

**ORDINANCE NO. 2017-03**

**ORDINANCE TO AMEND CHAPTER 17.4 DEVELOPMENT REVIEW PROCEDURES OF THE  
COMMUNITY DEVELOPMENT CODE REGARDING ESTABLISHING A TWO-STEP DESIGN  
REVIEW PROCESS**

**RECITALS**

- A. The Town of Mountain Village (the "Town") is a legally created, established, organized and existing Colorado municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado (the "Constitution") and the Home Rule Charter of the Town (the "Charter").
- B. Pursuant to the Constitution, the Charter, the Colorado Revised Statutes and the common law, the Town has the authority to regulate the use and development of land and to adopt ordinances and regulations in furtherance thereof.
- C. The Town Council may amend the CDC from time-to-time to address CDC interpretations, planning matters, clarify and refine the Town's land use regulations; or to address issues or policy matters.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO AS FOLLOWS:**

**Section 1. Amendment of Community Development Code**

- A. The Town of Mountain Village Community Development Code is hereby amended as set forth in Exhibit A which is attached hereto and incorporated herein.
- B. The Planning Division is directed to codify the amendments in Exhibit A into the CDC.
- C. The Planning Division may correct typographical and formatting errors in the amendments or the adopted CDC.

**Section 2. Ordinance Effect**

- D. This Ordinance shall have no effect on pending litigation, if any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.
- E. All ordinances, of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

**Section 3. Severability**

The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause or portion of this Ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of this Ordinance.

**Section 4. Effective Date**

This Ordinance shall become effective on April 15, 2017.

**Section 5. Public Hearing**

A public hearing on this Ordinance was held on the 16<sup>th</sup> day of March, 2017 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

**INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 16<sup>th</sup> day of February, 2017.**

**TOWN OF MOUNTAIN VILLAGE**

**TOWN OF MOUNTAIN VILLAGE,  
COLORADO, A HOME-RULE  
MUNICIPALITY**



By: \_\_\_\_\_  
Dan Jansen, Mayor

ATTEST:

  
\_\_\_\_\_  
Jackie Kennefick, Town Clerk

**HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 16th day of March, 2017.**


**TOWN OF MOUNTAIN VILLAGE**

**TOWN OF MOUNTAIN VILLAGE,  
COLORADO, A HOME-RULE  
MUNICIPALITY**



By: \_\_\_\_\_  
Dan Jansen, Mayor

ATTEST:

  
\_\_\_\_\_  
Jackie Kennefick, Town Clerk

Approved As To Form:

  
\_\_\_\_\_  
Jim Mahoney, Assistant Town Attorney

I, Jackie Kennefick, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Ordinance No. 2017-03 ("Ordinance") is a true, correct and complete copy thereof.

2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on February 16, 2017, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Dan Jansen, Mayor	X			
Cath Jett			X	
Laila Benitez	X			
Dan Caton	X			
Michelle Sherry	X			
Martin McKinley, Mayor Pro-Tem	X			
Bruce MacIntire	X			

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on February 22, 2017 in accordance with Section 5.2b of the Town of Mountain Village Home Rule.

4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on March 16, 2017. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:


Council Member Name	"Yes"	"No"	Absent	Abstain
Dan Jansen, Mayor			X	
Cath Jett				X
Laila Benitez	X			
Dan Caton	X			
Michelle Sherry	X			
Martin McKinley, Mayor Pro-Tem	X			
Bruce MacIntire	X			

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 16<sup>th</sup> day of March, 2017.

(SEAL)



  
 Jackie Kennefick, Town Clerk

**Exhibit A: Amendments to Chapter 17.4 DEVELOPMENT REVIEW PROCEDURES**

## CHAPTER 17.4 DEVELOPMENT REVIEW PROCEDURES

### 17.4.1 Purpose

The purpose of the Development Review Procedures is to provide a clear, transparent, consistent, predictable and efficient review process for certain development activities within Mountain Village that are governed by this CDC.

### 17.4.2 Overview of Development Review Processes

- A. There are five (5) development review processes that are used for evaluating land use development applications governed by the CDC:
1. **Class 1 application:** Staff development application review process;
  2. **Class 2 application:** Staff-DRB chair development application review process;
  3. **Class 3 application:** DRB development application review process;
  4. **Class 4 application:** DRB-Town Council development application review process; and
  5. **Class 5 application:** Town Council development application review process.
- B. Table 4-1 summarizes the types of development applications that fall under each class of application and associated review authority:

**Table 4-1, Development Application Classes**

Development Application Type	Application Class	Review Authority
Minor revision Process	Class 1	Planning Division Staff
Renewals	Class 1	Planning Division Staff
Rezoning Process	Class 4	DRB Recommendation & Town Council Action
Density Transfer Process		
From lot, or density bank, to a lot	Class 4	DRB Recommendation & Town Council Action
Within the density bank	Class 1	Planning Division Staff
Design Review Process		
	Class 1	Planning Division Staff
	Class 2	DRB Chair
	Class 3	DRB
Site Specific PUD (SPUD)	Class 4	DRB Recommendation & Town Council Action
Conceptual PUD	Class 4	DRB Recommendation & Town Council Action
Sketch PUD	Class 3	DRB
Final PUD	Class 4	DRB Recommendation & Town Council Action
Master PUD (MPUD)		
Outline PUD	Class 5	Town Council
Final PUD	Class 4	DRB Recommendation & Town Council Action
Subdivision		
Major Subdivisions	Class 4	DRB Recommendation & Town Council

Development Application Type	Application Class	Review Authority
		Action
Minor Subdivisions	Class 5	Town Council
Staff Subdivisions	Class 1	Planning Division Staff
Conditional Use Permits	Class 4	DRB Recommendation & Town Council Action
Variance Process	Class 4	DRB Recommendation & Town Council Action
Vested Property Right	Class 4	DRB Recommendation & Town Council Action
Special Events	Class 1	Planning Division Staff
Vending Permits	Class 1	Planning Division Staff
Home Occupations	Class 1	Planning Division Staff
Telecommunication Regulation		
New Freestanding Antenna	Class 4	DRB Recommendation & Town Council Action
Attached to structure	Class 1	Planning Division Staff
Cell on Wheels (COW)	Class 1	Planning Division Staff
Busking Permits	Class 1	Planning Division Staff

- C. Certain development applications are not associated with an application class, and have their Alternative Review Process outlined in a specific section of the CDC, such as the Alternative Review Process for governmental projects, appeals and worksessions.
- D. In the event a development application is submitted and can be processed pursuant to the provisions of this CDC, but the application class is not listed in the development application table or set forth in the CDC as a development application class or alternative review, the Director of Community Development shall determine the application class such application shall follow.

### 17.4.3 Development Review Procedures

The following Development Review Procedures shall apply to all classes of development applications except where a section of this CDC has a unique development process contained therein. The following Development Review Procedures shall be in addition to any specific review procedures that may be required for a specific type of development application outlined in this CDC.

#### A. Step 1: Presubmittal Meeting

The purpose of a presubmittal meeting is to provide an applicant with a list of required information and plans that must be submitted with a development application and to discuss potential opportunities and issues with CDC regulations prior to a formal submittal.

1. **Class 1 and 2 Applications.** Presubmittal meetings are not required for class 1 or 2 development applications; however, an applicant or the Planning Division may request such a meeting based on the nature and scope of a development application.
2. **Class 3, 4 or 5 Applications.** Prior to submitting a class 3, 4 or 5 development application, a presubmittal meeting shall be scheduled with the Planning Division to review the submittal documents, information and studies that must be submitted and to discuss potential issues with CDC regulations. This meeting may, at the discretion of the Planning Division, require a conceptual site plan showing key plan elements (building layout, parking area layout, access, lot layout, etc.). The applicant will be provided with

a development application submittal information packet and a checklist of submittal requirements at the presubmittal meeting.

3. **Waiver of Presubmittal Meeting.** The Planning Division may waive the presubmittal meeting requirement based upon the nature and scope of a proposed development application.

**B. Step 2: Development Application Submittal for All Application Classes.** A development application may be submitted to the Planning Division following the presubmittal meeting for class 3, 4 and 5 development applications unless a presubmittal meeting was waived by the Planning Division, in which case the application may be submitted at any time. A development application for class 1 and 2 applications may be submitted at any time unless a presubmittal meeting was required by the Planning Division. The application shall include all the submittal requirements of the development application submittal form, including but not limited to all applicable fees, required plans and other submittal documents required by the CDC.

**C. Step 3: Development Application Completeness Check**

1. **Completeness and Compliance Review.** The Planning Division shall determine the completeness of a development application according to the submittal requirements of this CDC [and the application requirements of the Department](#) within seven (7) calendar days following the submittal of an application ("Completeness Check Deadline").
2. **Advisement of Development Application Status.** If an application is determined to be complete, it shall be accepted by the Planning Division as a complete development application and the formal review process shall commence. If the application is determined incomplete, the applicant shall be notified in writing of the specific deficiencies and the review process shall not commence until all noted deficiencies are corrected. [No public notice shall be issued for a public hearing as required below until an application has been deemed complete.](#) The Planning Division shall provide written notification of either the acceptance or rejection due to incompleteness of an application by the Completeness Check Deadline. An incomplete application may be returned to an applicant if an application is not made complete within twenty-one (21) calendar days following the original submission date.

**D. Step 4: Development Application Referral and Review**

1. **Class 1 and 2 Applications.** The formal review process for a development application shall commence with the Referral and Review Process. The Referral and Review Process shall be a fifteen (15) calendar day process from the date of a complete development application. The Referral and Review Process may be compressed by the Planning Division if responses to all referrals are received and the Planning Division also completes its development application review prior to the end of the fifteen (15) day review period.
  - a. Referral agency comments shall be forwarded to the applicant.
  - b. Within the first five (5) calendar days of the review period a referral agency may request an extension of time to review a development application for good cause. The Planning Division shall determine if any requested extension is warranted and notify the referral agency and applicant of its decision and the number of days allowed for the extended review time, if any, within three (3) business days of such request.

