendar days but no more than 60 calendar days before the designation hearing, the board shall publish notice in a newspaper of general circulation in the county.

2.

The planning commission shall hold a hearing and provide a recommendation to the board on the proposed designation prior to the board hearing. Notice of any hearing before the planning commission shall be published no less than 14 days before the planning commission hearing date in a newspaper of general circulation in the county.

C.

Criteria for designations. At the public hearings(s), the planning commission and board of county commissioners shall consider such evidence as they deem appropriate, including, but not necessarily limited to testimony and documents addressing the following considerations.

1. **The intensity of current and foreseeable development pressures.**
2. The 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.
3. Applicable policies of the Larimer County Master Plan and any duly adopted intergovernmental agreements affected by the area or activity under consideration.
4. The extent to which other governmental entities regulate the area or activity proposed to be designated.
5. The testimony, evidence and documents taken and admitted at the **public hearing.**
6. The recommendations of staff and the planning commission.

D.

Adoption of designation and regulations.

1. At the conclusion of the hearing, or within 30 days thereafter, the board may, by resolution, adopt, adopt with modification, or reject the proposed designation and accompanying guidelines or regulations.
2. Each designation order adopted by the board shall, at a minimum:
 - a. Specify the activity or area of state interest to be designated;
 - b. Specify the boundaries of the designated area of state interest, if applicable;
 - c. State reasons why the designation is appropriate in light of the review criteria considered at the public hearings pursuant to the above section; and
 - d. Specify the regulations applicable to the designated matter of state interest.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

• **14.4. - DESIGNATED MATTERS OF STATE INTEREST**

The board of county commissioners, having conducted a public hearing consistent with the requirements of Section 24.65.1-404 C.R.S. and having considered **the intensity of current and foreseeable pressures on and within Larimer County;** the dangers that would result from uncontrolled conduct of such activity or development in an area of state interest; and the advantages of conduct of such activity in a coordinated manner, does hereby find and declare the following to be matters of state interest. A 1041 permit shall be required prior to any of the following activities, unless specifically exempted.

A.

- Siting and development of any electrical power plant with a generating capacity of 50 megawatts or more, or any addition to an existing power plant which increases the existing design capacity by 50 megawatts or more. This designation shall not include use of temporary generators at an existing electrical power plant in an emergency situation.
- B. Conversion of an existing electrical power plant to a new type of fuel or energy, but not including a change from coal to natural gas, and also not including a change in start-up fuel.
- C. Siting and development of a nuclear power plant of any size, or any addition thereto.
- D. Siting and development of a wind power plant in which there are more than three wind towers or where any wind generator tower exceeds a hub height of 80 feet, or any addition thereto increasing the existing design capacity of the facility by ten percent or more or expanding the area of the plant.
- E. Siting of electric transmission lines and appurtenant facilities that are designed to transmit electrical voltages of 69,000 volts or greater, whether erected above ground or placed underground.
- F. Any existing transmission line upgrade that involves expanding an easement or right-of-way or increases the height of transmission structures by more than ten feet.
- G. Siting of an electrical substation or transition site designed to provide switching, voltage transformation or voltage control required for the transmission of electricity at 69,000 volts or greater.
- H. Siting and development of new pipelines designed for transmission of natural gas or other petroleum derivatives of ten inch diameter or larger. This designation shall include appurtenant facilities such as compressor stations, pipe valves and other mechanical controls that are part of the pipeline project. This designation shall not include the maintenance, repair, adjustment or removal of an existing pipeline or the relocation of an existing pipeline within the same easement or right-of-way. The designation shall also not include the addition, replacement, expansion or maintenance of appurtenant facilities on existing pipelines.
- I. Siting and development of new or expanded storage facilities of 50,000 cubic feet or more of natural gas or 35,000 barrels or more of petroleum derivatives.
- J. Siting and development of new or extended domestic water or sewer transmission lines which are contained within new permanent easements greater than 30 feet or within new permanent easements greater than 20 feet that are adjacent to existing easements. Domestic water transmission lines include those used to transport both raw and treated water. This designation shall not include the maintenance, repair, adjustment or removal of an existing pipeline or the relocation, replacement or enlargement of an existing pipeline within the same easement or right-of-way, provided no additional permanent property acquisitions are required. The designation shall also not include the addition, replacement, expansion or maintenance of appurtenant facilities on existing pipelines.

K.

