



MEETING OF THE PLANNING COMMISSION

**Town Board Room
807 Mountain Avenue
Town of Berthoud, Colorado
Thursday, May 8, 2025, 6:00 p.m.**

This is an IN-PERSON meeting at the location and time noted above.

This meeting will be streamed live on YouTube. The live stream is accessible by visiting www.berthoud.org/stream

1. Call Meeting To Order
2. Pledge Of Allegiance
3. Roll Call
4. Approval Of Meeting Minutes

April 10, 2025 Housing Steering Committee meeting

April 10, 2025 Planning Commission meeting

Documents:

[2025 04 10 MINUTES HSC DRAFT.PDF](#)
[2025 04 10 MINUTES PC DRAFT.PDF](#)

5. Berthoud - Mead IGA

Documents:

[BERTHOUD MEAD IGA PACKET.PDF](#)

6. 2025 Land Use Code Amendment - Discussion
Sections for initial review: General, Annexation, Flood Mitigation

Documents:

[2025 05 08 PC BUNDLE GENERAL CODE FLOOD ANNEX GENERAL.PDF](#)

7. Discussion With Town Attorney, Erin Smith

8. Report By Staff

9. Adjourn

Individuals needing special accommodation may request assistance by contacting the Town Clerk at 807 Mountain Avenue, Berthoud, Colorado 80513, 970-532-2643 at least 24 hours in advance.



**Garden
Spot of
Colorado**

**Town of Berthoud Housing Steering Committee Work Session
Town Hall
Board Room
807 Mountain Avenue, Berthoud, CO 80513
April 10, 2025 at 6:00 p.m.**

1. Meeting called to order – Chairperson Anderson at 6:01 p.m.
2. Roll Call

The following Housing Steering Committee members were present:

Karen Anderson, Chair
Abigail Smith, Vice Chair
Mark Brodie, Commissioner
David Pond, Commissioner
Nick Semedallas, Commissioner
Tim Hardy, Town Trustee
Sean Murphy, Mayor Pro Tem
Tiffany Brodie, Habitat for Humanity
Ryan Baker, Thompson School District

The following Housing Steering Committee members were absent:

Jeff Feines, Loveland Housing Authority

The following Planning Commission members were absent:

Marc Hofmans, Commissioner
Stacy Sigman, Commissioner

The following staff members were present:

Anne Johnson, Community Development Director
Brenton Thompson, Building Permit Technician

3. Work Session Presentation was given to the Housing Steering Committee by Josh Olhava, Western Planning Lead with Ayres Associates, and Karlyn Vasan, Community Planner with Ayres Associates, on the Final Housing Diversity Plan and Action Plan.
 - a. Committee Member Tiffany Brodie moved to send the approval of the Plans to the Board of Trustees. The motion was seconded by Committee Member Nick Semedallas.
4. Report by Staff:
 - a. The Final Housing Needs Assessment will be presented to the Town Board of Trustees on April 22, 2025.
5. Adjourn
The meeting was adjourned by unanimous consensus at 6:31 p.m.

Chairperson

Secretary



**Garden
Spot of
Colorado**

**Town of Berthoud Planning Commission Work Session
Town Hall
Board Room
807 Mountain Avenue, Berthoud, CO 80513
April 10, 2025 at 7:00 p.m.**

1. Meeting called to order – Chairperson Anderson at 7:00 p.m.
2. Roll Call

The following Housing Steering Committee members were present:

Karen Anderson, Chair
Abigail Smith, Vice Chair
Mark Brodie, Commissioner
David Pond, Commissioner
Nick Semedalas, Commissioner
Tim Hardy, Town Trustee
Sean Murphy, Mayor Pro Tem
Tiffany Brodie, Habitat for Humanity
Ryan Baker, Thompson School District

The following Housing Steering Committee members were absent:

Jeff Feines, Loveland Housing Authority

The following Planning Commission members were absent:

Marc Hofmans, Commissioner
Stacy Sigman, Commissioner

The following staff members were present:

Anne Johnson, Community Development Director
Brenton Thompson, Building Permit Technician

3. Correction to Agenda: Minutes to be considered include those from the 3/27 and 3/13 PC work sessions.
4. Approval of Minutes from the March 13, 2025, and March 27, 2025 Planning Commission work sessions were moved for approval by Commissioner Brodie and a second to the motion was made by Commissioner Pond.
5. A Land Use Code Amendment was presented for consideration for Natural Healing Centers and Natural Medicine Businesses by Anne Johnson. The public hearing opened at 7:03 p.m. Public testimony was taken by one resident, Lynn Larsen at 7:34 p.m. and closed at 7:37 p.m. Commissioners discussed the proposed Code amendment. Commissioner Semedalas moved to send a recommendation of approval to the Town Trustees as proposed. A second to this motion was made by Commissioner Smith. The public hearing closed at 7:39 p.m.

6. Report by Staff:

- a. Planning Commission on April 24, 2025 does not have an agenda scheduled.
- b. Planning Commission on May 8, 2025 may include an Intergovernmental Agreement between the Town of Mead and the Town of Berthoud.
- c. Write your passwords and user names for the town-issued tablets down or provide them to the Chair or Staff for safe-keeping.

7. Adjourn

The meeting was adjourned by Motion of Commissioner Pond and seconded by Commissioner Brodie at 7:43 p.m.

Chairperson

Secretary

PLANNING COMMISSION INFORMATION

COMMUNITY DEVELOPMENT DEPARTMENT



Meeting Date:	May 8, 2025
Agenda Title/Subject:	Meeting to review the proposed Intergovernmental Agreement between the communities of Mead and Berthoud and to forward a recommendation to the Town Board of Trustees
Type of Item:	Regular Item
Purpose:	Recommendation to the Town Board of Trustees regarding adoption of the Intergovernmental Agreement between the communities of Berthoud and Mead
Presented by:	Anne Johnson, Community Development Director

ATTACHMENTS:

- Intergovernmental Agreement

BACKGROUND:

Intergovernmental Agreements afford communities to collaborate and determine their growth boundaries, common design standards, road maintenance and land use, for example. The communities of Berthoud and Mead have been collaborating on an Intergovernmental Agreement (IGA) to establish the following commitments:

1. Growth boundary area;
2. Collaboration on development and master plan review;
3. Collaborate on roadway access and maintenance;
4. Establish a prohibited use of storage facilities within $\frac{1}{4}$ mile of the shared boundary; and
5. Confirm road maintenance obligations regarding Weld County Road 7.

The Town will be presenting this Agreement to their Town Board on May 27. The Berthoud Town Board will hear the Agreement at their June 10th meeting.

FISCAL IMPACT AND FUND SOURCE:

There is no negative fiscal impact to the Town in establishing the IGA with Mead.

COMMUNITY TOUCHSTONES:

Establishing an IGA with neighboring communities and counties enables both communities to communicate transparently with the development community and reduce potential conflicts with our neighboring communities.

RECOMMENDED ACTION(S):

Staff recommends approval of the Intergovernmental Agreement between the communities of Mead and Berthoud as presented. Adopting an updated Intergovernmental Agreement with both Larimer and Weld Counties is an action item identified in the Comprehensive Plan update. By agreeing on growth boundaries with our neighboring communities, the larger agreement with both Larimer and Weld County is more palatable when all parties are in agreement regarding their growth boundaries.

Suggested Motions:

Approval: *I move recommend approval of the Berthoud – Mead Intergovernmental Agreement to the Town Board of Trustees for the reasons stated in this staff report.*

Denial: *I move to recommend denial of the Berthoud – Mead Intergovernmental Agreement to the Town Board of Trustees for the following reasons: _____.*

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF MEAD AND TOWN OF BERTHOUD
URBAN GROWTH BOUNDARY AGREEMENT**

This INTERGOVERNMENTAL AGREEMENT ("**Agreement**") is made and entered into this _____ day of _____, 2025 ("**Effective Date**"), by and between the TOWN OF BERTHOUD, a Colorado municipality with an address of 807 Mountain Avenue, P.O. Box 1229, Berthoud, Colorado 80513 ("**Berthoud**") and the TOWN OF MEAD, a Colorado municipality with an address of 441 Third Street, P.O. Box 1229, Mead, Colorado 80542 ("**Mead**") (each a "**Party**" and collectively the "**Parties**").

WHEREAS, the State of Colorado has authorized and encouraged local governments to cooperate or contract with each other for the purposes of planning or regulating the development of land pursuant to the Local Government Land Use Control Act, C.R.S. § 29-20-101, *et seq.*, C.R.S. § 29-1-203, and § 18(2)(a) and 2(b) of Article XIV of the Colorado Constitution; and

WHEREAS, growth, development, and demands for municipal services exist, and will continue to exist within the geographic vicinity of Mead and Berthoud; and

WHEREAS, certain unincorporated areas of Weld County are located between Mead and Berthoud; and

WHEREAS, Mead has adopted a comprehensive plan titled the *Town of Mead Comprehensive Plan* updated in March 2018, as well as the *Town of Mead Open Space, Parks & Trails Master Plan* in 2011 and currently under review (together, the "**Mead Plans**"); and

WHEREAS, Berthoud has adopted an update to the Town of Berthoud Comprehensive Plan in 2021, the *Berthoud Open Space Plan* in 2021, the *Berthoud Trails Master Plan* in 2022, *Landscape Design Guidelines* in 2023 and *Architectural Guidelines* in 2021 ("**Berthoud Plans**") (together with the Mead Plans, the "**Plans**"); and

WHEREAS, Mead and Berthoud recognize the desirability of establishing growth boundaries between their respective municipalities in order to plan effectively and efficiently for the orderly growth and development of each municipality, the provision of municipal services, the conservation of available resources for all of their respective citizens, the promotion of economic viability of both municipalities, and the raising of revenue sufficient to meet the needs of the citizens, as well as to avoid unnecessary duplication of governmental services, and to simplify governmental structure when possible; and

WHEREAS, the Parties have established urban growth and planning influence areas pursuant to their respective Plans as reflected in Section 1 of this Agreement, and desire to establish this Agreement for the purposes of planning for future annexation and guiding the use of land within these described areas; and

WHEREAS, cooperation and increased coordination between the Parties, as represented in this Agreement, in planning for the affected geographic area will enhance the ability of the Parties to achieve their respective and common goals; and

WHEREAS, each Party's Board of Trustees has adopted a resolution approving this

Agreement and authorizing its execution.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Growth Management Areas.** Each Party has approved boundaries for its respective urban growth and planning influence area as part of its Comprehensive Plan (“Growth Management Area” or “GMA”). The Growth Management Area for Berthoud is contained in Exhibit A-1. The Growth Management Area for Mead is contained in Exhibit A-2.

2. **Annexation Policy Relative to Boundary Line.** Neither Party shall annex, solicit the annexation of, enter into any agreement to annex, commence proceedings to annex, nor entertain a petition to annex any territory that lies in the Growth Management Area of the other Party.

The Parties further agree that they shall not, in any manner, become directly or indirectly involved with the annexation of property in the GMA of the other municipality, or oppose the other municipality's annexation of property in its own GMA, except as provided herein.

In the event that either municipality is contacted by any person in connection with any matter involving the annexation of land that lies within the GMA of the other municipality, the contacted municipality shall immediately refer such person to the other municipality for exclusive disposition thereof.

3. **Annexation Policy Relative to Roads and Rights-of-Way.** Notwithstanding any provision of this Agreement to the contrary, both municipalities acknowledge that should an annexation occur within either municipality relating to property abutting existing public roads or rights-of-way divided in some manner by the shared boundary line between each Party’s GMA, the annexation that occurs first in any given location will include the entire width of the road or right-of-way, and the annexing municipality shall therefore have jurisdiction over the road segment or right-of-way in question. Annexations of property abutting proposed roads or rights-of-way that do not yet exist that are divided in some manner by the boundary line shall have issues of annexation and jurisdiction of said roads or rights-of-way determined by a separate written agreement between the municipalities at the time the annexation is processed. Both Parties shall collaborate on the design standards and expectations for the full build-out of the road.