2. **Class 3, 4 and 5 Applications.** The formal review process for a development application shall commence with the Referral and Review Process. The Referral and Review Process shall be a twenty-one (21) calendar day process from the date of a complete development application.
  - a. Within the first ten (10) calendar days of the review period a referral agency may request an extension of time to review a development application for good cause. The Planning Division shall determine if any requested extension is warranted and notify the referral agency and applicant of its decision and the number of days allowed for the extended review time, if any, within three (3) business days of such request.
  - b. Referral agency comments shall be forwarded to the applicant.
  
3. **Additional Review Time for All Development Application Classes.** The Planning Division has the authority to determine, based on the complexity of a development application and staffing demands related thereto, if additional review time is required for the Referral and Review Process for all development application classes. The Planning Division shall inform an applicant if additional time is required within seven (7) calendar days from the date of a complete development application for class 1 and 2 applications, and within fourteen (14) calendar days for class 3, 4 and 5 applications.
  
4. **Referral Agencies.** The Planning Division shall be responsible for referring development applications to the agencies listed in the referral agency table, Table 4-2, below unless the Planning Division determines a referral is not necessary based on the nature of the development application.
  - a. **No Comment.** If a referral agency fails to respond by the date requested on the referral form, its failure to respond shall be interpreted as “no comment” in which case it shall be presumed that such referral agency does not take issue with the development application.
  - b. **Use of Referral Agency Comments.** Concerns raised by referral agencies related to specific regulatory requirements shall be considered by the review authority in making a decision. Referral agency recommendations not related to specific regulatory requirements of an agency may be addressed provided such recommendations are within the criteria for decision used by the review authority when considering a development application.

**Referral Agency Table 4-2**

Referral Agency	Class 1	Class 2	Class 3	Class 4	Class 5
Town Public Works	X	X	X	X	X
Town Plazas and Environmental Services Dept.	XEP	XEP	XEP	XEP	XEP
Town Attorney	XL	XL	XL	XL	XL
Mountain Village Cable	X	X	X	X	X
Transportation Department	XT	XT	XT	XT	XT
Recreation Department	XR	XR	XR	XR	XR
Telluride Fire Protection District	X	X	X	X	X
San Miguel Power Association	X	X	X	X	X
Source Gas	X	X	X	X	X
Qwest	X	X	X	X	X
Colorado Geologic Survey					X
San Miguel County				XMR	XMOS



Referral Agency	Class 1	Class 2	Class 3	Class 4	Class 5
Town of Telluride				XMR	
San Miguel Regional Housing Authority					
Colorado State Forest Service					
United States Army Corps of Engineers					
United States Forest Service					

XEP: Mandatory referral for a determination of the existence of wetlands on or adjacent to the site or lot related to development applications that involve grading or exterior construction activity and comments if there are wetlands in the area of the site or lot.

XL: Referrals for development applications with legal agreements or issues.

XT: Referrals for development applications with transportation impacts.

XR: Referrals for development applications with recreation impacts.

XMR: Mandatory referral for Design Review Process development applications on ridgeline lots.

XMOS: Mandatory referral for rezonings, subdivisions and lot line vacations that affect active or passive open space.

#### E. Step 5: Planning Division Follow-up Communication

**All Development Application Classes.** Within seven (7) calendar days following the completion of the Referral and Review Process in step 4, the Planning Division shall provide the applicant with a written communication summarizing the comments of the referral agencies received by the Planning Division during, and, if warranted by the conclusions of the review, may provide guidance and suggestions to the applicant regarding staff's analysis of measures necessary to attain compliance with the applicable criteria for decision and requirements of the CDC. The Planning Division's written correspondence to an applicant represents only an administrative review of the development application through the Referral and Review Process. Staff may identify additional issues at any time prior to final approval.

#### F. Step 6: Applicant Plan Revisions

1. **Plan Revisions.** If upon conclusion of the Referral and Review Process in step 4 it is determined that revisions to a development application are necessary in order to comply with the requirements of the CDC, the applicant shall be provided with an opportunity to revise the development application.
  - a. **Required Plan Revisions.** An applicant shall revise the development application to address the requirements of the CDC unless a variance or a PUD is being requested as a part of the development application (required plan revisions). Examples of such requirements include but are not limited to setbacks, general easements, building height, lot coverage and permitted uses. The subsequent public hearing shall not be scheduled until required plan revisions are made and submitted to the planning division.
  - b. **Discretionary Plan Revisions.** Certain requirements and criteria of the CDC are more discretionary and subject to individual opinion and judgment, such as the need to provide adequate buffering, minimize visual impacts or minimize wetland impacts (discretionary plan revisions). An applicant will be encouraged by the Planning Division to amend the development application to address the discretionary plan revisions in order to be compliant with the requirements and criteria of the CDC.
2. **Progression to Step 7.** A development application shall not progress to step 7 or other

subsequent steps until all the required plan revisions have been addressed by an applicant, and the applicant has either revised the plans to address the required discretionary plan revisions, or provided a written narrative on why the development application either does not need to be amended to address a discretionary requirement of the CDC, or a written explanation of how the development application meets the discretionary requirements.

**G. Step 7: Schedule Review Authority Public Hearing**

1. **Class 1 and Class 2 Applications.** Class 1 and 2 development applications do not require a formal public hearing with the review authority. Therefore, no public hearing is required.

2. **Class 3, 4 and 5 Applications.**

a. A public hearing shall be scheduled with the review authority in accordance with this section if the Planning Division determines that a class 3, 4 or 5 development application has met the following public hearing threshold requirements:

- i. The development application has addressed any required plan revisions;
- ii. The applicant has amended the development application to address any discretionary plan revisions or provided a written narrative why the development application does not need to be amended to address such discretionary requirements; and
- iii. The development application contains sufficient detail to allow a thorough review of the proposal by the review authority per the applicable requirements of this CDC and the applicable criteria for decision.
- iv. For Class 3 applications, an Initial Architecture and Site Review process has been completed hearing has been scheduled prior to the scheduled date for the Final Review public hearing.

b. Certain class 5 applications are exempt from the need to conduct a public hearing as outlined in step 10 and the public hearing noticing requirements.

b.c. Class 3 applications will require a two-step process consisting of an Initial Architecture and Site Review process hearing, followed by a public hearing for final approval at a subsequent Design Review Board meeting agenda.

3. **Scheduling Development Application on Agenda.** A development application shall be scheduled before the review authority at its next regular meeting, considering the required notice period, where adequate time is available on the agenda to conduct a public meeting or hearing, as applicable. Notwithstanding the foregoing, scheduling of the meeting or public hearing, whichever situation applies, shall occur within 60 calendar days after the Planning Division determines that the public hearing threshold requirements have been met.

**H. Step 8: Public Noticing**

1. **Class 1 and 2 Applications.** Class 1 and 2 development applications do not require public noticing.

2. **Class 3, 4 and 5 Applications.** Noticing of class 3, 4 and 5 development application public hearings shall be in accordance with the public hearing noticing requirements.

- a. Certain class 5 development applications as outlined in step 10 are exempt from the public noticing requirements because a public hearing is not required.
- ~~a.b. The Initial Architecture and Site Review hearing of the Class 3 Design Review process are exempt from the public noticing requirements because a public hearing is not required may be noticed concurrently with the Final Review public hearing. on a Class 3 Design Review application.~~

**I. Step 9: Preparation of Staff Report**

1. **Class 1 and 2 Applications.** Class 1 and 2 development applications do not require the preparation of a formal staff report. Notwithstanding the foregoing, the Planning Division may elect to prepare a report on such development applications.
2. **Class 3, 4 and 5 Applications.** The Planning Division shall prepare a staff report for the review authority for class 3, 4 and 5 development applications that analyzes the development application as per the applicable requirements and criteria for decision of this CDC. Such staff report shall be included as part of the application packet materials for the review authority.

**J. Step 10: Review Authority Public Hearing or Meeting**

1. **Class 1 and 2 Applications.** No public hearing or meeting is required for class 1 or 2 development applications prior to taking action.
2. **Class 3 Applications.** Prior to taking any action on a class 3 development application, the DRB shall hold at least one (1) Initial Architecture and Site Review hearing and at least one (1) Final Review public hearing held at a subsequent DRB agenda for the purpose of considering recommendations from the Planning Division, the Design Review Board, other agencies and testimony from the applicant and the public.
3. **Class 4 Applications.** A class 4 development application shall first be reviewed by the DRB, which shall make a recommendation to the Town Council. Thereafter, the Town Council shall render a final decision on such development applications.
  - a. Prior to taking any action and making a recommendation on a class 4 development application, the DRB shall hold at least one (1) public hearing for the purpose of considering recommendations from the Planning Division, other agencies and testimony from the applicant and the public.
  - b. Prior to taking any action on a class 4 development application, the Town Council shall hold at least one (1) public hearing for the purpose of considering recommendations from the Planning Division, DRB, other agencies and testimony from the applicant and the public.
4. **Class 5 Applications That Require a Public Hearing.** Prior to taking any action on the following class 5 development application, the review authority shall hold at least one (1) public hearing for the purpose of considering recommendations from the Planning Division, other agencies and testimony from the applicant and the public:
  - a. Outline MPUD development applications;
5. **Other Class 5 Applications.** Minor subdivision and other class 5 development applications do not require a public hearing.

**K. Step 11: Review Authority Action on a Development Application**

**1. Class 1 or Class 2 Applications.**

- a. The Planning Division shall issue a written decision on class 1 or 2 development applications within seven (7) calendar days after the Planning Division determines a development application can proceed to step 7 as outlined under step 6 above.
- b. The Planning Division's action on class 1 or 2 development applications shall be based on a finding of compliance with the specific requirements of this CDC for the type of development application under review and shall be for approval, conditional approval or denial.
- c. Approval of class 1 or class 2 development applications may include conditions of approval.