Site selection and construction of a new water storage reservoir or expansion of an existing water storage reservoir resulting in a surface area at high water line in excess of 50 acres, natural or manmade, used for the storage, regulation and/or control of water for human consumption or domestic use and excluding a water storage reservoir used exclusively for irrigation. A water storage reservoir shall also include all appurtenant uses, structures and facilities, roads, parks, parking, trails and other uses which are developed as part of the water storage reservoir. This designation shall not include the maintenance and operation of irrigation ditches, canals or laterals nor shall it include the normal maintenance and operation of a reservoir solely used for irrigation or a reservoir serving both irrigation and domestic customers.

L.

Siting and development of any solar energy power plant, including solar energy collectors, power generation facilities, facilities for storing and transforming energy and other appurtenant facilities, that together disturb an area greater than five acres, or any addition thereto that expands the disturbed area. This designation shall not include roof mounted solar systems located on existing permitted principal and accessory buildings.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 08182009R001, Exh. A, 8-18-2009; Res. No. 01192010R004, 12-21-2009; Res. No. 01192010R005, 1-4-2010; Res. No. 08042015R001, § 1, 8-4-2015)

• 14.5. - EXEMPT DEVELOPMENT ACTIVITIES

A.

Statutory exemptions. These regulations shall not apply to any development in an area of state interest or any activity of state interest if any one of the following is true as of May 17, 1974.

1.

The specific development or activity was covered by a current building permit issued by the county.

2.

The specific development or activity was directly approved by the electorate of the state or the county, provided that approval by the electorate of any bond issue by itself shall not be construed as approval of the specific development or activity.

3.

The specific development or activity is on land which has been finally approved by the county, with or without conditions, for planned unit development or land use similar to a planned unit development.

4.

The specific development or activity is on land which was either zoned or rezoned in response to an application which contemplated the specific development or activity.

5.

The specific development or activity is on land for which a development plan has been conditionally or finally approved by the county.

B.

Specific exemptions. The regulatory provisions of this section shall not apply to any of the following.

1.

Any activity which, as of the date of designation as a matter of state interest, meets one of the following criteria.

- a. The activity is part of a final discretionary county land use approval and protected by a site specific development plan or agreement whose vesting period has not expired.
- b. The activity has a complete application filed and in process for a discretionary county land use approval, provided the applicant (if a public entity) commits to being bound by any conditions of a final county approval or by denial of the application.
- c. The specific activity has been acted upon by the planning commission as a location and extent application.

2.

An interstate natural gas utility regulated by the Federal Energy Regulatory Commission or its successor, provided the following requirements and procedures are complied with by the utility whenever site selection and construction of major facilities within Larimer County are proposed:

- a. Copies of all materials (i.e., environmental impact statement, application for certification of public convenience and necessity) filed with a federal and/or state regulatory agency shall also be filed with the county commissioners within five days;
- b. Written notice of all scheduled public proceedings before the federal and/or state regulatory agency shall be given to the county commissioners not less than 30 days prior to the proceedings, provided further, however, that if the public utility receives less than 30 days' notice it shall give written notice to the county commissioners within five working days after it receives its notice.

3.

A reservoir used exclusively for irrigation is not considered to be a water storage reservoir.

4.

An entity that has an approved intergovernmental agreement with the county specific to the project in question, as provided for in [Section 14.8](#) below.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 08182009R001, Exh. A, 8-18-2009; Res. No. 01192010R004, 12-21-2009; Res. No. 08042015R001, § 2, 8-4-2015)

• 14.6. - RELATIONSHIP TO OTHER COUNTY, STATE AND FEDERAL REQUIREMENTS

A.

If a 1041 permit is required under this [section 14](#), other sections of the Code shall not apply unless specifically stated in this [section 14](#), or unless applied by the county commissioners as conditions of approval. If an appeal to the requirement for obtaining a 1041 permit is granted pursuant to [section 14.7](#) below, other requirements of the Land Use Code shall apply.

B.

Review or approval of a **project** by a federal or state agency does not obviate, and will not substitute for, the need to obtain a 1041 permit for that **project** under this section.

C.

These regulations shall not be applied to create an operational conflict with any state or federal laws or regulations.

1.

The applicant may request that the county application and review process be coordinated with the applicable state or federal agency review process

2.

To the extent practicable and appropriate, the county may coordinate its review and approval of the application, including the terms and conditions of such approval, with that of other agencies.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

• **14.7. - APPEAL OF 1041 PERMIT REQUIREMENT**

An applicant may appeal the requirement for obtaining a 1041 permit.

