

CHAPTER 9

REGULATIONS FOR DEVELOPMENT IN AREAS CONTAINING OR HAVING A SIGNIFICANT IMPACT UPON NATURAL RESOURCES OF STATEWIDE IMPORTANCE

Article 1 General and Introductory Provisions

- 9-101 Title and Citation
- 9-102 Purpose and Intent
- 9-103 Findings
- 9-104 Definitions
- 9-105 Applicability

Article 2 Designation of Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance

- 9-201 Designation of Area of State Interest
- 9-202 Boundaries of Area Covered by Designation
- 9-203 Reasons for Designation

Article 3 Permit Applications and Permits

- 9-301 Application Procedure
- 9-302 Submission Requirements
- 9-303 Action on Permit Application

Article 1 General and Introductory Provisions

9-101 Title and Citation

These various sections constituting Chapter 9 of the "Guidelines and Regulations for Areas and Activities of State Interest of Chaffee County" may be cited as the "Regulations for Development in Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance."

9-102 Purpose and Intent

The purpose and intent of the regulations contained in this Chapter 9 are:

- (1) To administer areas containing or having a significant impact upon natural resources of statewide importance in a manner that will allow man to function in harmony with, rather than be destructive to, these resources.
- (2) To protect areas of Chaffee County which are essential for wildlife habitat.
- (3) To ensure that development in areas containing natural resources of statewide importance and/or alteration of such natural resources that provide significant wildlife habitats is conducted in a manner which will minimize damage to those resources for future use and will minimize environmental impacts associated with such development or alteration.
- (4) To ensure that damage resulting from development in areas containing or having a significant impact upon natural resources of statewide importance and/or alteration of such natural resources (including but not limited to soil loss from air or water erosion, airborne dust, noxious weed invasion, and negative effects on surface and groundwater quality and the aquatic and natural habitat of the Source Development Area) is effectively mitigated.

9-103 Findings

The Board of County Commissioners hereby finds that:

- (1) The areas of Chaffee County which have been ranked as "High" or "Very High" on the Division of Wildlife maps included as Exhibit D to this Chapter provide significant wildlife habitat in which the wildlife species in the area could be endangered.
- (2) Such areas constitute a natural resource of statewide importance.
- (3) Wildlife plays an important role in the social, economic and environmental well-being of the Chaffee County.
- (4) Viable topsoil, a permanent water supply, diverse plant communities, shelter, cover, maintaining riparian systems, wetlands, floodplains, breeding and production areas and migration corridors are fundamental to the maintenance of significant wildlife habitat.

- (5) Loss of topsoil results in inability of the land to support native plants upon which all wildlife species depend. Particularly in the areas of Chaffee County which have been historically irrigated, the presence of topsoil on those areas has enabled wildlife to thrive.
- (6) Noxious weed invasion aggravates the loss of topsoil by crowding out native plants and further degrading the ability of wildlife species to exist.
- (7) This topsoil is the fundamental basis upon which the economic and environmental health of the County is based. Its productivity is inextricably linked to the economic health of the County and its residents.
- (8) Without adequate and enforceable revegetation plans, loss of topsoil from historically irrigated lands within the County, from air and waterborne erosion, or from noxious weed invasions, is a direct result of the transfer of water rights from the land and subsequent dry-up.
- (9) Adequate revegetation plans for such lands are needed to ensure that the significant wildlife habitat values of such lands are preserved and protected.
- (10) These regulations are necessary because of the intensity of current and foreseeable Natural Resource Development Activity and development pressures on and within the County which, if left unmitigated, could cause negative impacts in areas essential to wildlife.
- (11) These regulations are necessary for the protection of the natural resources and environment of the County and the State of Colorado and the health, welfare and safety of the people of the County.