**2. Class 3, ~~4~~ and ~~5~~ Applications.** The following options are available to the review authority when acting on class 3, ~~4~~ or ~~5~~ development applications:

a. Initial Architecture and Site Review. The Design Review Board shall review and approve an Initial Architecture and Site ~~S~~ Review application before the application is allowed to proceed to a subsequent agenda for a public hearing and Final Review. However, the public hearing and ~~formal~~ final review may be noticed concurrently with the ~~Sketch Review~~ initial architecture and site review application and such public hearing shall be continued in the event the Sketch Review application hearing is not approved before the noticed date for the Final Review public hearing

-b. Final Review/Public Hearing. After the DRB approves the Initial Architecture and Site Review application a public hearing shall be held on a subsequent agenda. The DRB shall have the following options for action:

-i. Approval. The ~~review authority~~ DRB shall approve a proposed Class 3, ~~4~~ or ~~5~~ development applications if it determines that it meets the applicable requirements and criteria of the CDC.

(-) — The ~~review authority's~~ approval of a class 3, ~~4~~ or ~~5~~ development application shall be made by resolution, and such resolution may be recorded in the records of the San Miguel County Clerk and Recorder at the discretion of the Town Attorney.

(-) (a) The DRB's recommendation of approval of a class ~~4~~ <sup>3</sup> development application shall be made by motion, approved by a majority vote of the DRB and recorded in the DRB summary of motions.

(-) (b) The review authority may attach conditions of approval.

-ii. Denial. The ~~review authority~~ DRB shall deny a proposed class 3, ~~4~~ or ~~5~~ development application if it determines that it does not meet the applicable requirements and criteria of the CDC.

(-) (a) The ~~review authority~~ DRB's denial of a class 3, ~~4~~ or ~~5~~ <sup>Final Review</sup> -development application shall be made by resolution.

(-) (b) The DRB's recommendation of denial of a class ~~4~~ <sup>3</sup> development application shall be made by motion, approved by a majority vote of the DRB and recorded in the DRB summary of motions.



-iii. **Continuance.**

(a) The public hearing may identify additional issues that relate to applicable requirements or criteria for decisions set forth in this CDC, and the applicant may be required by the review authority to address such new issues prior to taking formal action on a development application. Where development application revisions are required by the review authority, the review authority shall determine, at its public hearing or meeting, the timeline for submitting such revisions or new information to the Planning Division and continue the public hearing or meeting to a date certain, which will allow sufficient time for proper analysis and preparation of a supplemental staff report by the Planning Division.

(b) If a hearing is continued, the applicant shall submit, at least ~~30~~ 14 calendar days prior to the continued hearing (unless otherwise specified by the review authority provided there is enough time to review the revised plans and prepare a staff report), any additional required submittal documents or new information to address the review authority's concerns per the applicable requirements and criteria for decision set forth in this CDC. Failure to address such requirements in the required timeframe shall result in a further continuance of the application.

(c) A public hearing continued to a certain date, time and location is not required to be renoticed.

iv. **Tabling.** If continuance is not appropriate or if more than two months are needed to address development issues or questions, the ~~review authority~~DRB may table a development application for good cause or to allow additional information and materials to be submitted that will allow for a comprehensive review. Tabled development applications require noticing in accordance with the public hearing noticing requirements prior to recommencing the public hearing process.

3. **Class 4 and 5 Applications.** The following options are available to the review authority when acting on Class 4 or 5 development applications:

a. **Approval.** The review authority shall approve a proposed Class 4 or 5 development applications if it determines that it meets the applicable requirements and criteria of the CDC.

i. The review authority's approval of a Class 4 or 5 development application shall be made by resolution, and such resolution may be recorded in the records of the San Miguel County Clerk and Recorder at the discretion of the Town Attorney.

ii. The DRB's recommendation of approval of a Class 4 development application shall be made by motion, approved by a majority vote of the DRB and recorded in the DRB summary of motions.

iii. The review authority may attach conditions of approval.

- b. Denial. The review authority shall deny a proposed Class 4 or 5 development application if it determines that it does not meet the applicable requirements and criteria of the CDC.
  - i. The review authority's denial of a Class 4 or 5 development application shall be made by resolution.
  - ii. The DRB's recommendation of denial of a Class 4 development application shall be made by motion, approved by a majority vote of the DRB and recorded in the DRB summary of motions.
  
- c. Continuance.
  - i. The public hearing may identify additional issues that relate to applicable requirements or criteria for decisions set forth in this CDC, and the applicant may be required by the review authority to address such new issues prior to taking formal action on a development application. Where development application revisions are required by the review authority, the review authority shall determine, at its public hearing or meeting, the timeline for submitting such revisions or new information to the Planning Division and continue the public hearing or meeting to a date certain, which will allow sufficient time for proper analysis and preparation of a supplemental staff report by the Planning Division.
  - ii. If a hearing is continued, the applicant shall submit, at least 14 calendar days prior to the continued hearing (unless otherwise specified by the review authority provided there is enough time to review the revised plans and prepare a staff report), any additional required submittal documents or new information to address the review authority's concerns per the applicable requirements and criteria for decision set forth in this CDC. Failure to address such requirements in the required timeframe shall result in a further continuance of the application.
  - iii. A public hearing continued to a certain date, time and location is not required to be renoticed.
  
- d. Tabling. If continuance is not appropriate or if more than two months are needed to address development issues or questions, the review authority may table a development application for good cause or to allow additional information and materials to be submitted that will allow for a comprehensive review. Tabled development applications require renoticing in accordance with the public hearing noticing requirements prior to recommencing the public hearing process.

**L. Step 12: Notice of Action**

1. **Class 1 and 2 Applications.** With respect to Class 1 and 2 applications, the Planning Division shall send written notice of its decision to the applicant within five (5) calendar days after the date action is taken. Notice to the applicant shall include any conditions of approval or findings for denial. Failure to send written notice within five (5) calendar days shall not invalidate the action taken, but shall extend the period in which the applicant may submit an appeal by the number of days that giving of notice is delayed beyond five (5) calendar days.
2. **Class 3 Applications.** The Planning Division shall send written notice of the DRB's decision to either approve or deny a Final Review development application to the applicant within ~~seven~~fourteen (714) calendar days after the date action is taken. Notice

to the applicant shall include any conditions of approval or findings for denial. Failure to give notice within seven (7) calendar days shall not invalidate the action taken, but shall extend the period in which the applicant may submit an appeal by the number of days that giving of notice is delayed beyond seven (7) calendar days.

3. **Class 4 and 5 Applications.** The Planning Division shall send written notice of the Town Council's decision to either approve or deny a development application to the applicant within ~~seven~~ fourteen (14) calendar days after the date action is taken. Notice to the applicant shall include any conditions of approval or findings for denial.

**M. Step 13: Effective Date and Appeal**

1. **Class 1 and 2 Applications.** Action on class 1 and 2 applications shall become effective on the date a decision is rendered unless an appeal is filed within seven (7) calendar days.
2. **Class 3 Applications.** Action on class 3 applications shall become effective seven (7) calendar days from the date a decision is rendered unless an appeal is filed in accordance with the appeal procedures within this seven (7) day period.
3. **Class 4 and 5 Applications.** The Town Council's action on Class 4 and 5 applications shall become effective on the date a decision is rendered.

- i. In certain instances which require the recording of a legal instrument, the Town Council action shall not be effective until any required resolution or other required legal instruments are recorded. Recording shall occur as soon as practicable after the Council hearing approving the development application.

- b. Decisions of the Town Council shall be final, subject only to judicial review by a court of competent jurisdiction in accordance with the Colorado Rules of Civil Procedure.

**4. Appeal and No Issuance of Permits**

- a. Appeals to the Town Council on Class 1, 2 and 3 applications shall be filed, and hearings thereon shall be conducted in accordance with the appeal procedures.

- i. If a decision to approve a class 1, 2 or 3 application is appealed pursuant to the appeal procedures, building permits or other development permits shall not be issued until the appeal is heard by the Town Council and it takes action to uphold or modify the approval.

- ii. If the appeal results in a denial of a development application, a new and substantially modified development application must be submitted if an applicant desires to continue pursuing the development of a property absent a change in the CDC regulations or Comprehensive Plan policies.

- b. The Town Council's approval or denial of class 4 or 5 development applications, or appeals of class 1, 2 or 3 development applications shall constitute final administrative Town action on a development application.

- i. If the Town Council denies a development application, a new and substantially modified development application shall be submitted if an applicant desires to continue pursuing the development of a property absent a change in the CDC regulations or Comprehensive Plan policies.

- (a) An applicant cannot submit the same development application that was denied by the Town Council for a period of three (3) years from the date of denial.

**N. Step 14: Length of Validity**

**1. Class 1, 2 and 3 Applications.** Approval of class 1, 2 and 3 applications shall lapse eighteen (18) months from the effective date of the approval (except for renewals as outlined below) unless a development permit is issued by the Town and either: (a) a building permit is issued, and the Director of Community Development determines substantial construction has occurred on the project; (b) a certificate of occupancy or certificate of completion is obtained; or (c) the development application resulted in a final action that does not expire, such as a density transfer. If a certificate of occupancy or certificate of completion is obtained on a class 1, 2 or 3 development application, the approval shall remain valid for the life of the project provided the use continues to comply with the requirements of the CDC in effect when the project was completed, unless the development application is amended or revoked in accordance with the procedures outlined in this CDC.