A.

Appeal process.

1.

Initiation of appeal. A written application for appeal must be submitted to the planning director on a form provided by the planning department. An application fee established by the county commissioners must be paid when the appeal is submitted.

2.

Contents of appeal. The appeal application must include a description of the scope of the proposed activity and evidence that supports the appeal including evidence that demonstrates how section 14.7.B. review criteria are met.

3.

Scheduling. Upon receipt of the appeal, the planning director will schedule the appeal on the next available agenda of the county commissioners, no later than 60 days after the date on which a properly completed application is filed.

4.

Notice. Notice shall be consistent with the requirements of [section 12.3](#), notice of public hearing. Notice of the time and place of the appeal hearing must be published in a newspaper of general circulation at least 14 days before the hearing date.

5.

Action by the county commissioners.

a.

At the appeal hearing the county commissioners will take relevant evidence and testimony from the person who filed the appeal, county staff and any interested party.

b.

The applicant shall have the burden of proving that granting the appeal is consistent with the intent and purpose of this [section 14](#).

c.

The county commissioners may refer an appeal to the planning commission for a recommendation. The decision to refer an appeal to the planning commission will be made by the county commissioners within 14 days of the date the appeal was submitted.

d.

The decision of the county commissioners shall be final.

B.

The county commissioners shall consider each of the following review criteria and make findings pertaining to each one which, in their discretion, applies to the appeal.

1.

Approval of the appeal will not subvert the purpose or intent of this [section 14](#).

2.

The development or activity has received approval through a state or federal permitting process which has utilized review criteria substantially the same as those contained in this regulation, and which has afforded a similar or greater amount of input by affected citizens and property owners of Larimer County.

3.

In the case of siting and development of a new domestic water or sewer transmission pipeline, evidence has been provided that:

a.

The proposed pipeline is located entirely on property owned by the entity proposing the activity and/or within easements or rights-of-way that have been acquired from willing sellers, or

b.

The proposed pipeline is located entirely within a special district organized under C.R.S. Title 32, or a public or local improvement district organized under C.R.S. 30-20-Parts 5 and 6, and

(1)

The pipeline is intended to provide water or sewer service to properties located within that district in Larimer County; and

(2)

Written notice of all scheduled public meetings of the district concerning the siting and development of the new pipeline has been given to all property owners who may be directly affected by the activity, and to the county commissioners, not less than 14 days prior to the meeting.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 01192010R004, 12-21-2009)

• 14.8. - INTERGOVERNMENTAL AGREEMENTS

A.

Upon request of the State of Colorado or a political subdivision of the state proposing to engage in an area or activity of state interest, the requirements of this [section 14](#) may be met by the approval of an intergovernmental agreement between the county and such applicant. The county commissioners may, but shall be under no obligation to do so, approve such an intergovernmental agreement in lieu of a permit application and review as provided by this section. In the event such an agreement is approved by the county commissioners, no 1041 permit application to conduct the activity or area of state interest shall be required, provided that all of the following conditions are met.

1. The state or political subdivision applicant and the county must both be authorized to enter into such an agreement.
2. The purpose and intent of this [section 14](#) must be satisfied by the terms of the agreement.
3. A public hearing must be conducted by the county commissioners. Notice of the hearing must be published once in a newspaper of general circulation in Larimer County not less than 30 nor more than 60 days before the date set for the hearing. Prior to the hearing, the county commissioners shall approve the form of any proposed intergovernmental agreement, subject, however, to final approval of the agreement at the conclusion of or subsequent to the public hearing and based upon the evidence presented there. The public hearing shall be for the purpose of taking comment upon the proposed intergovernmental agreement, the provisions of which have been determined to be acceptable to the applicant and to the county.
4. Both the county commissioners and the state or the governing body of the political subdivision applicant must approve the agreement in the manner required of each of them by the state constitution, statutes and any applicable charter, ordinance or resolution.
5. Memorandum of understanding (MOU). The county and the applicant shall execute a memorandum of understanding, prior to engaging in the process of forming an intergovernmental agreement, the purpose of which is:
 - a. To acknowledge the intent of the parties to begin joint discussions which may result in the approval of an intergovernmental agreement.
 - b. Establish the timeframe for those discussions and any significant milestones agreed upon.
 - c. Establish the timeframe for review, public input and public hearing before the county commissioners.