4. **Roadway Access and Maintenance.** Absent separate agreement, surface maintenance of any right-of-way shall be the responsibility of the municipality within which the right-of-way lies. Each municipality shall provide any access necessary for the other Party’s maintenance of its right-of-way. Neither Party shall withhold right-of-way access permits for new development when the permit application meets all applicable requirements.

5. **Notice of Development Proposals and Comprehensive Plan Revisions.**

- a. **Proposed Development.** Each Party shall refer to the other Party all formal petitions and/or applications for annexation, zoning, platting, subdividing, and/or development of any land within a quarter of a mile of the other Party’s GMA boundary (“Application”). The referral shall include the first formal submittal of any Application. Written notice shall also be provided to the other Party either in accordance with Section 13(e) below, at

least 15 days prior to any public meeting or hearing on the matter so that it may comment on the proposal and appear as an interested party and be heard. Comments, consideration, and input may pertain to, but shall not be restricted to, site access, layout, storm water management, building materials, landscaping, buffering, lighting, signage, setbacks, design criteria, and similar site-specific features.

- b. **Comprehensive Plan Amendments.** Each Party shall provide notice to the other Party of any proposed change to its respective Comprehensive Plan that would affect land within the other Party's GMA. Each Party shall comply with the provisions of C.R.S. § 24-32-3209(2)(a) by providing written notice at least fifteen days in advance of the first public hearing at which a Party will consider any comprehensive plan or comprehensive plan amendments. The Party to whom the referral is sent may provide written comments or objections any time prior to adoption of the comprehensive plan or plan amendments. In the event mediation is requested as part of the objection, such mediation shall be conducted in accordance with C.R.S. § 24-32-3209(2)(b) and (2)(c).

6. **Statutory Rights Preserved.** This Agreement shall not be construed to limit or adversely affect the right of either municipality to file a statutory objection to or litigation over any proposed County zoning, or any other extraterritorial right granted to it by Colorado law.

7. **Divided Parcels.** The Parties acknowledge that there may now, or in the future, be lots, parcels, or tracts of land under single ownership that lie on both sides of the boundary line of the Parties' GMAs. In the event such property divided by the boundary line is proposed for development, the Parties agree to cooperate in the development of such property as may be required to provide appropriate municipal services for the benefit of the property owners and each municipality. Nothing that may be accomplished by such cooperation shall be construed as, or have the effect of, changing or abrogating the boundary line. It is the intention of the Parties to avoid duplication of municipal services wherever possible.

8. **Prohibited Uses Adjacent to Boundary.** It is mutually agreed that neither Mead nor Berthoud shall allow the development of any Storage Facility, as defined herein, within one quarter mile (¼ mi) of the shared boundary between the Parties' GMAs. A Storage Facility means an indoor or outdoor facility with storage space for rent or as part of a commercial or industrial use, including but not limited to enclosed mini-storage warehouses, self-service storage, and/or auto, recreational vehicle, boat, and truck storage.

9. **Shared Growth Boundary Plan.** The Parties recognize that it is in the best interest of each municipality to create a joint vision plan for the Weld County Road ("WCR") 40 corridor adjoining both GMAs, as shown in Exhibit B ("**Shared Growth Boundary**"). The regional plan for the Shared Growth Boundary shall consist of a one-quarter mile distance on either side of the WCR 40 alignment and shall include an access control plan for WCR 40. The Parties shall set a time and date no later than December 31, 2028, for their respective staff to meet, either in-person or electronically, to discuss further details of the Shared Growth Boundary plan, including design, construction, funding, utilities, and timeline for completion of WCR 40 improvements. The Parties may create a joint committee with staff and elected or appointed officials from each municipality to develop the Shared Growth Boundary plan or particular aspects of same.

10. **Other Agreements Between the Parties.** The Parties acknowledge that there are and may be in the future other intergovernmental agreements between the Parties and that the existence of such

agreements shall not impact the validity of this Agreement except in accordance with the termination and amendment provisions contained herein. In particular, the Parties acknowledge that the Intergovernmental Agreement Between the Town of Mead and the Town of Berthoud Regarding Cost Sharing for Design Costs for Paving County Road 7, executed in 2024, which relates to the funding and design of improvements to WCR 7 north of WCR 38 and south of State Highway 56 (WCR 44) (“**WCR 7 IGA**”). This Agreement is not intended to supersede the WCR 7 IGA and shall be construed so as to give effect to both this Agreement and the WCR 7 IGA.

11. **Consents/Approvals.** Whenever this Agreement calls for the consent or approval of a Party, to be effective, such consent shall be in the form of a resolution duly enacted by the Mead or Berthoud Board of Trustees, as applicable.

12. **Term and Termination.** This Agreement shall remain in effect for an initial ten-year term, beginning on the Effective Date, with automatic renewal thereafter for subsequent one-year terms, if neither Party requests termination or amendment. Either Party may request amendments to this Agreement at any time by providing the other Party with 30-day notice of a request to amend the agreement. The Parties agree to work cooperatively and in good faith to amend the Agreement for the benefit of both Parties. All amendments must be in writing executed by both Parties to be effective.

13. **Miscellaneous.**

- a. **Amendment.** This Agreement may be amended in writing executed by both Parties.
- b. **Severability.** If any provision of this Agreement is declared invalid or unenforceable for any reason by a court of competent jurisdiction, the validity and effect of any other provision shall not be affected, and such invalid provision shall be deemed deleted from this Agreement in a manner to give effect to the remaining provisions, except that if a requirement or limitation in such provision is declared invalid as to one Party, it shall likewise be deemed invalid as to the other Party.
- c. **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the Parties and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto. Nothing contained in this Agreement shall be used or construed to affect, support, bind, or invalidate the boundary claims of either Party insofar as they shall affect any municipality or county not a party to this Agreement. Nothing contained in this Agreement shall be construed to require Mead or Berthoud to annex any property or to provide any services to any land. Nothing contained in this Agreement shall be construed to require either party to obtain other boundary agreements or similar intergovernmental agreements (IGAs), or to plan for land uses for properties that have been designated to the other party in this Agreement, and thus it is recognized that some unincorporated areas may remain undesignated by boundary agreements. Nothing contained in this Agreement shall be construed to entitle either Party, or any person, firm, partnership, or corporation claiming protection under or by virtue of the existence of this Agreement, to a judgment for monetary damages against the other for violation of the terms of this Agreement.

- d. **Governing Law, Venue, and Enforcement.** This Agreement shall be construed in accordance with the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or injunction.
- e. **Notices.** Unless otherwise provided in this Agreement, all notices, demands, or other communications required or permitted to be given under this Agreement will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the fifth (5th) business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of the immediately following business day after deposit with Federal Express or a similar overnight courier service that provide evidence of receipt, addressed as follows. Any such notice shall be accompanied by email delivery to the applicable email address.

If to Mead: Town of Mead
 P.O. Box 626
 Mead, CO 80542
 Attn: c/o Town Manager
 Email: hmigchelbrink@townofmead.org

With copies to: Michow Guckenberger McAskin LLP
 5299 DTC Boulevard, Suite 300
 Greenwood Village, CO 80111
 Attn: Mead Town Attorney
 Email: mmcaskin@mgmfirm.com

If to Berthoud: Town of Berthoud
 P.O. Box 1229
 Berthoud, Colorado 80513-1229
 Attention: c/o Town Administrator
 Email: _____

With copies to: Maynes Bradford Shipps and Sheftel LLP
 600 17th Street, Suite 2150S
 Denver, CO 80202
 Email: esmith@mbssllp.com

- f. **Recording.** Mead shall cause recordation of this Agreement in the real property records of Weld County, Colorado, upon its execution by both Parties. Berthoud shall cause recordation of this Agreement in the real property records of Larimer County, Colorado, upon its execution by both Parties.
- g. **Governmental Immunity.** The Parties, their officers, and their employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by

the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Parties and their officers or employees.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

This Agreement shall be effective for all purposes on and after the Effective Date as further provided herein.

TOWN OF BERTHOUD, COLORADO

By: _____
_____, Town Administrator, *authorized*
pursuant to Resolution No. _____

Date of execution: _____, 20__

ATTEST:

REVIEWED BY:

By: _____
Town Clerk

By: _____
Town Attorney

[Town of Berthoud signature page.]

TOWN OF MEAD, COLORADO

By: _____
Helen Migchelbrink, Town Manager, *authorized*
pursuant to Ordinance No. _____

Date of execution: _____, 20__

ATTEST:

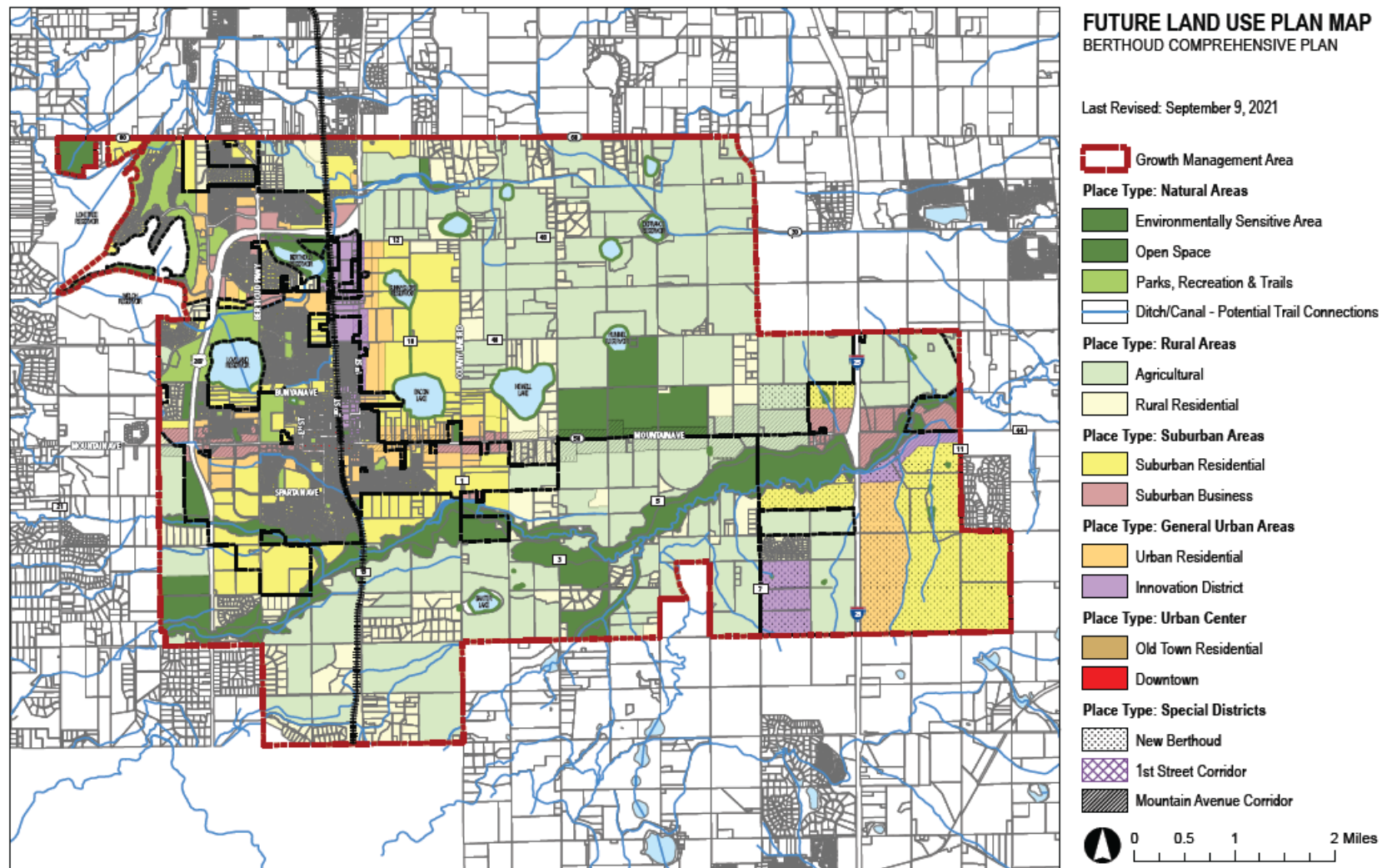
REVIEWED BY:

By: _____
Town Clerk

By: _____
Town Attorney

[Town of Mead signature page.]