- a. An applicant may seek one (1), six (6) month renewal prior to lapse of the approval in accordance with the renewal procedures. If a renewal development application is approved by the Town, the approval shall lapse six (6) months after the expiration date of the original approval.
- b. Class 1, 2 or 3 development applications that have lapsed shall be required to submit a new development application, which shall be governed by the requirements of this CDC in effect at the time of the new submittal.
- c. If construction ceases on a development leaving a partially finished project, the Town may initiate the revocation procedure.
  - i. During the revocation procedure, the Town may apply conditions to mitigate adverse impacts in conjunction with relief provided by the CDC and the Building Codes.

**2. Class 4 Applications.**

- a. **Class 4 Applications General.** The Town Council's approval of a class 4 application shall lapse after eighteen (18) months from the date of approval unless one (1) of the following actions occurs within said time period:
  - i. Any required plat, development agreement or other legal instruments are executed and recorded; or
    - (a) A PUD development agreement shall set forth the length of validity for such agreement and any associated vested property rights according to the PUD Process.
  - ii. The activity and/or use described in the development application has substantially commenced or been constructed, whichever situation applies in accordance with development application and the associated approval.



Once one of these actions occurs, the class 4 application shall remain valid for length stated in the approving resolution or associated development agreement unless it is amended or revoked in accordance with the procedures outlined in this CDC.

**b. Length of Validity for Conditional Use Permits.**

- i. If no time period is stated in a resolution approving a conditional use permit, the permit shall be valid for five (5) years unless a development agreement or resolution has been approved in accordance with the CDC, which may specify a longer period of approval.
- ii. The Town Council may limit the maximum length of validity for all conditional use permits to allow for periodic reviews of such uses per the requirements and criteria for decision of this CDC.
- iii. If activities allowed by a conditional use permit have ceased for at least one (1) year, such permits shall expire and these activities cannot resume unless a development application is filed and approved in accordance with the procedures for review of new conditional use permits.
- iv. A conditional use permit shall remain valid for length stated in the approving resolution or associated development agreement unless the approval is amended or revoked in accordance with the procedures outlined in this CDC.

**3. Class 4 or 5 Applications.**

- a. Approval of a class 4 or 5 application shall lapse after eighteen (18) months unless one of the following ~~have~~has occurred:
  - i. The required legal instruments have been executed and recorded, such as the required resolution, ordinance, density transfer, subdivision plat, PUD development agreement, development agreement or any other legal instruments required by the Town as a part of the development application approvals; or
    - (a) A PUD development agreement shall set forth the length of validity for such agreement and any associated vested property rights according to the PUD Process.
  - ii. The approving ordinance is subject to a petition and referendum and is revoked by a vote in accordance with the Town Charter.
- b. Once the required actions occur, the approval shall remain valid as stated in the legal instruments unless the approval is amended or revoked in accordance with the procedures outlined in this CDC.
  - i. Subdivision plats and associated resolutions, and rezoning and ordinances shall be valid in perpetuity unless the approvals are amended or revoked in accordance with the procedures outlined in the CDC.

#### **17.4.4 General Provisions Applicable to All Development Application Classes**

##### **A. Merits of Each Development Application**

Every development application as set forth in the CDC shall be reviewed on its individual merits in relation to the criteria for decision and the applicable requirements of the CDC. Therefore, no precedence is set by the approval of a development application.

##### **B. Authority to Initiate a Development Application**

Any owner or anyone who has written permission from an owner in a form deemed acceptable by the Planning Division may submit a development application. Special rules apply to submitting a PUD development application and for PUD amendments.

##### **C. Communication**

Written notice or communication of any matters as provided for in this CDC for any purpose, including without limitation notice of action, and follow up communication on a development application shall adhere to the standards as set forth in this section. Communication may be provided by either surface mail, e-mail or other electronic communication. The time period for any such notice process shall be as set forth in the provisions of this CDC related to such particular process, and receipt of such notice shall be presumed to be the date of such electronic transmission unless conclusively established to the contrary.

##### **D. Conditions of Approval**

1. The review authority may impose or attach any reasonable conditions to the approval of a development application to ensure a project will be developed in the manner indicated in the development application and will be in compliance with the standards and criteria established within this CDC.
  - a. Conditions for class 1 and 2 applications shall be related to outstanding technical requirements of this CDC or referral agency comments not adequately addressed by the initial development application.
  - b. Class 3, 4 and 5 applications may also include, in addition to technical conditions to address specific requirements of this CDC, conditions to ensure that a development application meets the criteria for decision, mitigates adverse impacts of the use or protects public health, safety and welfare.
2. Conditions shall be tied to the applicable criteria for decision, applicable legal requirements and may consist of one (1) or more but are not limited to the following:
  - a. **Development Schedule.** If the review authority determines that a development schedule is warranted, the conditions may place a reasonable time limit on any activities associated with the proposed development or any portion thereof. Upon good cause shown by the applicant, the Town may allow for administrative amendments to any development schedule and the associated legal instruments. Notwithstanding the foregoing, some development schedules are integral to the review authority's approval, and, if so determined by the Planning Division with respect to a proposed amendment to a development schedule, only the review authority that took action on the original approval may approve an amendment to

- such development schedule.
- b. **Use.** The conditions may restrict the future use of the proposed development to that indicated in the development application and other similar uses.
  - c. **Dedications.** The conditions may require conveyances of title or easements to the Town, public utilities, a homeowners association or other appropriate entity for purposes related to ensuring general conformance with the Comprehensive Plan and the public health, safety and welfare, which may include but not be limited to land and/or easements for parks, utilities, pedestrian/bikeways, schools, trails, roads, transportation and other similar uses. The Town may also require construction of all facilities to public standards and the dedication of public facilities necessary to serve the development.
  - d. **Homeowner's Association.** A condition may require the creation of a homeowners association to hold and maintain common property or common improvements in a condominium community.
  - e. **Public Improvements, Improvements Agreement and Public Improvements Guarantee.** When public improvements are involved in a development application, conditions shall require the public improvements, an improvements agreement consistent with the public improvements policy, and a financial guarantee in an amount to be determined by the Town to ensure that all public improvements and related infrastructure are completed as approved.
  - f. **Indemnification/Covenants.** The conditions may require the recording of covenants and/or deed restrictions on the subject property or the indemnification of the Town in certain instances.
  - g. **Additional Plans.** The conditions may require that additional plans or engineered revisions to site, drainage or utility plans be submitted to the Town and approved prior to issuance of building permits or issuance of a certificate of occupancy, whichever is applicable.
  - h. **Other Conditions.** Other conditions may be required, as determined by the Town to be necessary to ensure that the development is constructed in compliance with applicable Town regulations and standards.

#### **E. Revocation of Approval**

**Class 1, 2, 3, 4 and 5 Applications.** The Planning Division, in consultation with the Town Attorney's Office, may revoke a class 1, 2, 3, 4 or 5 application approval if construction or activities authorized by a development application cease for at least eighteen (18) months or for failure to comply with conditions of approval, or for a threat to the public health safety or welfare provided, however, prior to any such revocation, the developer shall receive a thirty (30) day written notice of the pending revocation stating the grounds for revocation, during which time the developer shall have the opportunity to either cure the violation to the satisfaction of the Town, default or appeal the administrative decision. The Revocation Process in this section shall not apply to a legally recorded PUD development agreement, plat or executed rezoning ordinance.

#### **F. Maximum Time Limits for Development Application Processing**

1. **Class 1, 2, 3, 4 and 5 Applications.** Unless an extension is granted, class 1, 2, 3, 4 and 5 applications shall receive a final decision from the review authority within one (1) year from the date such an application is filed and accepted by the Planning Division as a complete development application unless the development application is withdrawn.
2. **Failure to Amend Development Application.** If an applicant fails to amend the application to address required plan revisions, discretionary plan revisions or to address a

review authority's continuance or tabling conditions, the Planning Division shall schedule the development application for review and action by the appropriate review authority and provide the appropriate notice as required by this CDC.

3. **Extension.** The Director of Community Development may extend the one (1) year review period for any development application upon a determination that good cause exists for such extension due to: 1) the complexity, size or other extraordinary physical characteristics of the proposed development, or 2) other exceptional circumstances applicable to the particular development application.

#### **G. Revisions**

1. Certain class 1, 2, 3, 4 or 5 application approvals may be granted an administrative minor revision or modification by the Planning Division subject to the Revision Process.
2. Revisions or modifications that are found by the Planning Division to not be minor per the Revision Process shall be considered a new proposal and be evaluated in accordance with the applicable development review process outlined in this CDC.

#### **H. Expiration of Preexisting Approvals and Development Applications**

1. **Expired Development Applications.** Development application approvals that have expired shall have to resubmit a new development application following the requirements of this CDC and be subject to the applicable requirements of this CDC in effect at the time of submittal or as otherwise provided for by law.
2. **Preexisting, Inactive Development Applications.** Inactive development applications that were submitted prior to March 25, 2012, that have not had final action by the review authority are considered null and void.

#### **I. Public Hearing Noticing Requirements**

This section sets forth the public hearing noticing requirements for various public hearings as provided for in this CDC.

##### **1. General Provisions**

- a. Adjacent property owner address lists and PUD owner address lists for PUD amendments shall be obtained from either San Miguel County's Geographic Information System ("GIS") or from the records of the San Miguel County Clerk and Recorder within thirty (30) calendar days of the date of the required mailing. If more than sixty (60) calendar days have passed after the date an adjacent property owner list was provided to the Planning Division as required by this section, an applicant shall provide an updated list to the Planning Division based on the most recent GIS records.
- b. 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 the public noticing requirements set forth below.
- c. 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 the GIS records.
- d. 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 this section, any failure of the Town, applicant or other party to strictly comply with the noticing requirement set forth in this section for any public hearing shall not deprive the review authority of jurisdiction to hear the matter at such public hearing or in any other manner invalidate actions taken by such review authority at such meeting.