9-104 Definitions

- (1) "Administrator" means the County Administrator or another person designated by the Board of County Commissioners to provide an initial review of proposed Natural Resource Development Activity.
- (2) "Area Wildlife Manager" means the local Area Wildlife Manager of the State of Colorado Division of Wildlife assigned to the area encompassed by Chaffee County or designee.
- (3) "Natural Resource Development Activity" means and includes any of the following, if proposed to be taken with respect to any parcel(s) or tract(s) of land aggregating thirty-five acres or more, located within the area described on **Exhibit D**: (i) any construction or activity for which a permit is required by the Chaffee County Zoning, Subdivision Regulations or Land Use Code; or (ii) development of the land for a use or uses other than irrigated agriculture; or (iii) cessation of irrigation or water flow as evidenced by entry of a final decree of transfer of water rights by the Water Court for Water Division 2 or as evidenced by removal of the water from the land for two years or more, pursuant to a lease or sale (including without limitation temporary supply plans and water banking).

- (4) "Natural resources of statewide importance" means and includes areas of Chaffee County which have been designated as significant wildlife habitat in which the wildlife species in the area could be endangered, as identified by the Division of Wildlife of the Department of Natural Resources ("DOW") which are shown on **Exhibit D** and are ranked as "High" or "Very High".
- (5) "Noxious weed invasion" means the appearance and establishment of non-native plants in a manner or quantity which threatens to displace or does displace native vegetation, vegetation planted as a part of a revegetation program or effort, or vegetation planted as an agricultural crop or practice. "Noxious weed invasion" shall not include the appearance and establishment of non-native plants when part of an approved revegetation plan.
- (6) "Soil Loss" means the loss of topsoil by air or waterborne erosion, or by noxious weed invasion.

9-105 Applicability

- (1) These Regulations apply to all Natural Resource Development Activity in areas containing or having a significant impact upon natural resources of statewide importance wholly or partially within the unincorporated territory of this County, as designated in Article 2, below. Unless a Statement of No Impact is obtained, a permit for such Natural Resource Development Activity in such areas shall be required, as further described in Chapter 2 of these Regulations.
- (2) A Statement of No Impact or an application for a permit pursuant to these regulations shall be required prior to submitting an application for any land use activity or development for which a permit or County approval is required. If a permit is required pursuant to these regulations, such permit must be approved prior to or in conjunction with final approval of a final plat, minor tract division or PUD final plan , and in every case must be obtained prior to commencement of construction in connection with the Activity.

Article 2 Designation of Areas Containing or Having a Significant Impact upon Natural Resources of Statewide Importance

9-201 Designation of Areas of State Interest

The Board of County Commissioners having considered the intensity of current and foreseeable development pressures and applicable Guidelines for Identification and Designation adopted and issued by the Colorado Land Use Commission, order that areas described below in 9-202 are natural resources of statewide importance and are hereby designated as areas of state interest. Natural Resource Development Activity in such areas shall be regulated pursuant to the provisions of this Chapter.

9-202 Boundaries of Area Covered by Designation

The designation and these Regulations shall apply to the wildlife habitats shown on the map attached hereto as **Exhibit D** which are ranked as "High" or "Very High". At least

every five years, the Board of County Commissioners shall review the map and hold a public hearing to consider whether the map should be updated.

9-203 Reasons for Designation

The areas containing or having a significant impact upon natural resources of statewide importance as described in 9-202 are hereby designated as areas of state interest for the reasons stated in Sections 1-102 and 9-102 and 9-103 of these Regulations.

Article 3 Permit Applications and Permits

9-301 Application Procedure

- (1) The procedures concerning permit applications, notice and conduct of permit hearings, review of Permit Authority decisions, and the issuance and content of permits to engage in development in areas containing or having a significant impact upon natural resources of statewide importance shall comply with the provisions set forth in Chapter 2, the Permit Regulations. Notwithstanding Chapter 2, a permit is not required if a person seeking to engage in Natural Resource Development Activity first obtains a Statement of No Impact from the Administrator, as discussed below.
- (2) Any person seeking to engage in Natural Resource Development Activity shall comply with the following, prior to filing an application for a permit.
 - (a) Such person shall submit a Notice of Proposed Natural Resource Development Activity to the Administrator. The Administrator shall forward a copy of the Notice to the Area Wildlife Manager, with a copy to the Administrator. The Notice shall consist of the following:
 - (i) Applicant's name, address and phone number.
 - (ii) Map prepared at an easily readable scale showing:

- The boundary of the area affected by the proposed Natural Resource Development Activity.
 - The relationship of the site to surrounding topographic and cultural features, such as roads, streams, and existing structures.
 - Proposed building, improvement, and infrastructure locations associated with the proposed Natural Resource Development Activity.
 - Legend which includes: (i) A complete and accurate legal description of the site; (ii) Total acreage of the site; (iii) Title, scale and North arrow; and (iv) Date, including revision dates, if applicable.
- (iii) Written statement of nature and density of the proposed Natural Resource Development Activity.
- (iv) The Area Wildlife Manager shall review the Notice and determine whether the proposed Natural Resource Development Activity will adversely impact wildlife species, wildlife habitat and/or wildlife movement patterns/displacement and adaption of wildlife populations within the Source Development Area. Following the review, the Area Wildlife Manager shall prepare comments on the proposed Natural Resource Development Activity and whether it is likely to adversely impact wildlife species, wildlife habitat and/or wildlife movement patterns/displacement and adaption of wildlife populations within the Source Development Area and suggest ways in which the proposed Natural Resource Development Activity could mitigate impact.
- (b) Within 45 days after receiving the Notice, the Area Wildlife Manager shall deliver a copy of the Area Wildlife Manager's written comments to the Administrator. Alternatively, at the request of the Permit Authority/Administrator or option of the Area Wildlife Manager, may present such comments orally at a public meeting duly noticed and held within 45 days after receiving the Notice. The Area Wildlife Manager's failure to deliver such recommendations within 45 days shall not be construed as a recommendation for issuance of a Statement of No Impact.
- (c) Notwithstanding any recommendation or comments submitted by the Area Wildlife Manager, the Permit Authority reserves the right to determine whether any proposed Natural Resource Development Activity must obtain a Permit. Within thirty days following expiration of the above-described 45 day period, the Administrator shall administratively review and consider the Area Wildlife Manager's recommendation, if any, and shall take one of the following actions:

- (i) Determine that the proposed Natural Resource Development Activity will not impact wildlife species, wildlife habitat and/or wildlife movement patterns/displacement and adaption of wildlife populations within the Source Development Area and prepare a written Statement of No Impact specifying such; or
- (ii) Determine that the proposed Natural Resource Development Activity may impact wildlife species, wildlife habitat and/or wildlife movement patterns/displacement and adaption of wildlife populations within the Source Development Area and notify the applicant that the applicant must obtain a Permit to satisfy the requirements of this Chapter.

9-302 Submission Requirements

In addition to requirements set forth in Section 2-203, an application for a permit to conduct Natural Resource Development Activity shall be accompanied by ten copies of the following documents and information:

- (1) For the purpose of assisting in evaluation of the applicant's selected development alternative only, list alternative development and general degree of feasibility of each or, at the option of the applicant, the environmental analyses, assessments and statements developed under any required review pursuant to the National Environmental Policy Act (NEPA).
- (2) Map and/or describe all floodplains, wetlands, and riparian areas to be affected by the Activity, including a description of the types of wetlands, species composition, and biomass and a delineation of the 100-year flood event.
 - (a) Describe the source of water interacting with the surface systems to create each wetland (i.e., side-slope runoff, over-bank flooding, groundwater seepage, etc.).
 - (b) Describe the impacts and net effect that the proposed Activity would have on the floodplains, wetlands, and riparian areas.
- (3) Terrestrial and Aquatic Animals and Habitat:
 - (a) Describe and indicate on a map terrestrial and aquatic animals including the status and relative importance of game and non-game wildlife, a description of streamflows and lake levels needed to protect the aquatic environment and a description of threatened or endangered animal species and their habitat.
 - (b) Describe and indicate on a map wildlife habitat to be affected by the proposed Activity including a description of how the applicant will meet the applicable habitat needs listed below and avoid conflict with these needs. Where conflicts are unavoidable, the applicant shall present proposals to minimize the extent and degree of the conflict, including

compensation through replacement or enhancement of habitat on an alternative site. The Permit Authority may request additional information or reports in order to adequately access the below listed habitat needs.