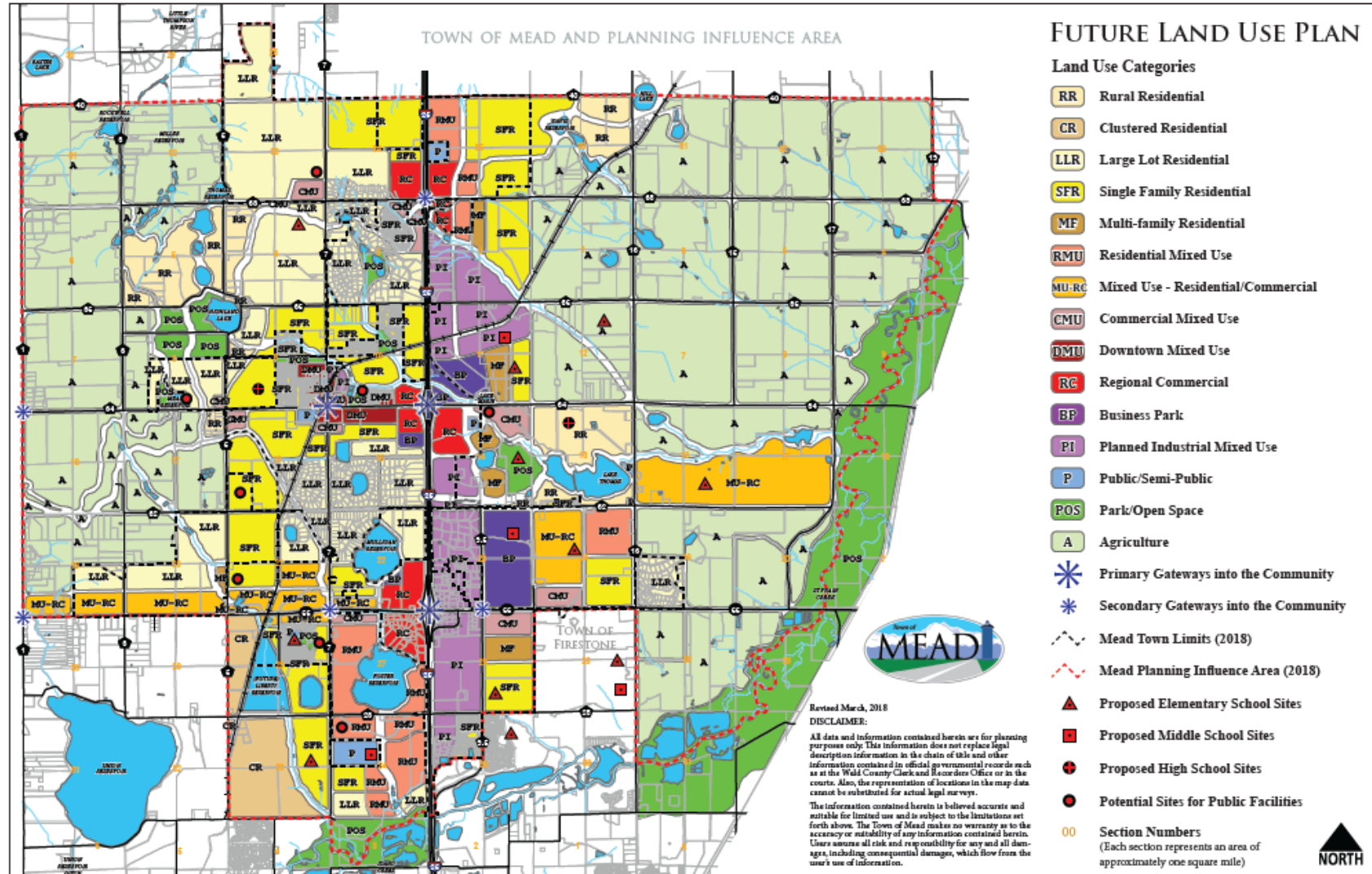
Exhibit A-1: Berthoud Growth Management Area



Source: 2021 Comprehensive Plan update

Exhibit A-2: Mead Growth Management Area (designated as Planning Influence Area)

MAP 4. FUTURE LAND USE PLAN (2018)

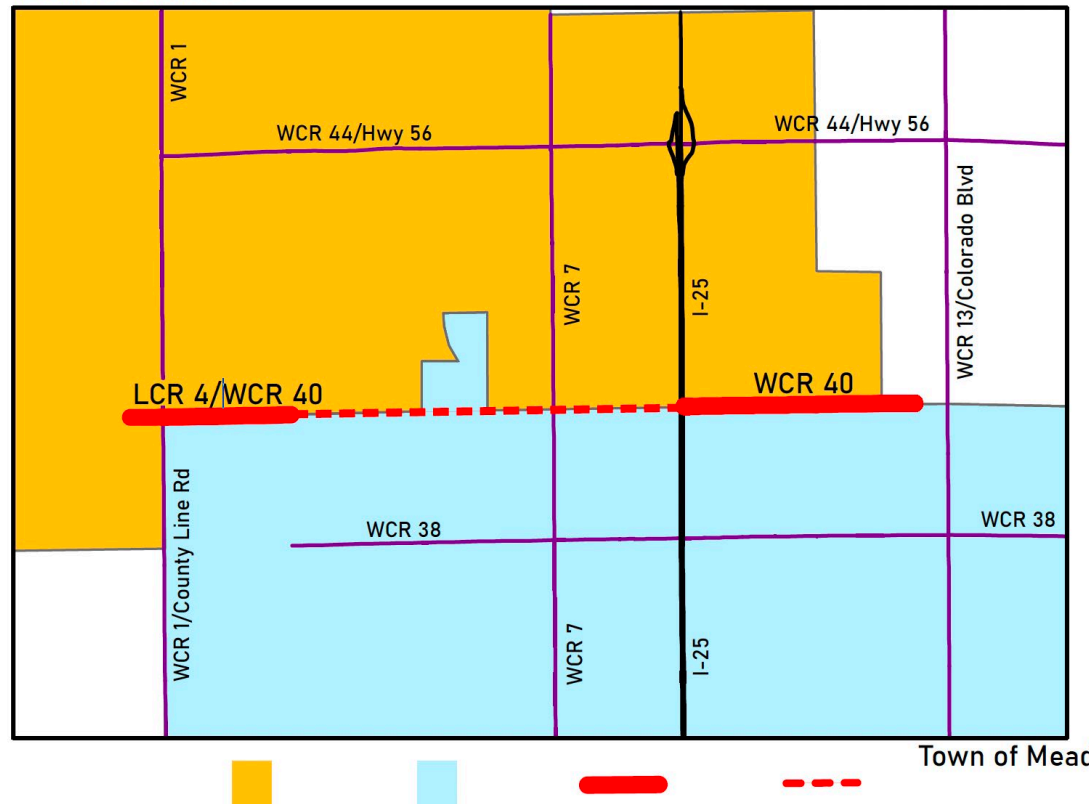


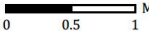
Source: 2018 Comprehensive Plan update

EXHIBIT B

Shared Growth Boundary

Town of Berthoud



 Town of Mead	Paving and Establishment of WCR 40/LCR 4	1 in = 1 mi  Miles 	This draft document was prepared for internal use by the Town of Mead, CO. The Town makes no claim as to the accuracy or completeness of the data contained hereon. Due to security concerns, The Town requests that you do not post this document on the internet or otherwise make it available to persons unknown to you.
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PLANNING COMMISSION INFORMATION

COMMUNITY DEVELOPMENT DEPARTMENT



Meeting Date:	May 8, 2025
Agenda Title/Subject:	Meeting to share an overview of the proposed changes to the Land Use Code including the General, Annexation and Flood Mitigation Sections
Type of Item:	Regular Item
Purpose:	Staff will share information regarding the Land Use Code update.
Presented by:	Anne Johnson, Community Development Director

ATTACHMENTS:

- Flood Mitigation Section, draft
- Annexation Section, draft
- General Provisions Section, draft

BACKGROUND:

The Town's Land Use Code will be opened for review, reorganization and consolidation in 2025. The first Sections has been drafted and an overview of the changes proposed are presented in this memo. Subsequent memos will provide an overview of the changes proposed to keep Planning Commissioners informed. A public hearing will be held this fall to share details of the proposed changes.

1. Flood Mitigation
 - a. Larimer County updated their maps and study. The Town's Code will provide reference to the new study title and date.
 - b. The Colorado Water Conservation Board (CWCB) oversees the State's adherence to FEMA Standards. The CWCB approved the change.
 - c. The Town's Development Review Engineer approved the change.
2. Annexation
 - a. Describe the process required for annexations west of County Road 19.
 - b. Reference to the water dedication requirements of the Impact Fee Section.
 - c. Clarify the requirements for Annexation application materials.
3. General Provisions
 - a. Move several sections of the Land Use Code into this section including: vesting, non-conformities
 - b. Clarify the purpose of the Land Use Code.
 - c. Clarify the process used to amend the Comprehensive Plan as one did not exist prior.
 - d. Clarify the vesting and non-conformity sections.
 - e. Add, delete, move and amend definitions.
 - f. Add a column regarding the referral process to the Public Hearing and General Notice Provisions table.

The next sections under review include the newly combined Subdivision and Land Use section as well as the oil and gas section.

FISCAL IMPACT AND FUND SOURCE:

There is no negative fiscal impact to the Town in sharing the intended changes to the Land Use Code. Staff is proceeding with the changes vs. hiring a third-party consultant to perform this work.

COMMUNITY TOUCHSTONES:

The Berthoud Land Use Code content is very strong and requires consolidation, clarification and re-arrangement. The Subdivision and Land Use, as well as the Design Sections may have substantive changes which will be discussed with Planning Commissioners and the Town Trustees at future meetings.

RECOMMENDED ACTION(S):

Staff is seeking input on these three particular sections for clarity and transparency. No formal action is required at this time.

30-12-101. TITLE AND PURPOSE

The Legislature of the State of Colorado has, in Title 29, Article 20 of the Colorado Revised Statutes, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Town Board of Trustees of the Town of Berthoud, Colorado, does hereby adopt the following floodplain management regulations:

A. Findings of fact.

1. The flood hazard areas of the Town of Berthoud are subject to periodic inundation, which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.
2. These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

B. Statement of Purpose

It is the purpose of this ordinance to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to critical facilities, infrastructure and other public facilities such as water, sewer and gas mains; electric and communications stations; and streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
7. Insure that potential buyers are notified that property is located in a flood hazard area.

C. Methods of reducing flood losses. In order to accomplish its purposes, this ordinance uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other development which may increase flood damage;
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

30-12-102. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

100-YEAR FLOOD - A flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms "one-hundred-year flood" and "one

percent chance flood" are synonymous with the term "100-year flood." The term does not imply that the flood will necessarily happen once every one hundred years.

100-YEAR FLOODPLAIN - The area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

500-YEAR FLOOD - A flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annual-flood). The term does not imply that the flood will necessarily happen once every five hundred years.

500-YEAR FLOODPLAIN - The area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

ADDITION - Any activity that expands the enclosed footprint or increases the square footage of an existing structure.

ALLUVIAL FAN FLOODING - A fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial fans contain active stream channels and boulder bars, and recently abandoned channels. Alluvial fans are predominantly formed by alluvial deposits and are modified by infrequent sheet flood, channel avulsions and other stream processes.