- e. Notwithstanding the foregoing, the requirements for the timing of the notice and for specifying the time, date and place of a hearing 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.
- f. If questions arise at a review authority's hearing regarding the adequacy of notice in relationship to specific requirements of this CDC, the review authority shall make a formal finding regarding whether there was substantial compliance with the notice requirements of the CDC before proceeding with the hearing 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.
- g. Failure of a party to receive written notice after it is mailed in accordance with the provisions of this CDC shall not invalidate any subsequent action taken by a review authority.
- h. The required legal notice of a vested property right may be combined with the notice for any other required, concurrent hearing to be held on the site-specific development plan for the subject site or lot.

**2. Public Noticing Requirements.** Notice as required by this section shall be given at least thirty (30) calendar days as prescribed below prior to the initial ~~public~~ hearing held by the review authority. Development applications shall be noticed in substantial compliance with the following provisions:

- a. **Class 1 and 2 Applications.** No legal notice of these administrative development application processes is required.
- b. **Class 3 and 4 Applications.** Notice of the Sketch Initial Architecture and Site Review hearing and Final Review public hearing(s) shall be: 1) sent to all property owners within 400 feet of the property boundaries in accordance with the public hearing noticing requirements and the mailing notice details at least fifteen (15) days prior to the Sketch Initial Architecture and Site Review hearing and Final Review public hearing with such notices able to be noticed concurrently; 2) posted in accordance with the posted notice details, and 3) listed on the review authority agenda.

~~No mailed or posted notice is required for Sketch Review.~~

- i. ~~If the Director of Community Development determines that a final MPUD or major PUD amendment development application affects only a portion of the property within a MPUD, SPUD or PUD, then, notwithstanding any other provisions of this section, notice shall be mailed to owners within 400 feet of the affected site or to those owners that are determined to be potentially affected.~~

- c. **Class 4 Applications.** Notice of the public hearing(s) shall be: 1) sent to all property owners within 400 feet of the property boundaries in accordance with the public hearing noticing requirements and the mailing notice details at least

thirty (30) days prior to the initial public hearing, 2) posted in accordance with the posted notice details, and 3) listed on the review authority agenda.

i. If the Director of Community Development determines that a final MPUD or major PUD amendment development application affects only a portion of the property within a MPUD, SPUD or PUD, then, notwithstanding any other provisions of this section, notice shall be mailed to owners within 400 feet of the affected site or to those owners that are determined to be potentially affected.

b.d. **Class 5 Applications.** Notice of the following development application public hearing(s) shall be: 1) sent to all property owners within 400 feet of the property boundary in accordance with the public noticing requirements and the mailing notice details, 2) posted in accordance with posted notice details, and 3) listed on the review authority agenda:

- i. Outline MPUD development applications;
- ii. No legal notice is required for the following class 5 development applications:
  - (a) Minor subdivisions.
  - (b) Other class 5 applications.

e.e. **Mineral Estate Notification:** An applicant, for any application outside of the Original PUD Boundary, shall provide notice to mineral estate owners as required by C.R.S. § 24-65.5-100, et seq., as currently enacted or hereinafter amended.

### **3. Additional Public Notice Requirements for Specific Development Review Applications**

- a. **Vested Property Right.** Notice of the review authority's public hearing for a vested property right may be combined with the notice for any other required, concurrent hearing to be held on the site-specific development plan for the subject site or lot.
- b. **CDC Amendments.** Notice of the review authority's public hearing for the proposed CDC amendment shall be: 1) listed on the review authority agenda, and 2) listed as a public notice on the Town's website at least fifteen (15) calendar days prior to the initial public meeting.
- c. **Adoption or Amendments to Master Plans.** Notice of the Town Council's public hearing for the proposed adoption of or amendments to the Comprehensive Plan shall be: 1) listed on the Council's agenda, and 2) published as a legal advertisement at least once in a newspaper of general circulation in the town at least fifteen (15) calendar days prior to the initial public meeting.

### **4. Mailing Notice Details**

- a. Mailing of the property owner notice is the responsibility of the applicant who shall obtain a copy of the adjacent property owner letter form from the Planning Division.
- b. The mailing of all notices shall be by first-class mail, postage prepaid.

- c. If a condominium development is located within the prescribed distance of the subject property, the applicant shall provide notice to the condominium association and every condominium unit property owner or part owner who owns at least a fifty percent (50%) interest in a condominium unit.
- d. Prior to the mailing of notice, the applicant shall deliver to the Planning Division a copy of the notice for review and approval.
- e. If for any reason a development application is not placed on the agenda for the date noticed, the applicant shall re-notice the revised scheduled meeting date at least fifteen (15) days prior to the revised meeting date.
- f. The applicant shall execute an affidavit of mailing in a form provided by the Planning Division with a copy of the notice and the property owner mailing list attached thereto.
- g. If notice required by this section is determined to be improper or incomplete, the applicant shall be required to re-notice adjacent owners at least thirty (30) days prior to a revised scheduled meeting date.
- h. Notices shall be deemed delivered when deposited for delivery with the United States Postal Service.
- i. Notices shall include, at a minimum, the following information:
  - i. Name and address of the applicant;
  - ii. Type of development application(s);
  - iii. Address and legal description of the subject property;
  - iv. Date, time and place of the DRB and/or Town Council meeting;
  - v. Detail summary of the development application under consideration;
  - vi. Description of any requested variations to the standard requirements of the CDC;
  - vii. Vicinity map;
  - viii. Identification of the review authority that will conduct the public hearing; and
  - ix. Such other information deemed necessary by the Planning Division in order to inform the public of the nature of the development application.

## 5. Posted Notice Details

- a. At least ~~fifteen-fifteen-fifteen~~ (1515) days prior to the meeting date, the applicant shall post a public notice sign on the property that is the subject of the development application.
- b. The public notice sign shall be provided by the Planning Division and shall be posted on the property by the applicant in a visible location adjacent to public rights-of-way or public space.
- c. The posted notice shall only indicate that the property is the subject of a pending land use development application before the Town and shall provide a contact phone number with the Town to obtain information regarding the development application.
- d. More than one notice may be required to be posted on the property affected by the development application if the Planning Division determines that because of the size, orientation or other characteristics of the property additional posted notice is necessary.
- e. The applicant shall be responsible for returning the sign to the Planning Division following the meeting date.
- f. The Planning Division may require a security deposit for the sign.

- g. The applicant shall execute an affidavit of posting the notice in a form provided by the Planning Division.

**J. Submittal Requirements**

- 1. The Planning Division shall publish submittal requirements for each type of development review process as provided for by this CDC. Submittal requirements shall be based on the requirements of this CDC and criteria for decision.
  - a. The Planning Division may amend the submittal requirements from time to time by publishing new submittal requirements.
- 2. Situations will occur when all of the listed submittal requirements will not be needed and situations when items not listed as submittal requirements will be needed in order for the Town to have sufficient information to fully evaluate the impacts of a development application. The Planning Division is therefore authorized to determine, based on the nature of a development application, whether to waive submittal requirements or require additional submittal requirements that are not addressed in the published submittal requirements.

**K. Concurrent Processing**

Applicants with developments that require the submittal of more than one (1) type of development application may request concurrent processing. A determination on a request for concurrent processing shall be made by the Director of Community Development based on administrative efficiency and the complexity of the development proposal. In the instance of concurrent processing, the applicant's submittal shall meet the submittal requirements for each class of development application submitted. Fee adjustments in the case of a concurrent submittal may be authorized by the Director of Community Development.

**L. Fees**

- 1. **Fee Schedule.** The Town Council shall, from time to time, adopt a fee resolution setting forth all development application fees and associated permit fees. Fees for submittals not listed in the fee schedule resolution shall be determined by the Director of Community Development on a case-by-case basis determined by the similarity between the submittal and the development applications listed on the fee schedule together with the estimated number of hours of staff time the review of the submittal will require. No development application shall be processed, nor any development or building permits shall be issued until all outstanding fees or moneys owed by the applicant, lot owner, developer or related entity, as defined by the Municipal Code, to the Town, in any amount for any purpose, including but not limited to any fees, delinquent taxes, required Town licenses, permit fees, court fines, costs, judgments, surcharges, assessments, parking fines or attorney's fees are paid to the Town.
- 2. **Town Attorney Fees.** The applicant shall be responsible for all legal fees incurred by the Town in the processing and review of any development application or other submittal, including but not limited to any Town Attorney fees and expenses incurred by the Town in the legal review of a development application together with the legal review of any associated legal documents or issues. Legal expenses so incurred shall be paid for by the applicant prior to the issuance of any permits.
- 3. **Property or Development Inquiries.** The Town requires that Town Attorney legal fees



and expenses be paid for all development or property inquiries where a legal review is deemed necessary by the Town. The developer or person making the inquiry, whichever the case may be, shall be informed of this obligation and execute a written agreement to pay such legal expenses prior to the Town Attorney conducting any legal review. A deposit may be required by the Director of Community Development prior to the commencement of the legal review.

4. **Other Fees.** The applicant shall be responsible for all other fees associated with the review of a development application or other submittal conducted by any outside professional consultant, engineer, agency or organization and which are deemed necessary by the Town for a proper review.
5. **Recordation Fees.** The Community Development Department will record all final plats, development agreements and other legal instruments. The applicant shall be responsible for the fees associated with the recording of all legal instruments.

## **M. Requirement and Cost for Special Studies**

The Town Council, DRB or Director of Community Development shall have the authority to require special studies, as deemed necessary, to be prepared for all development applications to address a requirement or a criteria for decision under this CDC. Examples of such studies include, but are not limited to analyses for traffic impacts, wetlands, steep slopes or visual impacts. The applicant may cause such studies to be prepared by a third-party consultant engaged directly by the applicant; however, the Director of Community Development may require in his or her sole discretion that an independent third-party consultant be hired by the Town to conduct or review the required studies. The cost of said independent study shall be paid for by the applicant proposing the project.

### **17.4.5 Appeals**

#### **A. Purpose and Intent**

The purpose and intent of this section is to provide a process for the appeal of class 1, 2 and 3 applications and for certain administrative decisions as set forth in the CDC.