- (i) Production Areas. These include areas necessary for pre-nuptial activities, breeding, young-bearing and rearing, i.e., spawning beds, nursery streams, and protected shoal areas for fish; permanent shallow water for amphibians; strutting, booming and dancing grounds and calling perches, nesting places, and protective young-rearing cover for birds; breeding grounds, calving and fawning area, dens, trees, burrows, and young-rearing cover for mammals.
- (ii) Principal Feeding Areas. These include areas containing the natural foods of a wildlife species of sufficient quantity and quality and readily available to sustain a normal population.
- (iii) Summer Ranges. Summer ranges relatively free of human disturbance are highly important to the survival of some species, especially those requiring extended periods of time for young-rearing.
- (iv) Winter Ranges. Winter ranges of sufficient quality and quantity are critical for two reasons: (1) they are frequently so restricted in area that they limit the size of an animal population over its entire range; and (2) these ranges are often in proximity to human populations and human activities so that the species involved are adversely affected, or the species may adversely affect real and personal property.
- (v) Concentration Areas. Areas where high density of wildlife species at certain times of the year makes them highly susceptible to developments and activities of man. Examples of concentration areas include staging areas for waterfowl, sandhill cranes and deer; roosting areas for a number of birds; colonies of such colonial species as swallows, herons and beaver; and mass dens of snakes.
- (vi) Shelter Areas. Those physical or natural features in their habitats which provide escapement from their enemies and adverse weather conditions. Included here are such things as rough terrain for many species of wildlife; rocky bottoms and shorelines and aquatic vegetation in and adjacent to water for protection of fish, amphibians, and aquatic oriented species of terrestrial wildlife.
- (vii) Water and Minerals. A permanent water supply in sufficient quantity and quality is necessary to support most wildlife species. In addition, some species have special mineral needs. Continuous stream flows and conservation pools in reservoirs are

essential to the survival of fish. Stable water levels in lakes and reservoirs are highly desirable for fish, amphibians and many forms of terrestrial wildlife. High quality water, free of pollutants, is essential to the survival of fish, amphibians and many birds, as well as to the food organisms upon which they depend.

- (viii) Movement Corridors. Many species of wildlife have daily and seasonal movement patterns along more or less established corridors. These may be between seasonal ranges; to reach spawning areas; or between nesting, resting, roosting, feeding and watering areas. Concentrations of animals along such corridors increase the likelihood of conflict between wildlife and humans. Many of these corridors offer the only means for wildlife movements, or their uses become so traditional that disruption or interference could be disastrous for the species involved.
- (ix) Buffer Zones. Some species of wildlife are intolerant to disturbance from human activities during portions of the year. In order to protect these species, buffer zones with no, or limited, human related disturbances are necessary during those seasons when these species occupy specific areas.
- (x) Special Habitat Needs. Some wildlife species have very specific habitat needs, without which they cannot survive. Therefore, the reduction of such needs beyond certain limits, or a complete destruction of these habitat features could cause a species to be reduced in number or perish. For example, sagebrush is essential to the survival of sage grouse; wild turkeys need roost trees meeting certain requirements; catfish will only spawn when water temperatures are within certain limits; and blackfooted ferrets are limited to ranges occupied by prairie dogs.
- (xi) Shoreline Vegetation. Vegetation along stream banks and the shorelines of lakes is extremely important to aquatic wildlife and aquatic related forms of terrestrial wildlife. Such vegetation controls water temperatures, provides food and shelter and protects banks from excessive erosion which damages or destroys wildlife habitats.