AREA OF SHALLOW FLOODING - A designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

BASE FLOOD - The flood which has a one percent chance of being equaled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

BASE FLOOD ELEVATION (BFE) - The elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

BASEMENT - Any area of a building having its floor sub-grade (below ground level) on all sides.

CHANNEL - The physical confine of stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.

CHANNELIZATION - The artificial creation, enlargement or realignment of a stream channel.

CODE OF FEDERAL REGULATIONS (CFR) - The codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.

COMMUNITY - Any political subdivision in the state of Colorado that has authority to adopt and enforce floodplain management regulations through zoning, including, but not limited to, cities, towns, unincorporated areas in the counties, Indian tribes and drainage and flood control districts.

CONDITIONAL LETTER OF MAP REVISION (CLOMR) - FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

CRITICAL FACILITY - A structure or related infrastructure, but not the land on which it is situated, as specified in the Section regarding Standards for Critical Facilities, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood. See the Section regarding Standards for Critical Facilities.

DEVELOPMENT - Any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

DFIRM DATABASE - Database (usually spreadsheets containing data and analyses that accompany DFIRMs). The FEMA Mapping Specifications and Guidelines outline requirements for the development and maintenance of DFIRM databases.

DIGITAL FLOOD INSURANCE RATE MAP (DFIRM) - FEMA digital floodplain map. These digital maps serve as "regulatory floodplain maps" for insurance and floodplain management purposes.

ELEVATED BUILDING - A non-basement building (i) built, in the case of a building in

Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION-

The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEDERAL REGISTER - The official daily publication for Rules, proposed Rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

FEMA - Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

FLOOD OR FLOODING - A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of water from channels and reservoir spillways;
2. The unusual and rapid accumulation or runoff of surface waters from any source; or
3. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

FLOOD INSURANCE RATE MAP (FIRM) – An official map of a community, on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) - The official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map as well as flood profiles for studied flooding sources that can be used to determine Base Flood Elevations for some areas.

FLOODPLAIN OR FLOOD-PRONE AREA - Any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

FLOODPLAIN ADMINISTRATOR - The community official designated by title to administer and enforce the floodplain management regulations.

FLOODPLAIN DEVELOPMENT PERMIT – A permit required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed

within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this floodplain management ordinance.

FLOODPLAIN MANAGEMENT - The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS - Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOOD CONTROL STRUCTURE - A physical structure designed and built expressly or partially for the purpose of reducing, redirecting, or guiding flood flows along a particular waterway. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOODPROOFING - Any combination of structural and/or non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY (REGULATORY FLOODWAY) - The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Colorado statewide standard for the designated height to be used for all newly studied reaches shall be one-half foot (six inches). Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

FREEBOARD - The vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

FUNCTIONALLY DEPENDENT USE - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE - Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior or;
 - b. Directly by the Secretary of the Interior in states without approved programs.

LETTER OF MAP REVISION (LOMR) - FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

LETTER OF MAP REVISION BASED ON FILL (LOMR-F) – FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

LEVEE – A man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

LEVEE SYSTEM - A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR - The lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

MANUFACTURED HOME - A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

MANUFACTURED HOME PARK OR SUBDIVISION - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL - For purposes of the National Flood Insurance Program, the

North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

MATERIAL SAFETY DATA SHEET (MSDS) – A form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP) – FEMA's program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable Federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.

NEW CONSTRUCTION - Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

NO-RISE CERTIFICATION – A record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

PHYSICAL MAP REVISION (PMR) - FEMA's action whereby one or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations, and/or planimetric features.

RECREATIONAL VEHICLE - means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projections;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

SPECIAL FLOOD HAZARD AREA – The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

START OF CONSTRUCTION - The date the building permit was issued, including substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE - A walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure just prior to when the damage occurred.

SUBSTANTIAL IMPROVEMENT - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "Start of Construction" of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This includes structures which have incurred "Substantial Damage", regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
2. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

THRESHOLD PLANNING QUANTITY (TPQ) – A quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.

VARIANCE - A grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise

prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations).

VIOLATION - The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section

60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION - The height, in relation to the North American

Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

30-12-103. GENERAL PROVISIONS

- A. *Lands to which this Ordinance applies.* The ordinance shall apply to all Special Flood Hazard Areas and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of Berthoud, Colorado.
- B. *Basis for establishing the special flood hazard area.* The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "*Flood Insurance Study, Larimer County, Colorado, and Incorporated Areas, [Effective January 15, 2021](#)*", ~~dated January 15, 2021~~; and "*Flood Insurance Study, Weld County, Colorado, and Incorporated Areas, [Effective September 26, 2024](#)*", ~~dated January 20, 2016~~, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance. These Special Flood Hazard Areas identified by the FIS and attendant mapping are the minimum area of applicability of this ordinance and may be supplemented by studies designated and approved by the Town of Berthoud. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, and FIRMs on file and available for public inspection.
- C. *Establishment of floodplain development permit.* A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.
- D. *Compliance.* No structure or land shall hereafter be located, altered, or have its use changed within the Special Flood Hazard Area without full compliance with the terms of this ordinance and other applicable regulations. Nothing herein shall prevent the Town of Berthoud from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.
- E. *Abrogation and greater restrictions.* This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, nor deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- F. *Interpretation.* In the interpretation and application of this ordinance, all provisions shall be:
 - 1. Considered as minimum requirements;
 - 2. Liberally construed in favor of the governing body; and
 - 3. Deemed neither to limit nor repeal any other powers granted under State statutes.
- G. *Warning and disclaimer of liability.* The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes.

This ordinance does not imply that land outside the Special Flood Hazard Area or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the

Community or any official or employee thereof for any flood damages that result from reliance on this Ordinance, or any administrative decision lawfully made thereunder.

- H. *Severability.* This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

30-12-104. ADMINISTRATION

- A. *Designation of the Floodplain Administrator.* The Town Engineer, or their assignee is hereby appointed as Floodplain Administrator to administer, implement and enforce the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.
- B. *Duties and responsibilities of the Floodplain Administrator.* Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:
1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by the Section on Permit Procedures.
 2. Review, approve, or deny all applications for Floodplain Development Permits required by adoption of this ordinance.
 3. Review Floodplain Development Permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
 4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
 5. Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this ordinance, including proper elevation of the structure.
 6. Where interpretation is needed as to the exact location of the boundaries of the Special Flood Hazard Area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
 7. When Base Flood Elevation data has not been provided in accordance with the Section on the Basis for Establishing the Special Flood Hazard Area, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and Floodway data available from a Federal, State, or other source, in order to administer the provisions of the Section on Provisions for Flood Hazard Reduction.
 8. For waterways with Base Flood Elevations for which a regulatory Floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half foot at any point within the community.
 9. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one-half foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.
 10. Notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.

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11. Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

C. *Permit Procedures.* Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to Special Flood Hazard Area. Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
3. A certificate from a registered Colorado Professional Engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria found in the Section of Provisions for Flood Hazard Reduction and specifically Specific Standards for Construction;
4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
5. Maintain a record of all such information in accordance with the Section on the Duties and Responsibilities of the Floodplain Administrator.
6. Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
 - a. The danger to life and property due to flooding or erosion damage;
 - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - c. The danger that materials may be swept onto other lands to the injury of others;
 - d. The compatibility of the proposed use with existing and anticipated development;
 - e. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - h. The necessity to the facility of a waterfront location, where applicable;
 - i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - j. The relationship of the proposed use to the comprehensive plan for that area.

D. *Variance Procedures.*

1. The Appeal Board, as established by the Community, shall hear and render judgment on requests for variances from the requirements of this ordinance.
2. The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

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6. Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance as stated in the Statement of Purpose Section.
 7. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
 8. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 9. Prerequisites for granting variances:
 - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - b. Variances shall only be issued upon:
 - i. Showing a good and sufficient cause;
 - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
 10. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a Functionally Dependent Use provided that:
 - a. The criteria outlined in the Administration Section and Specifically the Variance Procedures Section, and
 - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. *Penalties for noncompliance.* No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and Title 30 of the Berthoud Municipal Code. Violation of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall proceed through the Enforcement procedures outlined in the Municipal Code.

30-12-105. PROVISIONS FOR FLOOD HAZARD REDUCTION

- A. *General Standards.* In all Special Flood Hazard Areas the following provisions are required for all new construction and substantial improvements:
1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
 3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
 4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

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5. All manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
 6. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
 8. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

B. *Specific Standards.* In all Special Flood Hazard Areas where base flood elevation data has been provided as set forth in (i) the General Provisions Section, Basis for establishing the Special Flood Hazard Area; (ii) the Administrative Section, Duties and Responsibilities of the Floodplain Administrator item 7; or (iii) the Provisions for Flood Hazard Reduction Section, Standards for Subdivision Proposals, the following provisions are required:

1. RESIDENTIAL CONSTRUCTION.

New construction and Substantial Improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

2. NONRESIDENTIAL CONSTRUCTION

With the exception of Critical Facilities, outlined in Article 5, Section H, new construction and Substantial Improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that at one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

A registered Colorado Professional Engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. Such certification shall be maintained by the Floodplain Administrator, as proposed in the Administration Section, Permit Procedures.

3. ENCLOSURES

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered Colorado Professional Engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than one foot above grade.

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- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4. MANUFACTURED HOMES

All manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

All manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of the above paragraph, shall be elevated so that either:

- a. The lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are one foot above the base flood elevation, or
- b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

5. RECREATIONAL VEHICLES

All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- a. Be on the site for fewer than 180 consecutive days,
- b. Be fully licensed and ready for highway use, or
- c. Meet the permit requirements of the Administration Section, Permit Procedures, and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

6. PRIOR APPROVED ACTIVITIES

Any activity for which a Floodplain Development Permit was issued by the Town of Berthoud or a CLOMR was issued by FEMA prior to the effective date of the Flood Damage Prevention Ordinance adopting the Berthoud Flood District may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this ordinance if it meets such standards.

- C. *Standards for areas of shallow flooding (AO/AH Zones).* Located within the Special Flood Hazard Area established in the General Provisions Section, Basis for Establishing the Special Flood Hazard Area, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. RESIDENTIAL CONSTRUCTION

All new construction and Substantial Improvements of residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent

grade at least one foot above the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

2. NONRESIDENTIAL CONSTRUCTION

With the exception of Critical Facilities, outlined in Section regarding Provisions for Flood Hazard Reduction and Standards for Critical Facilities, all new construction and Substantial Improvements of non-residential structures, must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified), or together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least one foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy. A registered Colorado Professional Engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in the Administration, Permit Procedures Section, are satisfied.

Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide flood waters around and away from proposed structures.

- D. *Floodways.* Floodways are administrative limits and tools used to regulate existing and future floodplain development. The State of Colorado has adopted Floodway standards that are more stringent than the FEMA minimum standard (see definition of Floodway in the Definition Section). Located within Special Flood Hazard Area established in the General Provisions, Basis for Establishing the Special Flood Hazard Area, are areas designated as Floodways. Since the Floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:
1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory Floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado Professional Engineer and in accordance with standard engineering practice that the proposed encroachment would not result in any increase (requires a No-Rise Certification) in flood levels within the community during the occurrence of the base flood discharge.
 2. If the Section on Provisions for Flood Hazard Reduction, Floodways above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of the Section on Provisions for Flood Hazard Reduction.
 3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in Base Flood Elevations, provided that the community first applies for a CLOMR and floodway revision through FEMA.
- E. *Alteration of a watercourse.* For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:
1. Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.
 2. Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.