- B. Exercise of the provisions of this section by the state or an applicant that is a political subdivision of the state shall not prevent that entity from electing at any time to proceed under the permit provisions of this regulation. Additionally, any entity which has previously proceeded under the permit provisions of this regulation may at any time elect to proceed instead to seek the establishment of an agreement.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 08042015R001, § 3, 8-4-2015)

• 14.9. - 1041 PERMIT APPLICATION AND REVIEW PROCESS

- A. No person may engage in development in a designated area of state interest or conduct a designated activity of state interest without first obtaining a 1041 permit, unless the county

commissioners have granted an appeal to the requirement for a 1041 permit or have adopted an intergovernmental agreement per [section 14.8](#) such that a permit is not required.

1.

If a development or activity subject to these regulations is proposed as an integral part of a land division process, the applicant shall comply with this section prior to obtaining final plat approval.

2.

No building permit shall be issued by the county for an activity or development subject to this section without the applicant having first obtained a 1041 permit, unless the county commissioners have granted an appeal to the requirement for a 1041 permit or have adopted an intergovernmental agreement per [section 14.8](#) such that a permit is not required.

3.

1041 permits issued under this section shall not be considered to be a site specific development plan and no statutory vested rights shall inure to such permit. A 1041 permit may specify a period of time for which the permit is valid or state additional criteria related to future validity of the permit.

B.

General process outline. The following is a general outline of the steps required for any permit decision under this section. More specific information regarding these referenced steps is contained in section 12 common procedures for development review and in the technical supplement to the Land Use Code.

1.

Pre-application conference.

2.

Complete and sufficient application received.

3.

Referral to affected agencies.

4.

Public hearing before the planning commission and county commissioners.

5.

Post-approval requirements.

C.

Notice of 1041 permit hearing. Notice shall be consistent with the requirements of [section 12.3](#), notice of public hearing.

1.

Not later than 30 days after receipt of a completed application for a 1041 permit, the planning director shall set and publish notice of the date, time and place for a hearing before the county commissioners. The notice shall be published once in a newspaper of general circulation in Larimer County, not less than 30 nor more than 60 days before the date set for the hearing.

a.

The planning director shall be responsible for the determination that a complete and sufficient application has been received.

b.

Not later than 60 days after receipt of the application, the planning director shall provide a written description of any application materials that are determined to be

not complete and the additional materials that are necessary before application processing may begin.

2.

Within the time constraints above, the planning director shall schedule the application for a hearing before the planning commission. Notice of the planning commission hearing shall be published in a newspaper of general circulation for the county at least 14 days before the hearing date.

3.

A notice will be mailed to property owners in the vicinity of the proposal at least 14 days prior to the hearing(s) according to the procedures and requirements of [section 12.3.3](#) mailed notice.

4.

C.R.S. §§ 30-28-133(10) and 24-65.5-103(1) require an applicant for development to notify all owners and lessees of a mineral interest on the subject property of the pending application. The applicant must submit, to the planning department, a certification of compliance with this notice requirement, prior to the initial public hearing for a 1041 permit, except for those types of development applications specifically excluded below. Failure to submit the required certification of notice will result in the public hearing being rescheduled to a later date. According to C.R.S. §§ 24-65.5-102(2) an application for development does not include applications with respect to electric lines, crude oil or natural gas pipelines, steam pipelines, chilled and other water pipelines, or appurtenances to said lines or pipelines; therefore notification of mineral interest owners and lessees is not required for those activities.

D.

Any application for a 1041 permit which relates to the location, construction or improvements of a major electrical or natural gas facility as contemplated by 29-20-108 C.R.S. as amended shall be subject to the terms of that statute. In the event of an inconsistency between the statute and these regulations, the statute shall control.

E.

The planning director may, when necessary, decide that additional expertise is needed to review a project, according to the procedure detailed in Section 8.01.A of this Code.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 01192010R004, 12-21-2009)

• **14.10. - GENERAL REQUIREMENTS FOR APPROVAL OF A 1041 PERMIT APPLICATION**

A.

The applicant must submit a complete and sufficient application that is consistent with the submittal requirements that are stated at the pre-application conference.

B.

A 1041 permit application may be approved only when the applicant has satisfactorily demonstrated that the proposal, including all mitigation measures proposed by the applicant, complies with all of the applicable criteria set forth in this [section 14](#). If the proposal does not comply with all the applicable criteria, the permit shall be denied, unless the county commissioners determine that reasonable conditions can be imposed on the permit which will enable the permit to comply with the criteria.

C.