#### **B. Applicability**

The Appeals Process is applicable to an administrative decision on class 1 or 2 applications, administrative decisions as authorized by this CDC (excepting the Building Codes that have a specific appeal procedure), and for DRB action on class 3 applications.

#### **C. Standing to Appeal**

The following persons shall be deemed to have standing to appeal a decision:

1. The applicant or the owner of the property of the subject development application;
2. Any party in interest who testified at any required public hearing on the development application;
3. Any party in interest who submitted written comments on the application before final action was taken, excluding persons who only signed petitions or form letters;
4. Any person who was entitled to receive the required public notice, if any;

#### **D. Appeal Procedures**

1. **Deadline to File Appeal.** In order to initiate an appeal pursuant to this section, a “notice of appeal” shall be filed with the Planning Division within seven (7) calendar days following one of the following events, as applicable:
  - a. **Administrative Decisions.** The appeal of a final, administrative decision as authorized by the CDC, including but not limited to action on class 1 and 2 applications and zoning violations, shall be made within seven (7) calendar days of the date of receiving notice of the written decision. A written decision shall be deemed to have been delivered when it is either emailed or deposited in the U.S. mail.
  - b. **DRB Decisions.** The appeal of a final decision of the DRB shall be made within seven (7) calendar days of the date the DRB made the final decision.
2. **Required Contents of the Notice of Appeal.** The notice of appeal shall describe the

contested action, contain the appellant's name, address and telephone number; and specify the grounds for the appeal as it relates to the applicable criteria for decision and/or requirements of this CDC. Failure to specify a ground for appeal in the notice of appeal shall bar consideration of the appeal by Town Council. The notice of appeal shall be accompanied by a fee as set forth in the fee resolution.

3. **Effect of Appeal.** The proper and timely filing of a notice of appeal shall temporarily stay the subject administrative decision or decision of the DRB, pending the determination of the appeal, unless the Town administrative official or the DRB, as applicable, certifies in writing to the Town Manager that a stay will pose an immediate threat to the health, safety or welfare of persons or property or defeat the lawful purpose of the decision; in which event, a stay shall not enter, and such order shall be subject to immediate enforcement according to its terms. Notwithstanding the foregoing, the timely filing of a notice of appeal shall under no circumstances stay a stop work order.
4. **Scheduling Hearing.** Upon receipt of a notice of appeal, the Planning Division shall schedule a hearing before the Town Council on the appeal within a reasonable period of time but not more than sixty (60) days following receipt of the notice of appeal and the required fee. Public notice of the appeal shall be done in accordance with the public hearing noticing requirements.
5. **Disclosure.** In order to ensure adequate notice to all parties to an appeal and for the efficient presentation of evidence, the parties to the appeal shall exchange a list of witnesses who may be called upon to offer testimony at the hearing, with copies thereof delivered to the Planning Division at least twenty (20) days prior to the hearing date. This disclosure shall include the name, address and telephone number of each witness and a brief summary of the subject matter of each witness's testimony. Also, at least twenty (20) days prior to the hearing date, the parties to the appeal shall exchange a brief which outlines the legal basis such party relies upon for their appeal and list of documents that may be offered into evidence to support such appeal and shall deliver copies thereof to the Town. Not less than ten (10) days prior to the hearing date, the parties may update their respective list of witnesses and documents by exchanging such updates with each other and delivering such updated list to the Community Development Department. The failure to make the required disclosure of a witness or document shall exclude the testimony of the undisclosed witness and the introduction into evidence of the undisclosed document at the hearing.
6. **Appellant Notice.** The Town Council shall hear all appeals at a public meeting with no less than thirty (30) days' prior written notice to the appellant and any other affected party.
7. **Town Council Hearing.** The burden shall be on the appellant to demonstrate by clear and convincing evidence that the action of the DRB, the building Official or the Town administrative official was in error, unjustified, an abuse of discretion or otherwise not in accordance with the terms of the CDC.
  - a. Unexcused failure on the part of the appellant or the appellant's representative to appear at the scheduled hearing shall result in a dismissal of the appeal and an affirmation of the decision.
  - b. Any appeal heard pursuant to this section shall be an evidentiary hearing with appellant and appellee being given an opportunity to present oral and documentary evidence previously disclosed in accordance with the CDC. Unless otherwise extended by the Town Council, appellant shall have thirty (30) minutes for the presentation of evidence and may reserve ten (10) minutes of the allotted thirty (30) minutes for rebuttal. Likewise, unless otherwise extended by the Town Council, the appellee shall have thirty (30) minutes for the presentation of

evidence and may reserve ten (10) minutes of the allotted thirty (30) minutes for rebuttal. Town Council shall then be permitted to examine the appellant and appellee for such period of time as it deems reasonable and necessary and shall thereafter discuss the evidence presented amongst themselves.

- c. The appellant shall be responsible for securing the attendance of a court reporter at the hearing at appellant's sole cost and expense. The transcript prepared by the court reporter, the documents introduced into evidence by appellant and appellee and the findings of fact and conclusions of law rendered by the Town Council shall constitute the record on appeal from this final administrative decision. Any party wishing to obtain a copy of the transcript shall do so at their own expense.

**8. Town Council Decision.** Not more than thirty (30) days following the conclusion of the hearing, the Town Council shall issue written findings of fact and conclusions of law.

- a. The Town Council may reverse, affirm or modify the appealed decision, and Town Council shall have all powers vested in the DRB or Town administrative officials to impose reasonable conditions to be complied with by the appellant as part of the decision. A copy of the Town Council's decision shall be mailed to the appellant.
- b. Decisions of the Town Council shall be final, subject only to judicial review by a court of competent jurisdiction in accordance with the Colorado Rules of Civil Procedure.

#### **17.4.6 Conceptual Worksession Process**

##### **A. Purpose and Intent**

The purpose and intent of this section is to provide a process for both the DRB and the Town Council to have an informal, non-binding review of a conceptual development proposal. The conceptual worksession is further intended to provide venue for the analysis of potential issues, areas of concern and to evaluate possible development alternatives.

##### **B. Applicability**

The Conceptual Worksession Process is applicable to any developer who desires to present conceptual plans to the DRB or Town Council. The Conceptual Worksession Process is also a required step in certain development review processes prior to submitting a formal development application.

##### **C. Review Process**

1. The Conceptual Worksession Process shall consist of the following steps:
  - a. Pre-submittal meeting;
  - b. Conceptual worksession submittal;
  - c. Planning Division completeness check;
  - d. Referral and review;
  - e. Planning Division follow-up communication;
  - f. Applicant plan revisions;
  - g. Schedule public meeting;
  - h. Publish review authority agenda; and
  - i. Conduct public conceptual worksession(s)

2. The steps outlined above shall generally follow the similar steps outlined in the Development Review Procedures.

**D. Criteria for Decision**

The review authority for a conceptual worksession shall evaluate the proposed concept plans based on the applicable criteria for decision for the future, formal development application(s) that will need to be submitted.

**E. General Standards**

1. **Legislative Process.** The Conceptual Worksession Process is not considered a land use development application under the CDC, since this process is to evaluate a conceptual development proposal prior to a developer or owner submitting a formal development application. As such, conceptual worksessions are considered a legislative matter and not a pending land use development application, with the DRB and the Town Council free to discuss the conceptual worksession development application outside of the public meetings.
2. **Action.** No formal action is taken by the DRB or the Town Council on conceptual worksessions because such provide informal opportunities for developers to obtain input.
3. **Worksession Disclaimer.** Any comments or general direction by the DRB or the Town Council shall not be considered binding or represent any promises, warranties, guarantees and/or approvals in any manner or form. A conceptual worksession shall not be construed as a comprehensive review of the proposal under discussion, and as such, additional issues and/or concerns will most likely arise as part of the formal development review process.

**17.4.7 Minor Revision Process**

**A. Purpose and Intent**

The purpose and intent of this section is to provide an administrative process for minor plan revisions for approved class 1, 2, 3, 4 and 5 development applications.

**B. Applicability**

The Minor Revision Process is applicable to any approved class 1, 2, 3, 4 and 5 development application where the developer requests a minor revision of the approved plans.

**C. Review Process**

Minor Revision Process development applications shall be processed as class 1 applications.

**D. Criteria for Decision**

1. The following criteria shall be met for the review authority to approve minor revisions to an approved development application:
  - a. The proposed revision does not increase the amount of originally approved, gross building floor area more than ten percent (10%) of the total approved by the review authority;
  - b. The proposed revision does not materially alter the bulk and massing of

- buildings, increase the visual impact of the development or materially alter a project's design;
  - c. The proposed revision does not significantly change the location of uses, the layout of streets or driveways, parking areas, trails or pathways or other improvements;
  - d. The proposed revision does not significantly increase the level of environmental impact caused by the proposed development, including but not limited to increasing the amount of slope disturbance or impact wetlands;
  - e. The proposed revision does not significantly alter the development application or plans reviewed and approved by the review authority or any conditions or findings made by such review authority in approving the development application; and
  - f. The proposed revision meets all applicable Town regulations and standards.
2. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the revision review criteria.
  3. If the Planning Division is unable to find that the proposed revision meets the applicable criteria listed above, such revision shall be considered a new proposal and shall be evaluated in accordance with the applicable development review process outlined in this CDC.
  4. A proposed revision may not be approved by the Planning Division if it seeks to revise:
    - 1) PUD text or exhibits, excepting scrivener's errors;
    - 2) a development agreement, excepting scrivener's errors;
    - 3) a site-specific development plan;
    - 4) a rezoning;
    - 5) an official plat approved by the Town Council, or other revisions that are determined by the Director of Community Development to be significant.

#### **17.4.8 Renewals**

##### **A. Purpose and Intent**

The purpose and intent of this section is to provide an administrative process for renewals of approved class 1, 2, 3, 4 and 5 development applications.