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3. Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.
 4. Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.
 5. All activities within the regulatory floodplain shall meet all applicable Federal, State and Berthoud floodplain requirements and regulations.
 6. Within the Regulatory Floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a Floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions Floodway resulting from the project, otherwise known as a No-Rise Certification, unless the community first applies for a CLOMR and Floodway revision in accordance with Section D of this Article.
 7. Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.
- F. *Properties removed from the floodplain by fill.* A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:
1. **RESIDENTIAL CONSTRUCTION**
The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill.
 2. **NONRESIDENTIAL CONSTRUCTION**
The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads or effects of buoyancy.
- G. *Standards for Subdivision proposals.*
1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, the proposal shall minimize flood damage.
 2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of General Provisions, Basis for Establishing the Special Flood Hazard Area; Administration, Permit Procedures; and the provisions of the Section on Provisions for Flood Hazard Reduction of this ordinance.
 3. Base Flood Elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to the General Provisions and Administration sections of this ordinance.
 4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
 5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

H. *Standards for critical facilities.* A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

1. Classification of critical facilities. It is the responsibility of the Town of Berthoud to identify and confirm that specific structures in their community meet the following criteria:
 - a. Critical Facilities are classified under the following categories: (a) Essential Services; (b) Hazardous Materials; (c) At-risk Populations; and (d) Vital to Restoring Normal Services.
 - b. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.
 - c. These facilities consist of:
 - i. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);
 - ii. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions);
 - iii. Designated emergency shelters;
 - iv. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);
 - v. Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and
 - vi. Air Transportation lifelines (airports (municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).
 - d. Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.
 - e. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Town of Berthoud that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town of Berthoud on an as-needed basis upon request.
 - f. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. These facilities may include:
 - i. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
 - ii. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
 - iii. Refineries;
 - iv. Hazardous waste storage and disposal sites; and
 - v. Above ground gasoline or propane storage or sales centers.
 - g. Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health

Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this Ordinance but exclude later amendments to or editions of the regulations. Specific exemptions to this category include the following:

- i. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.
- ii. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
- iii. Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Article.

- h. At-risk population facilities include medical care, congregate care, and schools. These facilities consist of:
 - i. Elder care (nursing homes);
 - ii. Congregate care serving 12 or more individuals (day care and assisted living);
 - iii. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);
- i. Facilities vital to restoring normal services including government operations. These facilities consist of:
 - i. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);
 - ii. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

These facilities may be exempted if it is demonstrated to the Town of Berthoud that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this ordinance, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town of Berthoud on an as-needed basis upon request.

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2. *Protection for critical facilities.* All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be Critical Facilities. For the purposes of this ordinance, protection shall include one of the following:
 - a. Location outside the Special Flood Hazard Area; or
 - b. Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two feet above the Base Flood Elevation.
 3. *Ingress and egress for new critical facilities.* New Critical Facilities shall, when practicable as determined by the Town of Berthoud, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

SECTION ~~X~~ ANNEXATION

Commented [AJ1]: Erin/Mandy/Alicia, throughout this Section, see reference to C.R.S. and please confirm the citation is still correct.

30-~~X8~~-101 Purpose

The purpose of this Chapter is to establish a procedure to bring land under the jurisdiction of the Town in compliance with the **Colorado Municipal Annexation Act of 1965 (Act), C.R.S. §§ 31-12-101, to -123, as amended.** This Chapter, in part, provides supplemental requirements for annexation pursuant to the Act, and is not to be construed as altering, modifying, eliminating or replacing any requirement set forth in that Act, or any requirements set forth in other portions of the Berthoud Development Code. In the event of a conflict between the Act, the provisions of this Chapter, or any requirements set forth in other portions of the Berthoud Development Code, it is the expressed intent of the Town Board that the more stringent provision shall control.

30-~~X8~~-102 Statement of policy and review standards~~criteria~~

- A. It shall be the general policy of the Town with respect to annexations, the annexation application, and the consideration of annexation petitions that:
1. *Annexation is a discretionary act.* With the exception of a petition initiated by the Town for the annexation of an enclave, the Town Board shall exercise its sole discretion in the annexation of territory to the Town.
 2. Annexation west of Larimer County Road 19 WHAT, WHEN, HOW....
 3. The land to be annexed and the uses proposed for the land shall conform to the goals, policies and strategies of the Town of Berthoud Comprehensive Plan and to the land uses depicted on the Preferred Land Use Map, as amended. Furthermore, all annexation proceedings shall comply with the Colorado Municipal Annexation Act of 1965, as amended.
 4. At the time development occurs, certain public facilities and amenities are necessary and must be constructed as part of any territory annexed to and developed within the Town in order that the public needs may be served by such facilities. These facilities include, but are not limited to, arterial streets, bridges, public parks and recreation areas, water and sanitary sewer facilities, school sites, fire and police station sites, and storm drainage facilities. Typically, the annexation of lands to the Town shall be shown not to create any additional cost or burden on the then-existing residents of the Town to provide such public facilities in any newly annexed area.
 5. The petitioner for annexation shall be responsible for paying application fees and the Town's full cost for processing the annexation applications and petition; from initial discussion with Town Staff before submittal of the petition, through the approval and recording of the final annexation documents.
 6. Annexed areas will not typically divide tracts of land to prevent further annexation of adjoining parcels. (For example, leaving a "gap" or a "strip" of land between property to be annexed and the adjoining property.)
 7. The property owner shall comply with the Annexation Application requirements of this Chapter prior to submitting an annexation petition.
 8. The property owner is responsible for complying with the water dedication requirements outlined in the Water Right Dedication Requirements section of this Code.

30-~~X8~~-103 Annexation application

- A. *Annexation application.* An annexation application is necessary for the Town to evaluate the impacts on the Town of annexing the property identified in the application. The annexation application shall include the following information:
1. *Letter of intent.* The applicant shall provide a letter of intent addressed to the Board to serve as a cover letter to the formal petition, introducing the applicant(s) to the Board, requesting annexation of the petitioner's property and describing any development plans for the property, if it is annexed. The letter of intent shall contain the following information:
 - a. The property location and how the proposed project will complement and be compatible with adjacent and surrounding land uses.
 - b. How the property meets the intent of the Comprehensive Plan and land designation on the Future Land Use Map.
 - c. A statement indicating how the proposed zoning complies with the Comprehensive Plan's Future Land Use Map, the proposed zoning designation and standards found in the zoning section of this Code, housing diversity standards, design requirements and neighborhood identity features.
 - d. Provide information substantiating how the project will include the standards and requirements found in additional master plans such as the Open Space Plan, Trails Plan, and any overlay districts the property is located within.
 - e. If the property will propose a Metro District and how the proposal will be consistent with the Town's Metro District Policy.
 2. *Annexation application form.* The Town's annexation application form shall be completed, signed, and dated. The application fee as provided by this Code must be included.
 3. *Annexation Petition.* The applicant shall submit a petition for annexation complying with the requirements of C.R.S. § 31-12-107, as amended. The Town of Berthoud will provide the applicant with the standard form of this Petition. The applicant shall modify the standard form with site- and development- specific information . The applicant shall provide an original petition to the Town along with the electronic submittal. One original and three copies of the Annexation Petition shall be submitted to the Town.
 4. *Memorandum of Understanding (MOU) for payment of development review expenses.* The application shall be accompanied by a signed standard form MOU for the payment of Development Review Expenses incurred by the Town and the appropriate deposit of funds.
 5. *Annexation map.* An annexation map prepared in compliance with the Annexation Map Technical Standards section of this Code. Per a checklist provided by the Town, copies of the annexation map at 24 by 36 inches and reductions sized at 11 by 17 inches are to be provided with the initial submittal. The annexation map(s) shall comply with the technical drawing requirements contained in Section 30-8-108 of this Code. The map shall be accompanied by a legal description of the property in an electronic version (Word format).
 6. *Title commitment.* The applicant shall submit proof of ownership in the form of a current title commitment issued by a title insurance company licensed by the State of Colorado, whose effective date shall be less than 30 days prior to the date of submittal of the annexation petition. Ownership must match the ownership listed in the petition. If the legal description of the area to be annexed as shown on the annexation map does not match the legal description of the property owned, because of road rights-of-way or other reasons, then the title policy must certify that the property owned is wholly contained within the described area on the annexation map. If the applicant is not the owner, there shall be provided, in addition to the title commitment naming the owner as the insured, a notarized

affidavit by the owner stating the applicant is authorized by the owner to make application for annexation. ~~The applicant is to provide a word processing file of the legal description contained in the title commitment.~~

7. *Property tax statement.* A copy of the prior year's property tax statement and paid receipt for all property to be annexed.
8. *Mailing list labels.* The Applicant is to provide a mailing list generated from the records of either address labels for Larimer and/or Weld County for surrounding property owners as listed in the Public Hearing and General Notice section of this Code. The mailing list shall also include the County Commissioners and County Attorneys, special districts, school districts, irrigation companies, and mineral interest owners and adjacent property owners as required by this sectionChapter. The petitioner shall also certify that the required address list of owners of real property is complete.
9. *Zoning of property to be annexed.* If zoning is requested simultaneously with annexation, the petitioner must submit a complete zoning and neighborhood master plan application packages in accordance with the zoning and neighborhood master plan sections of this Code. d Zoning application form including a Zoning map for the property. If zoning is not requested simultaneously with annexation, the property is required by statute to be brought under the Berthoud's Development Code and Zoning Map within 90 days of the completion of the annexation process. Refer to the zoning Section of this Code 30-3-110 for zoning requirements. Until the property is zoned in conformance with the Town Code, the property shall be zoned T, Transitional.
10. *Annexation assessment report.* The application is to be accompanied by a narrative report assessing the effect of the proposed annexation upon the community and existing services and facilities. It shall detail the need for any expansion of those services and facilities to accommodate the development proposed for the property being annexed. The narratives shall fully explain the needs, concepts and proposed solutions for each of the following:
 - a. The economic impact to the municipality of the proposed annexation including a list of special districts and the annual financial impact to each district;
 - b. The applicant shall provide information regarding the outcome of discussion with the school district and the proposed impact including an estimate of the number of students to be generated by development of the property;
 - c. The anticipated sources of water, sanitary sewer and other utilities to be used to serve the property and the impact on the water and sanitary sewer systems anticipated to serve the property;
 - d. The impact on the existing transportation system in the immediate vicinity of the property as well as the overall community;
 - e. The impact to the existing storm water drainage system and a statement on how storm drainage will be managed;
 - f. Preservation of the flow of irrigation water on the site to the water's final destination;
 - ge. The impact of other public services such as but not limited to: fire and emergency services, library, public health, recreation, and other special districts;
 - h. How the property meets the intent of the Comprehensive Plan and land designation on the Future Land Use Map;
 - i. A statement indicating how the proposed zoning complies with the Comprehensive Plan's Future Land Use Map, the proposed zoning designation and standards found in the zoning section of this Code, housing diversity standards, design requirements and neighborhood identity features;

Commented [AJ2]: Do we have authority to require all annexation to be accompanied with Zoning and NMP or is there something in CRS that would prohibit us from doing so? It will make the decision making of PC and TB easier to understand the full intent of the project with Zoning and NMP. Am I missing any negative unintended consequences if we can do this?

j. Provide information substantiating how the project will include the standards and requirements found in additional master plans such as the Open Space Plan, Trails Plan, and any overlay districts the property is located within;

k. If a non-potable system is proposed, provide details regarding how the system will be managed and maintained by the development in perpetuity.

f. ~~The compatibility of the proposed development with the Berthoud Comprehensive Plan and any plan amendments that may be necessary for the proposed development;~~

kg. A review of existing and adjacent land uses, areas of compatibility or conflict, and possible mitigation measures that may be required for the proposed development.

~~11. Application submittal checklist. The Town will provide all applicants with a checklist identifying the form and number of copies for each submittal.~~

30-~~X8~~-104 Annexation process

A. *Annexation applications shall be processed and considered as follows:*

1. ~~Step 1:~~ *Annexation pre-application conference.* The application process begins with a pre-application conference with Town Staff to determine the feasibility of the annexation request. Following this informal meeting, the applicant may submit a Letter of Intent requesting annexation, the annexation application form and petition maps and supporting documents.
2. ~~Step 2:~~ *Town evaluation of annexation application.* Town Staff shall analyze the feasibility of annexing the proposed property, including but not limited to, the ability to serve with streets, water, sanitary sewer, storm sewer, parks and recreation, schools, police and fire protection; compliance with the Comprehensive Plan; sources of revenue from the property; the Town's costs to serve the proposed development; and other related matters.