If the county commissioners determine at the public hearing that sufficient information has not been provided to allow it to determine if the applicable criteria have been met, the board may continue the hearing until the specified additional information has been received. The commissioners shall adopt a written decision on a 1041 permit application within 90 days after the completion of the permit hearing. The 1041 permit will be in the form of a findings and resolution signed by the board of county commissioners. The effective date shall be the date on which the findings and resolution is signed.

D.

Review criteria for approval of all 1041 permits.

1. The proposal is consistent with the master plan and applicable intergovernmental agreements affecting land use and development.
2. The applicant has presented reasonable siting and design alternatives or explained why no reasonable alternatives are available.
3. The proposal conforms with adopted county standards, review criteria and mitigation requirements concerning environmental impacts, including but not limited to those contained in this Code.
4. The proposal will not have a significant adverse affect on or will adequately mitigate significant adverse affects on the land or its natural resources, on which the proposal is situated and on lands adjacent to the proposal.
5. The proposal will not adversely affect any sites and structures listed on the State or National Registers of Historic Places.
6. The proposal will not negatively impact public health and safety.
7. The proposal will not be subject to significant risk from natural hazards including floods, wildfire or geologic hazards.
8. Adequate public facilities and services are available for the proposal or will be provided by the applicant, and 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.
9. The applicant will mitigate any construction impacts to county roads, bridges and related facilities. Construction access will be re-graded and re-vegetated to minimize environmental impacts.
10. The benefits of the proposed development outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development.
11. The proposal demonstrates a reasonable balance between the costs to the applicant to mitigate significant adverse affects and the benefits achieved by such mitigation.
- 12.

The recommendations of staff and referral agencies have been addressed to the satisfaction of the county commissioners.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 08042015R001, § 4, 8-4-2015)

• **14.11. - ADDITIONAL SPECIFIC REVIEW CRITERIA AND STANDARDS**

A.

Additional review criteria for power plants.

1.

Proposed transmission facilities have been identified and included as part of the power plant project.

2.

Wind power plants must meet the following standards:

a.

All towers must be set back at least 750 feet from property lines and public rights-of-way.

b.

The wind generator turbines and towers must be painted or coated a non-reflective white, grey or other neutral color.

c.

Facilities must not be artificially illuminated unless required by the FAA.

d.

Facilities must not be used to display advertising.

e.

Electrical controls must be wireless or underground and power lines must be underground except where the electrical collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.

f.

Noise generated from the wind power plant must be in compliance with the [Chapter 30](#), Article V. Noise of the Larimer County Code.

g.

The operator of the plant must minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by the plant.

h.

Towers for wind generators must be constructed of a tubular design and include anti-climb features.

i.

The facility design must use best practices available to protect wildlife.

B.

Additional review criteria for electrical transmission lines.

1.

The siting and design of the proposal addresses potential levels of electrical and magnetic fields (EMFs) by exercising "prudent avoidance" to limit exposure.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

- **14.12. - POST APPROVAL REQUIREMENTS**

Prior to the issuance of a 1041 permit approved under this section the follow conditions must be met, if applicable.

A.

The applicant may be required to obtain a **construction permit from the county engineer.**

B.

A development agreement may be required as a condition of approval of the 1041 permit and may include requirements for performance guarantees.

C.

An agreement concerning decommissioning, abandonment or reuse of the permitted facility may be required as a condition of approval of the 1041 permit.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

- **14.13. - TECHNICAL REVISIONS AND 1041 PERMIT AMENDMENTS**

A.

Any change in the construction or operation of **the project** from that approved by the county commissioners shall require staff review and a determination made by the planning director in writing as to whether the change is a technical revision or 1041 permit amendment.

B.

A proposed change shall be considered a technical revision if the planning director determines that there will be no increase in the size of the area affected or the intensity of impacts as a result of the proposed change(s); or any increase in the area or intensity of impacts is insignificant.

C.

Changes other than technical revisions shall be considered 1041 permit amendments. A permit amendment shall be subject to review as a new permit application.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

- **15.0. - SUPPLEMENTARY REGULATIONS**

- **15.1. - SUPPLEMENTARY REGULATIONS**

Supplementary regulations are contained in a separate volume from the land use code. The supplementary regulations listed below are an integral part of the land use code and the development review processes described in the code. Subsections 15.1.1.D and E apply to rural land plans.

(Res. No. 02222005R002, Exh. A, 2-22-2005; Res. No. 08102010R001, Exh. A, 8-10-2010)

- **15.1.1. - Supplementary engineering regulations.**