##### **B. Applicability**

The Renewal Process is applicable to any approved class 1, 2, 3, 4 or 5 development application that has not yet lapsed and the developer seeks to extend the approval.

##### **C. Review Process**

Renewal of development applications shall be processed as a class 1 development application.

##### **D. Criteria for Decision and Related Requirements**

1. The following criteria shall be met for the review authority to approve the renewal of an approved development application:
  - a. The renewal is for a currently valid review authority approval, and the approval will expire within three (3) months. Renewals shall not be granted for development applications that have more than three (3) months until their expiration unless good cause is shown to warrant an early renewal;
  - b. If new CDC provisions applicable to the project have been adopted since the

original approval or new issues are found per CDC regulations, the Planning Division may impose additional conditions at the time of renewal necessary to satisfy such new requirements and criteria for decision of the CDC. If such CDC regulations require plan revisions, then such revisions shall be evaluated in accordance with the minor Revision Process; and

- c. The proposed renewal meets all applicable Town regulations and standards.
2. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the renewal review criteria.
3. If the Planning Division is unable to find that the proposed revision meets the applicable criteria listed above, such revision shall be considered a new proposal and shall be evaluated in accordance with the applicable development review process outlined in this CDC.

#### **E. General Standards**

1. **Number of Renewals.** Only one (1), six (6) month renewal shall be permitted. Upon expiration of the renewal, the applicant must submit a new development application and follow the required development review process as provided for by this CDC.
2. **Length of Validity.** If a renewal development application is approved by the Town, the approval shall lapse six (6) months after the expiration date of the original approval.

#### **17.4.9 Rezoning Process**

##### **A. Purpose and Intent**

The purpose and intent of this section is to provide procedures and policies for a rezoning development application to change either the zone district or the zoning designation(s) of a lot.

##### **B. Applicability**

The Rezoning Process is applicable to any development application that proposes to change the zone district, zoning designation and/or the density allocation assigned to a lot.

##### **C. Review Process**

1. **Step 1: Conceptual Worksession.** A conceptual worksession application shall be submitted prior to submitting a formal rezoning development application.
  - a. The Director of Community Development may waive the requirement to submit a conceptual worksession due to limited size, scale or other matters that limit the issues associated with a rezoning development application.
2. **Step 2: Rezoning Development Application.** Rezoning development applications shall be processed as class 4 applications.

**D. Criteria for Decision**

1. The following criteria shall be met for the review authority to approve a rezoning development application:
  - a. The proposed rezoning is in general conformance with the goals, policies and provisions of the Comprehensive Plan;
  - b. The proposed rezoning is consistent with the Zoning and Land Use Regulations;
  - c. The proposed rezoning meets the Comprehensive Plan project standards;
  - d. The proposed rezoning is consistent with public health, safety and welfare, as well as efficiency and economy in the use of land and its resources;
  - e. The proposed rezoning is justified because there is an error in the current zoning, there have been changes in conditions in the vicinity or there are specific policies in the Comprehensive Plan that contemplate the rezoning;
  - f. Adequate public facilities and services are available to serve the intended land uses;
  - g. The proposed rezoning shall not create vehicular or pedestrian circulation hazards or cause parking, trash or service delivery congestion; and
  - h. The proposed rezoning meets all applicable Town regulations and standards.
2. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the rezoning review criteria.

**E. General Standards**

1. **Ordinance Required for Zone District Amendment.** Any change to the zone district, on a lot shall be by duly adopted ordinance.
  - a. All ordinances for a rezoning shall include a map reflecting the new zoning and associated boundaries.
  - b. A rezoning shall not become effective until thirty (30) days following the adoption of the rezoning ordinance.
2. **Ordinance Required for Change in Density or Zoning Designation.** Any change to the density or zoning designation assigned to a lot shall be by duly adopted ordinance that shall be recorded in the records of the San Miguel County Clerk and Recorder.
  - a. To the extent multiple recorded resolutions and/or ordinances exist with respect to the zoning designation of a lot, the most recently recorded resolution or ordinance shall prevail and shall have the effect of voiding all prior recorded resolutions and ordinances.
  - b. **Zoning on Plats.** If the current, recorded plat for the lot(s) affected by the rezoning lists either the zone district, zoning designation and/or associated density, the rezoning ordinance shall include a statement that the zoning set forth in the rezoning ordinance shall prevail over any inconsistent plat notations on all validly recorded plats for the lots affected by such rezoning.
3. **Official Zoning Map Amendment.** Rezoning affecting the zone district boundaries shall be shown by the Town on the Official Zoning Map as soon as reasonably practicable following the effective date of a rezoning. The Official Zoning Map, as



amended by the rezoning, shall be signed by the Town Mayor and attested by the Town Clerk.

4. **Official Land Use and Density Allocation List Amendment.** Rezoning that change the zoning designations or density allocations on a lot shall be reflected on the official land use and density allocation list as soon as reasonably practicable following the effective date of a rezoning.

5. **Density Transfer**

- a. Density may be transferred from one lot to another within the Town, provided that the existing or proposed zone district of both lots allows for the increase or decrease in density, and provided that the density transfer is approved pursuant to the Rezoning Process, PUD Process or the MPUD Process.
- b. Density may be increased or decreased on a lot by transferring density to or from the density bank, or by transferring density to or from another lot if such transferor lot is made a part of the Rezoning Process, PUD Process or the MPUD Process.

6. **Rezoning Limitations**

- a. Zoning designations assigned to density within the density bank may be changed to another zoning designation during the Rezoning Process when it is being transferred to a lot.
- b. Workforce housing density may not be rezoned to free market units except when the WHR is lost as provided for in the Zoning and Land Use Regulations.
- c. Workforce housing density assigned to a lot or property has specific requirements as set forth in the workforce housing requirements.
- d. Lots or units subject to the workforce housing restriction may only request a rezoning to change the zoning designation to either: (1) employee apartment, employee single-family, employee condominium or employee dorm; or (2) for whole lots only, the PUD Zone District to allow for a mix of workforce housing and free-market dwellings.
- e. Single-family zoning designations within the density bank may be rezoned to any zoning designation as a part of a rezoning and density transfer development application where the density is being transferred from the density bank to a lot.
- f. Lodge, efficiency lodge, hotel and hotel efficiency zoning designations may not be rezoned to condominium zoning designations.
- g. Rezoning of a condominium unit from residential to commercial, or vice-versa, whether or not there is any change to the exterior of the building, requires a rezoning of the affected unit(s).
- h. Lots outside the Village Center rezoning to any zoning designation with multi-family dwellings may be required to have a transportation plan and may be required to provide certain amenities on site, such as outdoor spa facilities, playgrounds, fitness facilities and/or a common area gathering place as conditions of approval.
- i. In development applications that propose removing density from a Village Center and multi-family lot, the applicant must prove the existence of a practical difficulty that prohibits the build out of the platted density. Financial hardship or expense shall not be considered a practical difficulty for the purpose of this section.
- j. Commercial and industrial density and/or zoning designations shall not be rezoned or converted to any other density since such a change would increase the

Density Limitation.

**7. Town Initiated Rezoning**

The Town Council may initiate the rezoning of private property by passing a motion directing staff to prepare and process a rezoning development application for specifically identified lots, following the Rezoning Process established by this section as a class 4 application.

**17.4.10 Density Transfer Process**

**A. Purpose and Intent**

The purpose and intent of this section is to provide procedures and policies for a density transfer development application to transfer density from:

1. A lot to another lot in the town;
2. A lot to the density bank;
3. The density bank to a lot; or
4. Within the density bank, from one entity to another entity.

**B. Applicability**

The density transfer process is applicable to any owner or developer that proposes to conduct one of the activities outlined above.

**C. Review Process**

Density transfers shall be processed as follows:

1. **Class 1 Application.** A density transfer within the density bank, from one entity to another entity, shall be processed as a class 1 application.
2. **Class 4 Application.** Density transfers from a lot to another lot, a lot to the density bank or the density bank to a lot shall be processed as class 4 applications, concurrent with the required Rezoning Process.

**D. Criteria for Decision**

1. **Class 1 Applications.** The following criteria shall be met for the review authority to approve a transfer within the density bank:
  - a. The applicant has submitted a copy of the effective and valid official density bank certificate;
  - b. The density bank certificate contains the density sought to be transferred;
  - c. The applicant has provided a copy of the properly recorded density conveyance document to the Planning Division showing the conveyance of the density;
  - d. The density transfer meets the density transfer and density bank policies; and
  - e. The proposed transfer within the density bank meets all applicable Town regulations and standards.
2. **Class 4 Applications.** The following criteria shall be met for the Review Authority to approve a density transfer:

- a. The criteria for decision for a rezoning are met, since such density transfer must be processed concurrently with a rezoning development application (except for MPUD development applications);
  - b. The density transfer meets the density transfer and density bank policies; and
  - c. The proposed density transfer meets all applicable Town regulations and standards.
3. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the density transfer review criteria.

**E. General Standards**

1. **Density as a Property Interest.** Density in the density bank is considered a property interest by the Town, and may be bought or sold subject to meeting the applicable requirements of the CDC.
2. **Density Bank Certificate.** Upon the approval of a density transfer within the density bank, the Town shall issue a new density bank certificate to the new owner and to the original owner if the transfer does not involve all of the density shown on the density transfer certificate.
3. **Official Land Use and Density Allocation List.** The Planning Division shall update the official land use and density allocation list upon the approval and effective date of a density transfer.

**17.4.11 Design Review Process**

- A. The purpose and intent of the Design Review Process is to ensure that development is planned and designed to fit within the overall design context of the town. These regulations are also intended to:

1. Promote public health, safety and welfare;
2. Require quality building, landscaping and site design that enhances the character of the town;
3. Ensure development meets the Zoning and Land Use Regulations and other applicable requirements of this CDC;
4. Foster a sense of community;
5. Promote the economic vitality of the town;
6. Promote the resort nature and tourism trade of the town; and
7. Protect property values within the town.