B. *Annexation petitions shall be processed and considered as follows:*

1. ~~Step 1:~~ *Annexation petition certification and completion.* The petition for annexation and all other documents submitted shall be reviewed by Staff for completeness and compliance with the provisions of the Act and the Berthoud Development Code. The applicant shall typically be notified within five working days of any deficiencies or inadequacies in the materials submitted. An incomplete submission shall not be processed, nor referred to the Town Board for a determination of substantial compliance. Once the application has been certified as complete, the applicant shall pay all application fees and development review fees. Until fees are paid, the application shall not be processed.
2. ~~Step 2:~~ *Annexation petition referral to Town Board.* Upon Staff's determination that the petition and supporting documentation are complete and in compliance with provisions of the Act and the Berthoud Development Code, Town staff shall refer the petition to the Town Board and schedule the petition for the earliest Board agenda possible;
3. ~~Step 3:~~ *Board determination of substantial compliance.* The Town Board shall take the appropriate steps to determine if the petition is in substantial compliance with the Act.
 - a. If the petition is found to be in substantial compliance with the Act, the Town Board may, by the adoption of a Resolution of Substantial Compliance, set the annexation (and zoning if requested) for the Statutory public hearing on a specified date, time, and place, not less than 30 days nor more than 60 days from the effective date of the Resolution, subject to compliance with C.R.S. § 31-12-108, as amended.
 - b. If the petition is found to not be in compliance with the Act, no further action shall be taken, except that the determination shall be made by resolution of the Town Board.

Commented [AJ3]: Is this statement needed?

c. If the Town Board, in its sole discretion, finds that the annexation is not in the best interest of the Town, it may deny the petition by resolution.

4. ~~Step 4-Annexation impact report.~~ An annexation impact report conforming to C.R.S § 31-12-108.5, as amended, is required for areas of ten or more acres and will be completed by Town Staff with information provided by the applicant in the Annexation Assessment Report. The Annexation Impact Report shall be filed with the by
5. ~~Step 5-Planning Commission review and recommendations.~~ The Planning Commission shall review, as a regular agenda item, the annexation application at a regular or special meeting to be held prior to the date of the public hearing before the Town Board. The Commission will make a recommendation by motion to the Town Board regarding the overall annexation of the property to the Town. The Commission's motion may be to recommend approval, approval with conditions, or denial of the annexation.

At this same meeting, the Commission may review the requested zoning of and the neighborhood master plan for the property. Notice of the Commission's review of the zoning request and neighborhood master plan shall be given in accordance with Public Hearing and General Notice section of this Code ~~the requirements for an amendment to the zoning map~~. The Planning Commission shall recommend to the Town Board approval with or without conditions, or recommend denial of the requested zoning.

6. ~~Step 6-Statutory~~ Town Board public hearing and action on the annexation.
- a. The Town Board shall hold the Statutory public hearing on the petition for annexation, ~~and~~ zoning, if requested and neighborhood master plan in conjunction with the annexation. The petitioners shall present evidence in support of the petition, ~~and zoning, and neighborhood master plan if applicable.~~ Town Staff shall testify as to the elements required by statute to be present for annexation and any comments received from governmental entities affected by the annexation. Any person may appear at the hearing and present evidence on any matter related to the annexation petition as determined by the Town Board. The Town Board may continue the hearing to another date without additional notice as provided by applicable law. At the conclusion of the public hearing, the Town Board shall adopt a resolution containing the findings of fact and conclusions, including:
- i. Whether or not the requirements of C.R.S. § 31-12-104 and -105 and this Code ~~Section~~ have been met;
- ii. Whether or not additional terms and conditions are to be imposed; and
- iii. Whether or not an election is required, either as result of a petition for election or the imposition of additional terms and conditions.
- b. If the Town Board finds that the area proposed for annexation does not comply with the requirements of C.R.S. § 31-12-104 and -105, the annexation proceeding will be terminated.
- c. If the Town Board finds the following:
- i. The annexation is in compliance with the requirements of C.R.S. § 31-12-104 and -105;
- ii. That an election is not required under C.R.S. § 31-12-107 (2); and
- iii. No additional terms and conditions are to be imposed;
- The Town Board may annex the land by ordinance without election and approve any annexation agreement. The zoning of the property, if requested with annexation, shall be approved by separate ordinance.

30-~~X~~8-105 Post-approval actions

- A. After final passage of the annexation ordinance, the applicant shall file with the Town final versions of all applicable documents including three mylars of the annexation map(s).
- B. In the event that zoning was requested with the annexation, zoning shall be granted by ordinance and the official zoning map shall be amended accordingly. In the event that zoning was not requested with annexation, the Town shall bring the area annexed under the zoning ordinance and map within 90 days after the effective date of the annexation ordinance in the manner provided by this Code. In the event that the property owner does not request and process its zoning request within such 90-day period, the zoning of the annexed property shall be deemed to be T: Transitional District as defined in this Code.
- C. The applicant shall provide an electronic copy of the Annexation, Zoning and Neighborhood Master Plan in accordance with the electronic mapping standards established by the Town within 30 days of the Statutory Hearing.

Commented [AJ4]: Comment repeated re ability to require Zoning and NMP at the time of Annexation

30-~~8X~~-106 Public hearing notices

- A. The Town shall publish and send by certified mail, notice of the public hearing for annexation, together with the Resolution of Substantial Compliance, petition and annexation map, to the County Commissioners, County Attorney and to any special district or school district having territory within the area to be annexed in accordance with Colorado law. In the case of a "flagpole" annexation, the Town shall also provide notice to abutting property owners as specified in C.R.S. § 31-12-105, as amended. ~~Notice shall also be given as required in Section 30-1-117, and Subsection C below.~~
- B. ~~The Petitioner shall 's responsibilities — mailing labels, notice to mineral estate owners and lessees.~~
- ~~1. The petitioner shall provide the Town with a set of standard mailing labels containing the owners of real property within 500 feet of the property to be annexed, the mineral interest owners and lessees for the property to be annexed, and irrigation ditch companies whose rights-of-way traverse the property to be annexed. The petitioner shall also certify that the required address list of owners of real property is complete.~~
- ~~2. The petitioner shall be responsible for providing notice of each public hearing (Planning Commission and/or Town Board) to the owners of the mineral estate on the property to be annexed, and to their lessees, as required by C.R.S. §§ 24-65.5-101, to -105. The petitioner shall certify to the Town Clerk conformance with this notice requirement not less than 15 days prior to the date of the public hearing(s). The petitioner's certification shall include a copy of the mailing along with the list of mineral owners and the source the list was derived.~~

Commented [AJ5]: Moved to application requirements section

30-~~8X~~-107 Annexation agreement

An Annexation Agreement may be developed by the Town and if developed, will be required to be executed prior to the Statutory public hearing before the Town Board of Trustees. The Town of Berthoud does not develop an annexation agreement with applicants as a matter of Town policy.

30-~~8X~~-108 Annexation map technical standards

- A. The annexation map shall be prepared by or under the supervision of a registered professional land surveyor licensed with the State of Colorado. The annexation map shall conform to the following ~~drafting~~ standards and contain the following information. It shall be a neat, clear, permanent, legible and reproducible document. Inaccurate, incomplete or poorly drawn maps shall be rejected.

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1. The annexation map shall be an original drawing on 24 inches by 36 inches flat, spliceless, tapeless and creaseless sheet(s) of double matte mylar film with a uniform thickness of not less than .003 of an inch, using only permanent black ink that will adhere to drafting films, or an acceptable "fix-line" photographic reproduction (emulsion down), or a computer generated reproduction of the original drawing. The document shall be in black and white only without grey. A margin line shall be drawn completely around each sheet leaving a margin at least one-half inch on three sides and a margin at least two inches on the left (short) side, entirely blank. Unless otherwise specified, text and numbers are to be large enough to be clearly legible at the scale drawn.
 2. The annexation map shall be drafted at a scale that best conveys the detailed survey, and confines the drafting error to less than one percent. Acceptable scales are one inch equals 50 feet or one inch equals 100 feet. For annexations exceeding 100 acres an acceptable scale is one inch equals 200 feet. In special instances another scale may be approved by the Town. When an annexation requires multiple sheets, an index shall be provided that delineates the boundaries and identifies each sheet number. The scale of a composite map may be different from the individual sheets, as approved by the Town. A "title sheet" containing the certifications and signature blocks shall be provided in the event that the annexation map sheet is too crowded.
 3. The title shall be centered at the top of the sheet, along the long dimension of each sheet and shall include the name of the proposed annexation. A general legal description stating the section, township, range, ___th P.M., Town of Berthoud, Larimer and Weld County, Colorado, shall be included under the name. On the title sheet (Sheet #1), under the general legal description, include the total acreage. Annexation names may not duplicate existing annexation names.

Example of annexation map title:

~~NAME OF~~ ANNEXATION
TO THE TOWN OF BERTHOUD, COLORADO

A Part of the xx of Section xx, Township ___ North,
Range ___ West, ___th P.M., Town of Berthoud, Larimer and Weld County, Colorado
xx.xx Acres

4. There shall be a title block in the lower right-hand corner, or along the right-hand margin that contains the name, address and telephone number of the land owner, the developer, and the engineer or surveyor preparing the drawing, an appropriate title for the drawing, the preparation date, sheet number, the preparer's project identification numbers, revision dates, draftsman's initials, and the electronic drawing file name (matching the AutoCAD drawing file provided to the Town).
 5. Adjacent to the title block, in the lower right-hand corner, there shall be a legend block which shall include a description of lines, points and symbols, a double-headed north arrow designated as true north and a written and graphic scale.
 6. Adjacent to the right margin, or in a column to the right of the center of the title page if the page is crowded, there shall be the Town's standard statement of ownership containing a written metes and bounds legal description of the land to be annexed (including the full width of abutting roadways not already within the Town) followed by the owner's signature block(s) and notary block(s), one for each owner or mortgagee.
 7. Immediately following the ownership certificate, there shall be the Town's standard Surveyor's certificate, signed, dated and sealed by a licensed surveyor or engineer.
 8. Immediately following the Surveyor's certificate, there shall be the Town's standard certificate block for the Town Board.
 9. Immediately following the Board's approval certificate, there shall be the Town's standard recording certificate block for the Larimer and/or Weld County Clerk and Recorder, if needed by the County.
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10. A vicinity map that depicts the area to be annexed and the area which surrounds the proposed annexation within a two-mile radius superimposed on a current USGS Topographical Map, maintaining the same scale shall be placed on the left side of annexation map, outside the boundary of the area being annexed, or on the left side of the title sheet.
 11. The annexation map drawing shall contain the following:
 - a. Show the outline of area to be annexed with boldest line.
 - b. For all references, show book, page, map number, etc., and place where publicly recorded.
 - c. Show all recorded and apparent rights-of-way lines of roads both within and without the periphery of land to be annexed; these roads are those which are adjacent, adjoining, contiguous, and/or coincident with the boundary. Provide all road names, rights of-way widths at each leg of an intersection, at the point of curve and point of tangent, at dead ends and at angle points; and rights of-way lines with accurate bearings and dimensions including chord lengths and bearings, central angles and radii of all curves. Whenever the centerline of a road has been established or recorded, the date and recording information shall be shown on the Annexation Map.
 - d. Show on the annexation map, next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the Town and the contiguous boundary of any other municipality abutting the area proposed to be annexed. A hatched boundary line shall be used to depict the boundary contiguous to the Town (example: ////////).
 - e. Show section, quarter section, and other monument corners. Display ties to section corners and to the State grid, if available, which show dimensions of all primary boundary survey control points with complete monument and location descriptions, all parcel lines showing dimensions with lengths, bearings, and curve data, including chord lengths and bearings, basis of bearings and relation to true meridian and similar data. Only circular curves shall be used. No spirals, parabolas, etc. shall be used. All dimensions are to be shown to the nearest 0.01 feet or in the case of degrees, to the nearest second. An accuracy of 1:50,000 (second order) minimum for linear and angular (bearing) closure shall be required for the boundary. All internal lots, tracts, or parcels shall have a closure accuracy of 0.01 feet.
 - f. Provide a description of all monuments, both found and set, which mark the boundaries of the property and of all control monuments used in conducting the survey.
 - g. Show the location of each ownership tract in unplatted land, and if part or all of the area is platted, the boundaries and plat numbers of plots or of lots and blocks.
 - h. Show the names and locations of all abutting subdivisions. The locations of all abutting unplatted parcels and public lands shall be depicted and designated as such.
 - i. The ownership identity of all mineral rights shall be designated on the map.
 - j. Show the purpose, widths, location (with fine dashed lines) and ownership of all easements and all abutting easements, including but not limited to utility, oil and gas gathering and transmission lines and irrigation ditches (fee or prescriptive). If any easement already of record cannot be definitely located, a statement of its existence, the nature thereof and its recorded reference must appear on the title sheet. The widths of all easements and sufficient data to definitively locate the same with respect to the parcel to be annexed must be shown. All easements must be clearly labeled and identified. If an easement shown on the annexation map is of record, its recorded reference must be given.
 - k. All lines, names and descriptions on the annexation map which do not constitute a part of the annexation shall be shown in dashed or screened lines. Any area enclosed by the annexation, but not a part thereof, shall be labeled "Not a Part of This Annexation."
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- l. Accurately locate 100-year floodplains, all existing and proposed watercourses, retention and detention areas, wetlands, aquifer recharge areas, streams, lakes, or inlets on the affected property.
 - m. Show clearly the length and bearing of all lines described in the written description.
 - n. Show section numbers, quarter section quadrants, township and range lines, and label each.
 - o. Show all lines, calls, arcs, etc., described in written description.
 - p. Circle or place an ellipse around each location where a detail drawing will be provided, and provide designation for each detail such as "See Detail A."
 - q. Show "Point of Beginning" in bold letters with an arrow.
 - r. Show "True Point of Beginning" with bold letters and arrow, when appropriate.
 - s. A map note shall indicate the total perimeter of the annexation boundary, the contiguous length to the existing Town boundary and the length representing one-sixth of the total annexation boundary perimeter.