(4) Terrestrial and Aquatic Plant Life

- (a) Map and/or describe terrestrial and aquatic plant life including the type and density, and threatened or endangered plant species and habitat.
- (b) Describe the impacts and net effect that the Activity would have on terrestrial and aquatic plant life.
- (c) Describe the potential adverse impact of the Activity on the soil of the Source Development Area, including impact upon soil productivity,

potential soil loss from air or water erosion, and degradation from susceptibility to noxious weed invasion.

(5) **Revegetation Plan:**

- (a) All applications must include a detailed revegetation plan for all land areas from which historic irrigation practices will be removed. Describe all revegetation plans or efforts proposed as part of the development, including any such plans required as a condition of any Water Court decree pertaining to the developments. Such plan shall include, at a minimum:
 - (i) Description of all lands included.
 - (ii) Plant and seed material to be used and the method and timing of their application.
 - (iii) Source, amount, timing and seasonal duration of irrigation water to be applied to establish the intended revegetation, for a period no less than two (2) growing seasons.
 - (iv) Whether the plan is required as a part of any Water Court transfer decree, and if so whether the plan has been approved by the Water Court (include a copy of the decree and plan as so approved).
 - (v) Proposed security to guarantee implementation of the revegetation plan.
- (b) The Permit Authority may, but is not required to consider a Water Court approved revegetation plan as partial or full satisfaction of the requirements of this Section 9-302(5).

9-303 Action on Permit Application

- (1) The Permit Authority shall act upon the permit application within 60 days after the public hearing on the application has been concluded. The Administrator shall ask the Area Wildlife Manager to give oral comments on the application at the public hearing. In determining whether to approve, approve with conditions, or disapprove a permit application, the Permit Authority shall take into consideration the following criteria:
 - (a) The proposed Natural Resource Development Activity will not have a significant adverse net effect on wildlife species within the Source Development Area. Assessment of net effect on wildlife species shall take the following into consideration:
 - (i) The proposed Activity will not disturb or harass individual animals, groups of animals or wildlife species.

- (ii) The proposed Activity will not disrupt necessary life-cycle function resulting in stress to the extent that physiological damage is done to an individual animal, group of animals or wildlife species. Examples include, but are not limited to, introduction of non-native vegetation, excessive use of fertilizers and other chemicals, placement of structures in close proximity to nesting and feeding areas and excessive exterior lighting.
- (b) The proposed Natural Resource Development Activity will not significantly deteriorate wildlife habitat or other wildlife protection areas, aquatic habitats, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species within the Source Development Area. Assessment of net effect on such habitats shall take the following into consideration:
- (i) The extent which the revegetation plans required by Section 9-302(5) will successfully prevent invasion of noxious weeds and air or waterborne soil loss, and minimize damage to significant wildlife habitats and the adequacy of the security ensuring implementation of such plan.
 - (ii) Adequate water supplies are available for successful implementation of revegetation plans.
 - (iii) The amount of vegetation/habitat removal and/or alteration within the development site.
 - (iv) The effect on surface and subsurface water quantity and quality.
- (c) The proposed Natural Resource Development Activity will not have a significant adverse net effect on wildlife movement patterns/displacement and adaptation of wildlife populations within the Source Development Area. Assessment of net effect on such patterns/displacement and adaption shall take the following into consideration:
- (i) The Activity's effect on preventing wildlife from using habitat they would normally use, such as blocking migration patterns from summer to winter range.
 - (ii) The Activity's effect on causing wildlife to find new routes that expose them to significantly increased predation, interaction with vehicles, intense human activity, or more severe topography and climactic conditions.
 - (iii) Ability of the specie or species to adapt to significant alteration of their current habitat.
 - (iv) Ability of the specie or species to find a new habitat that is sufficient to sustain the species over the long term.

- (d) The proposed development is designated and will be administered, controlled and regulated to allow man to function in harmony with, rather than be destructive to, significant wildlife habitats.
- (e) The proposed development has been reviewed and received favorable comment from the Area Wildlife Manager.