**B. Applicability and Exemptions**

1. **Applicability.** The Design Review Process is applicable to any developer, owner, agent or person that plans on conducting one of the following activities:
  - a. The construction or alteration of a building or structure;
  - b. New landscaping or alterations to existing landscaping;
  - c. Any clearing, grading or other movement of land;
  - d. Any dredging, filling, grading, paving or excavation;
  - e. The improvement or alteration of any lot, property or open space, whether temporary or permanent;
  - f. New development;
  - g. All exterior modifications to existing development; or

- h. The application of new paint or stain on a building or structure.

**2. Exemptions.**

- a. The following activities are exempt from the need to submit to a Design Review Process:
  - i. Landscaping to replace dead or diseased vegetation that was already approved by a previous Design Review Process development application;
  - ii. Landscaping that involves the planting of flowers without any expansion of the irrigation system;
  - iii. The placement of play equipment and similar uses in the rear yard that are not custom built on site, such as a swing set or a trampoline; and
  - iv. Any activity or building permitted by another development review process that has the same detail as the Design Review Process, including but not limited to conditional use development applications and site-specific PUD development applications.
    - (a) The Planning Division shall determine if an activity or building is approved via another development review process that has the same detail as the Design Review Process prior to an activity being exempt from the Design Review Process.
    - (b) Such written determinations shall be made either concurrent with the non-Design Review Process development application or by a separate written request after a development application has been approved.
    - (c) Examples of this include a facility that has detailed plans (grading, landscaping, floor plans, elevations, etc.) approved via the Conditional Use Permit Process and, therefore, would not be required to also conduct a Design Review Process.
  - v. Seasonal decorations that comply with any limitations in the CDC, such as the Lighting Regulations and be installed for no more than 60 days for all events except for winter seasonal decorations that may be installed for no longer than five (5) consecutive months.
- b. Even though an activity may be exempt from the Design Review Process, such activities shall still comply with the applicable requirements of the Design Regulations and this CDC.
- c. Even if an activity is exempt from the Design Review Process, it shall be the responsibility of the owner, developer or agent of a lot or property to ensure the activity, development, structure or improvements are constructed in compliance with the Design Regulations and the CDC.

**C. Review Process**

**1. Class 1 Applications.**

- a. The following types of Design Review Process development applications shall be processed as class 1 applications:

- i. Design revisions or remodeling that are minor in nature, does not alter the massing of the structure and does not compromise the intent of the Design Regulations or approved plans provided the developer provides a courtesy notice to all property owners within 400 feet of the lot affected by the redevelopment;
  - ii. Roofing replacement;
  - iii. Insubstantial landscaping and grading development applications;
  - iv. Sign permits;
  - v. Bridges for recreational or pedestrian paths;
  - vi. Fire mitigation and forestry management projects;
  - vii. New or modified lighting on all buildings and structures;
  - viii. The replacement of a lift with a new lift provided the capacity of the lift is not changing;
  - ix. Minor golf course improvements or landscaping, such green or tee replacements; and
  - x. Minor ski resort improvements such as replacing or installing a snowmaking line.
- b. If any is design variation is sought pursuant to Design Variation Process for one of the development applications set forth above, such development application shall be processed as a class 3 application.
  - c. The review authority may elect to elevate a Design Review Process development application to either a class 2 or 3 application based on complicating factors, complex design or other similar considerations.
    - i. If the review authority elects to elevate a Design Review Process development application to a class 3 application, no public notice of such application is required.

**2. Class 2 Development Applications:**

- a. The following types of Design Review Process development applications shall be processed as class 2 applications:
  - i. Building additions that do not increase the floor area by more than twenty-five percent (25%) of the primary structure;
  - ii. Design revisions or remodeling that are more significant in nature, minimally alters the massing of the structure and does not compromise the intent of the Design Regulations or approved plans provided the developer provides a courtesy notice to all property owners within 400 feet of the lot affected by the redevelopment;
  - iii. New or remodeled, non-residential buildings or structures with less than 2,500 sq. ft. of floor area; and
  - iv. Substantial landscaping and grading development applications;
- b. If any is design variation is sought pursuant to Design Variation Process for one of the development applications set forth above, such development application shall be processed as a class 3 application.
- c. The review authority may elect to elevate a Design Review Process development application to a class 3 application based on complicating factors, complex design or other similar considerations.

- i. If the review authority elects to elevate a Design Review Process development application to a class 3 application, no public notice of such application is required.

**3. Class 3 Development Applications.** All other Design Review Process development applications not listed above shall be processed as class 3 applications. Class 3 applications consist of two steps as outlined below.

a. **Initial Architecture and Site Review.** The intent of the Initial Architecture and Site Review is to allow the DRB a preliminary review of the composition of the project architecturally and its relation to the site to determine whether it is responsive to the Town Design Theme; fits within the context of the existing neighborhood and to identify the appropriateness of potential variations. The review is not a public hearing and does not constitute a final action. ~~no action will be taken.~~

i. ~~**Initial Architecture and Site Review Disclaimer.** Any comments, or general direction, warranties, guarantees and/or approvals in any manner or form by the DRB shall not be considered a final action at Sketch Review/Initial Architecture and Site Review binding or represent any promises, warranties, guarantees and/or approvals in any manner or form. An initial architecture and site review shall not be construed as a comprehensive review of the proposal under discussion, and as such, additional issues and/or concerns will most likely arise as part of the final review process.~~

~~b. **Final Review.** Held on a subsequent agenda after the Initial Architecture and Site Review is approved, the Final Review is a public hearing to determine the project's consistency with the Town Design Theme and compliance with the CDC.~~

**D. Criteria for Decision**

- 1. The following criteria shall be met for the review authority to approve a Design Review Process development application:
  - a. The proposed development meets the Design Regulations;
  - b. The proposed development is in compliance with the Zoning and Land Use Regulations;
  - c. The proposed development complies with the road and driveway standards;
  - d. The proposed development is in compliance with the other applicable regulations of this CDC;
  - e. The development application complies with any previous plans approved for the site still in effect;
  - f. The development application complies with any conditions imposed on development of the site through previous approvals; and
  - g. The proposed development meets all applicable Town regulations and standards.
- 2. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the Design Regulations.

**E. General Standards**

1. **Licensed Architect Required.** All development applications for a structure or building to be constructed, altered or modified within the town are required to be stamped by a Colorado licensed architect.
  - a. If allowed by the CRS 12-25-301 et seq, the Director of Community Development may exempt a remodeling development application from this requirement if he/she determines that such remodeling is minor in nature and without any modification to a building's mass, or for a remodeling that is simply proposing the replacement of exterior materials and associated minor alterations.
  
2. **Master Development Plan.** Development applications with several phases are required to receive approval of a master development plan pursuant to the class 3 application process. Each phase will require review per the applicable Design Review Process set forth above and the Design Regulations. Design review development applications for each phase will conform to the approved master development plan.
  - a. The master development plan shall be used as a guide for the subsequent development of sites and the design and location of buildings and grounds within the project. All plans subsequently approved by the DRB in accordance with the Design Regulations shall substantially conform to the master development plan approved by the DRB.
  
3. **DRB Design Review Prior to Building Permit.** A building permit for a project that requires Design Review Process shall not be issued unless such project has been reviewed and approved pursuant to the Design Review Process and the Design Regulations.
  
4. **Non-Conforming Lots or Buildings:** A Design Review Process development application shall require the applicant to bring the existing building(s), structure(s), landscaping and other site elements into compliance with the current Design Regulations and CDC requirements. The Town shall only seek to bring a lot, site or building into compliance with the CDC in direct proportion to the development application to ensure that the costs of compliance are fair and balanced to the level of originally requested improvements.
  
5. **Design Variation Process.**
  - a. The DRB may grant design variations to the following Design Regulations sections:
    - i. Building siting design;
    - ii. Grading and drainage design;
    - iii. Building design;
    - iv. Landscaping regulations;
    - v. Trash, recycling and storage areas;
    - vi. Lighting regulations;
    - vii. Sign regulations; and
    - viii. Commercial, ground level and plaza area regulations.
  
  - b. A design variation request shall be processed concurrently with the applicable Design Review Process development application.
  
  - c. A design variation request shall outline the specific variations requested and include the section number.

- d. A design variation request shall provide a narrative on how the variation request meets the design variation criteria for decision.
- e. The following criteria shall be met for the review authority to approve a design variation development:

- i. The design variation is compatible with the design context of the surrounding area, and provides for a strong mountain vernacular design.
- ii. The design variation is consistent with the town design theme;
- iii. The strict development application of the Design Regulations(s) would prevent the applicant or owner from achieving its intended design objectives for a project;
- iv. The design variation is the minimum necessary to allow for the achievement of the intended design objectives;
- v. The design variation is consistent with purpose and intent of the Design Regulations;
- vi. The design variation does not have an unreasonable negative impact on the surrounding neighborhood; ~~and~~
- vii. The proposed design variation meets all applicable Town regulations and standards; and

viii. The variation supports a design interpretation that embraces nature, recalls the past, interprets our current time, and moves the town into the future while respecting the design context of the neighborhood surrounding a site.

- f. Cost or inconvenience alone shall not be sufficient grounds to grant a design variation.
- g. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development substantially comply with the design variation process.

**6. DRB Compliance Inspection.** No owner, lessee or their agent or assignee shall apply for a certificate of occupancy (CO), temporary certificate of occupancy (TCO), final building approval or other similar occupancy approvals from the Building Division unless the applicant has received final inspections for compliance conducted by the Planning Division staff, and staff has signed the Building Division inspection card.

- a. In the event that paving and/or landscaping cannot be constructed without unreasonable delay, a TCO may be issued, if the applicant complies with the landscape completion policy in the Design Regulations.