~~12. A word processing file of the legal description for the annexation and all submittal narratives shall be provided electronically as a Word document.~~

Commented [AJ6]: This has already been established as a requirement

SECTION 1 GENERAL PROVISIONS

30-1-101 Title

This ordinance establishes the regulations and standards governing the use and development of land within the Town of Berthoud. Included are provisions for the annexation, subdivision, ~~and~~ zoning and use of land, as well as the administrative procedures governing requirements for the submission and processing of applications, administrative and public reviews, and appeals. Also included are the Town of Berthoud's standards for site and building design, landscaping, signage, dark sky compliance, parking and public infrastructure, for example. This Code applies to development and redevelopment and both terms are used interchangeably. This Code and the official zoning map govern the application of the zoning districts and related standards.

30-1-102 Short title

This ordinance shall be known and may be cited as the Town of Berthoud Development Code. Within this ordinance the Town of Berthoud Development Code shall simply be referred to as "this Code."

30-1-103 Authority

- A. This Code is adopted pursuant to the authority contained in the Colorado Revised Statutes (C.R.S.). Local governments are provided broad authority to plan for and regulate the use of land within their jurisdictions, as authorized in Title 29, Article 20, et seq. and Title 31, Article 23, et seq. of the C.R.S., as amended. Additional statutory authority may also exist for specific types of development regulation.
- B. Whenever a section of the Colorado Revised Statutes cited in this Code is later amended or superseded, this Code shall be deemed amended to refer to the amended section or section that most nearly corresponds to the superseded section.

30-1-104 Jurisdiction

- A. This Code shall be effective throughout the Town of Berthoud's municipal boundaries. The Town of Berthoud's planning jurisdiction includes all land within the Town of Berthoud, and where applicable, the lands within three miles of the Town of Berthoud's boundaries per C.R.S. §31-12-105(e) (I). For purposes of zoning ~~and~~ subdivision, land use and development standards, this Code only applies to lands within the Town of Berthoud's municipal boundaries.
- B. A copy of a map showing the boundaries of the Town of Berthoud and the area within the three-mile planning jurisdiction shall be available for public inspection in the Town of Berthoud's offices.
- C. Except as specifically provided herein, this Chapter does not create rights in third parties as beneficiaries. It is intended to create an enforceable relationship between only the Town and the property owners or citizens to whom its provisions directly apply.

30-1-105 Purpose

- A. The purpose of this Code is to preserve, protect and improve the health, safety and general welfare of Berthoud residents and to:
 - 1. Implement the Berthoud Comprehensive Plan (Comprehensive Plan), Master Plans and any amendments to such plans. The Comprehensive Plan is an informational and guidance document only. The Comprehensive Plan establishes a vision and is not regulatory.
 - ~~1-2.~~ Provide standards to achieve high-quality physical development and redevelopment activities to:

- a. Encourage the most appropriate uses of land in the Town; and
- b. Encourage redevelopment and new development to relate to the Town's historic development pattern creating a vital, cohesive, well-designed community; and
- c. Facilitate efficient provision of transportation, water, waste water treatment, stormwater management, schools, parks and other public requirements;
- d. Incorporate transect development place types and character districts for guiding Berthoud's physical development. (Transect development is a multi-tiered approach to plan for the community at various scales, starting from the Town-wide macro scale down to the block-level micro scale); and
- e. Encourage street, trail, sidewalk, and non-motorized path alignment and arrangement in relation to existing and planned streets, trail, sidewalk and non-motorized paths and ensure that the same result in safe, efficient and pleasant walking, biking and driving experiences; and
- f. Create livable and connected ~~Promote~~-compact developments that are-,well-defined, sustainable ~~neighborhoods that foster a sense of community,~~ enhance the Town's character and reduce dependency on vehicle traffic; and

~~f.g.~~ Encourage innovative, quality site design, architecture and landscaping.

~~2-3.~~ Maintain and enhance property values by stabilizing expectations, fostering predictability in land development, and establishing transparent processes to efficiently and equitably applies this Code to individual sites. This requires balancing economic development with community values.

- a. Provide a certain and consistent development review process with clear development and redevelopment standards.

~~3-4.~~ Protect critical environmental resources, including agricultural lands and water, wetlands, riparian areas, view corridors, important wildlife habitats and special places of the Town of Berthoud.

~~4-5.~~ Prevent or decrease the danger of life and property from flooding, geologic hazards and wildfire.

30-1-106 Interpretation

The provisions of this Code shall be interpreted and applied as the minimum requirements for the promotion of the public health, safety and welfare. Whenever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive, or that imposing the higher standard, shall govern.

30-1-107 Applicability of Code

- A. The provisions of the Town of Berthoud Development Code shall apply to any and all development of land within the municipal boundaries of the Town unless expressly and specifically exempted or provided otherwise in this Code. No development shall be undertaken without prior and proper approval or authorization pursuant to the terms of this Code. All development shall comply with the applicable terms, conditions, requirements, standards and procedures established in this Code.
- B. Except as herein provided, no building, structure or land shall be used and no building or structure or part thereof shall be excavated, erected, constructed, reconstructed, altered, repaired, moved or structurally altered except in conformance with the regulations herein specified for the zone district in which it is

located, nor shall a yard, lot or open space be reduced in dimensions or area to an amount less than the minimum requirements set forth herein.

- C. Whenever both the provisions of this Code and provisions of any other law cover the same subject matter, whichever is more restrictive shall govern.
- D. This Code establishes procedural and substantive rules for obtaining the necessary approval to develop land and construct buildings and structures. Development applications will be reviewed for compliance with the Town of Berthoud Comprehensive Plan and with [other Master Plans](#), adopted regulations, policies and other guidelines.

30-1-108 Relationship to existing ordinances and resolutions

All ordinances, resolutions or motions of the Town of Berthoud Board of Trustees or parts thereof in conflict with this Code are, to the extent of such conflict, hereby superseded and repealed, provided that no such repeal shall repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby. The adoption of this Code shall not adversely affect the Town of Berthoud's right to seek remedies for any violation of previous ordinances that occurred while those ordinances were in effect.

30-1-109 Relationship to Comprehensive Plan

- A. It is the intention of the Town of Berthoud that this Code implements the [vision and intent of the planning policies adopted in the Comprehensive Plan](#) for the Town and its extraterritorial planning area. [The Comprehensive Plan is a visionary document and is not legislative however, the vision and intent of the Comprehensive Plan should be integrated into the standards, expectations and guidelines provided in the Development Code.](#) While this relationship is reaffirmed, it is the intent of the Town of Berthoud that neither this Code nor any amendment to it may be challenged on the basis of any alleged nonconformity with the Comprehensive Plan.
 - 1. *Requirement for Comprehensive Plan amendment.* Where a development proposal is not in conformance with the Comprehensive Plan, an amendment to the Comprehensive Plan will be required prior to any zoning or subdivision approvals. Conformance exists when a development proposal matches the designations of the Preferred Land Use Plan.
 - 2. *Criteria for evaluating amendment proposals.* Amendments to the Comprehensive Plan resulting from development proposals under this Code shall be evaluated according to the criteria and procedure outlined in the Comprehensive Plan.
 - 3. [When the Comprehensive Plan does not provide an amendment procedure, the amendment procedure shall follow the procedure outlined for a Neighborhood Master Plan. Application materials shall be determined by Staff on a site-specific basis.](#)

~~30-1-110~~ ~~30-5-101~~ Enforcement

- A. Purpose. This section establishes procedures through which the Town seeks to ensure compliance with the provisions of this Code and obtain corrections for violations of this Code. This section also establishes the remedies and penalties applicable to violations of this Code.
- B. Authority. The Town Board, or its designee, shall be responsible for enforcing the provisions of this Chapter. Any criminal enforcement shall be by the issuance of a complaint and summons to Municipal Court by a peace officer.
 - a. *Authorization for inspections.* By annexing into Berthoud, the property owner, successors and assigns give their consent that the Town may enter any building, structure, real property, or premises during ordinary business hours and upon 12 hours verbal or written notice, to ensure compliance with the provisions of this Code as provided in the Berthoud Municipal Code.

C. Violations

- a. Approvals and Compliance with this Code. It is a violation of this Code to use real property or improvements on such property; to develop or redevelop real property; to erect, construct, reconstruct, remodel, restore, or improve a building or structure; to move buildings onto a site; to excavate or fill land; or to alter or change the use of any real property or improvements on such property in any way not in accordance with this Code or without first obtaining all land use approvals and permits required by this Code [including the following activities:-](#)
- i. Building Permit. It is a violation of this Code to use real property or the improvements on such property to erect, construct, reconstruct, remodel, or improve any building or structure; to move buildings onto a site; or to alter or change the use of any real property or the improvements on such property without first obtaining required under this Code and a building permit as required by the Building Code adopted by the Town.
 - 1. The Community Development Department will not approve the issuance of a building permit unless the plans for the proposed use, development erection, construction, reconstruction, remodel, restoration, improvement, alteration, or change conform to the requirements of this Code.
 - ii. Land Division. Except for parcels 35 acrs and larger in size established prior to **1972**, it is a violation of this Code to transfer or sell; agree to transfer or sell; or offer to transfer or sell any divided land before a plat for the land is approved by the Town Board of Trustees and recorded with the County Clerk and Recorder.
 - iii. Land disturbance. Excavating, grading, cutting, clearing or undertaking any other land disturbance activity contrary to the provisions of this Code or without first obtaining all requisite land use approvals required by the Code or other applicable regulations is a violation of this Code.
 - iv. *Nonconforming uses or structures inconsistent with Code.* Creating, expanding, replacing, or changing a nonconforming use, structure, lot, or sign except in compliance with this Code.
 - v. *Making lots or setbacks nonconforming.* Reducing or diminishing the lot area, setbacks, or open space below the minimum required by this Code, except as may otherwise be permitted under the provisions of this Chapter.
 - vi. *Increasing intensity of use.* Increasing the intensity of use of any land or structure, except in accordance with the procedural and substantive standards of this Code.
 - vii. *Activities inconsistent with permit.* Engaging in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, or other form of authorization required to engage in such activity.
 - viii. *Activities inconsistent with conditions of approval.* Failure to comply with any terms, conditions, or limitations placed by the Town upon any final development plan, subdivision plat, permit, or other form of approval by the Town.
 - ix. *Activities inconsistent with an order of the Town.* Failure to comply with any stop work order, abatement order, or any other order issued by the Town pursuant to this Code.
- b. *Separate violations.* Any person who violates or causes the violation of any of the provisions of this Chapter, shall be guilty of a separate offense for each and every day, or portion thereof, during which a violation is committed, permitted, or continues.

D. *Remedies and enforcement powers.* Violations of this Chapter may be enforced in the Berthoud Municipal Court or any other court with jurisdiction, by any appropriate equitable action, by abatement, by issuance of stop work orders, by injunction and/or restraining order, by revoking any permits or approvals issued, and by assessing any amounts due or to cover delinquent costs, fees, penalties and/or taxes. Any one, all or any combination of the foregoing penalties and remedies may be used to enforce this Chapter. In addition, the Town shall have the following civil remedies and powers to enforce this Code:

a. *Notice of violation and corrective action order.*

- i. *Non-emergency violations.* In the case of violations of this Code that do not constitute an emergency or require immediate attention, written notice of the nature of the violation and required corrective action to be taken may be given by the Town to the owner, occupant, applicant for any relevant permit, person in charge of construction or other work on the property, or any other person in possession of or involved in the illegal activity on the property. Notice shall be given in person, by certified U.S. Mail (return receipt requested) or by posting notice on the premises. The notice shall specify the Code provisions allegedly in violation, and shall state that the individual has a period of 30 days from the date of the receipt of the notice in which to correct the alleged violations before further enforcement action shall be taken. Failure to provide notice shall not constitute waiver of the violation by the Town.
- ii. *Emergency violations.* In the case of violations of this Code that lead to safety or public concerns, or violations that will create increased problems or costs if not remedied immediately, the Town may use the enforcement powers available under this Code without prior notice, but shall attempt to give notice simultaneous with commencement of enforcement action or as soon thereafter as practicable. Notice may be provided to the property owner, agent, occupant, or to the applicant for any relevant permit. Furthermore, at the Town's discretion, the Town may proceed to abate the danger and assess the costs as a lien on the property and/or certify those sums to the Larimer or Weld County Treasurer to be collected from the violator with respect to the taxes on the subject property.
- iii. *Extension of time for correction.* The Town Board may grant an extension of the time to cure an alleged violation, up to a total of 90 days as it deems appropriate.

- b. *Deny/withhold approvals or permits.* The Town may deny and withhold all approvals, permits, certificates, or other authorization to use or develop any land, structure, or improvements thereon including the vacation of plats in whole or in part until the alleged violation related to such property, use, or development is corrected. This provision shall apply whether or not the current owner or applicant for the permit is responsible for the violation.

Where a property owner, agent, or other person has a record of an outstanding violation of this Code, the Town shall be authorized to deny or withhold all permits, certificates of occupancy, or other forms of authorization for any use or development activity undertaken by such person until all outstanding violations are corrected. This provision shall apply whether or not the property for which the permit or other approval is sought is the property in violation.

The denial or withholding of a permit by the Town may be appealed to the Board of Adjustment as provided in 30-3-108 of this Code.

c. *Revocation of permits.*

- i. *Revocation by Town Board.* The Town may revoke any development permit, certificate or other authorization, for violation of this Code.
- ii. *Reconsideration of revocation.* The applicant may request a public hearing for reconsideration of the Town's revocation.

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- iii. *Notice of public hearing.* The public hearing on the reconsideration of revocation shall be conducted during a regular or special meeting of the Town Board not less than seven days, nor more than 21 days from the date the notice of the hearing is given. Notice of hearing shall be deemed given to the owner, the owner's agent or other person to whom the development permit was issued, upon deposit of said notice in the U.S. Mail, by certified mail, return receipt requested, addressed to the last known address of said person. Additional methods of service may also be utilized to give notice of the public hearing.
 - iv. *Findings.* Following the public hearing, the Board shall reinstate the permit revoked unless it finds any of the following:
 - There is a departure from the approved plans, specifications, or conditions of approval; or
 - There is a violation of any provision of this Code; or
 - The development permit was obtained by false representation; or
 - The development permit was issued in error.
 - v. *Notice of revocation.* Written notice of the findings shall be served upon the owner, the owner's agent, applicant, or other person to whom the permit was issued by certified mail, return receipt requested, or such notice may be posted in a prominent location at the place of the violation. No work or construction or use of the property shall proceed after service of the revocation notice.
- d. *Stop work order.*
- i. *Issuance of stop work order.* The Town may issue a written order to stop work on any property on which there is an uncorrected violation of either a provision of this Code or a provision of a land use approval or development permit, building permit or other form of authorization. The stop work order shall specify the violation(s). Service of the order shall be given in person, by certified U.S. Mail (return receipt requested) or by posting notice on the premises. After any such order has been served, no work shall proceed on any building, other structure, or tract of land covered by such order, except to correct such violation or comply with the order. The notice shall also state any appeal and/or variance procedures available pursuant to this Code.
 - ii. *Timing/notice.* The stop work order may be issued in conjunction with a notice of violation or subsequent to such notice. The stop work order may also specify a shorter time for correction of the violation if the Town determines a shorter time is necessary to protect the health, safety, or welfare of people or property in Berthoud. It shall be unlawful to violate the terms of a stop work order.
- e. *Abatement or injunctive relief.* In addition to any other remedy, the Board may initiate injunctive or abatement proceedings or other appropriate legal action in the Berthoud Municipal Court or other court of competent jurisdiction to abate, remove, or enjoin such violation and to recover damages, costs, and reasonable attorney's fees incurred in the abatement and removal of such violation.
- f. *Persons responsible.* The owner, tenant or occupant of any building or land or part thereof, may be held responsible for the violation and suffer the penalties and be subject to the remedies provided herein.
- g. *Remedies cumulative.* The remedies provided for violations of this Code, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law or equity, and may be exercised in any order. Each day or portion thereof is considered a separate violation under this Chapter.

- h. *Continuation of prior enforcement actions.* Nothing in this Code shall prohibit the continuation of previous enforcement actions undertaken by the Town pursuant to previous regulations.
- i. *Appeals of enforcement actions.* Appeals of any order, requirement, decision, or determination made by an administrative official in the enforcement of this Chapter shall be made to the Board of Adjustment in accordance with this Code.
- j. *Liability of Town of Berthoud.* This Code shall not be interpreted as establishing standards nor may it be construed to establish a basis to hold the Town responsible for any damages to persons or property by reason of the inspection or reinspection, or failure to inspect or reinspect, or by reason of issuing a building permit, or by reason of pursuing or failing to pursue an action for injunctive relief.
- k. *Violations.* Violations of this Chapter may be enforced in the Berthoud Municipal Court or another court of competent jurisdiction, by any appropriate legal or equitable action, by abatement, by issuance of stop work orders, by injunction or restraining order, by revoking any permits or approvals issued, and by assessing any amounts due or delinquent fines. Any one or any combination of the foregoing penalties and remedies may be used to enforce this Chapter.
- l. *Penalty.* Failure to comply with all of the provisions of this Chapter shall be unlawful and upon conviction is punishable by a fine of up to \$2,650.00 or imprisonment for a period not more than one year, or both. Each day that such violation continues to exist shall be considered a separate offense.
- m. *Costs and attorney's fees for enforcement for abatement incurred by the Town.* Costs and attorney's fees associated with said abatement shall be charged to the owner of the property where the violation occurred and any other person responsible for the violation as defined in this Chapter. The cost of abating a violation of this Chapter shall include all direct and indirect costs of such abatement, plus costs and compound interest at the rate of one percent per month. Notice of the bill for abatement of the violation shall be mailed to the last known address of said property owner by certified mail, and is payable within 30 calendar days from the receipt thereof. If all costs are not paid within 30 days of the notice, such costs may be lien against the property and/or certified to the Larimer or Weld County Treasurer and collected along with the taxes on the property.

30-1-111 Vesting

- A. Purpose. The purpose of this section is to implement the Colorado Vested Property Rights Statute.
- B. Applicability. A vested right is established under C.R.S. 24-68-101 et. seq., as amended, upon approval of a site-specific development plan by the Town Trustees, or their designee. Site-specific development plans are defined to be final plats for subdivisions and uses by special review permit.
- C. Approval. A vested right is automatically created upon the approval or conditional approval of a site-specific development plan. Vesting occurs on the date of the hearing when approval or conditional approval is granted. Failure to abide by the terms and conditions of approval will result in a forfeiture of vested rights inclusive of recording the plat and permit.
- D. Notice. The Director must publish a notice of the approval of the site-specific development plan in a newspaper of general circulation no later than 14 days after approval.
- E. Term. A vested right created by approval of a site-specific development plan remains in effect for three years from the date of the Town Trustees' approval, unless the Trustees determine, as part of the site-specific development plan approval, that a longer period is warranted in light of relevant circumstances. Those circumstances may include, but are not limited to, the size and phasing of the development, economic cycles and market conditions.

Commented [AJ1]: Is there a legal reason why Vesting has to occur the way as-written, or could it occur are proposed? The current process is cumbersome.

Commented [AJ2]: This is from Larimer County. If we advertise for the PC and TB hearings, why is this needed?

F. Modificaiton of the Plan. The Town Trustees' approval of any modification to a site-specific development plan does not extend the term of a vested right unless expressly authorized by the Trustees.

G. Exceptions. A vested right does not preclude any zoning or land use action taken by the Town under the following circumstances:

- a. With the consent of the affected property owner; or
- b. Upon the discovery of natural or manmade hazards or in the immediate vicinity of the property, which hazards could not reasonably have been discovered at the time of the site-specific development plan approval, and which hazards, if uncorrected, would pose a serious threat to the public's healty, safety, and welfare; or
- c. To the extent that the affected property owner receives just compensation for all costs, expenses, and liabilities incurred by the property owner after approval by the Town. These include, but are not limited to, costs incurred in preparing the site for development consistent with the site-specific development plan; all fees paid in consideration of financing; and al architectural, planning, marketing, legal and other consultant's fees, together with interest at the legal rate until paid. Just compensation does not include any diminution in the value of the property caused by such action.

H. A vested right does not preclude the application of regulations that are general in nature and applicable to all property subject to land use regulations by the Town, including but not limited to, building, plumbing, electrical and mechanical codes.

A. Purpose. This Section specifies procedures necessary to implement Article 68 of Title 24, C.R.S., as amended, which establishes a vested property right to undertake and complete development of real property under the terms and conditions of an approved site specific development plan. No vested rights shall be created within the Town except through a site specific development plan.

1. For the purpose of this Section on Vesting, aA site specific development plan shall be deemed approved upon the effective date of the Town action granting final approval of the plan. For purposes of this code, a site specific development plan shall be limited to the following: Final Subdivision Plat, Minor Subdivision Plat, ~~Conveyance Plat~~, Site Plan, Use by Special Review, Final Development Plan for a Planned Unit Development and/or a Development Agreement that creates a vested property right and is adopted as a legislative act of the Town. Zoning and annexation shall not result in the creation of vested property rights, other than as accompanied by the approval of a site specific development plan. The vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan including any amendments thereto.

~~A.B.~~ General Provisions.

1. Request for site specific development plan approval. Landowners wishing the creation of vested property rights pursuant to Article 68 of Title 24, C.R.S., as amended, shall request such that approval in writing at least 30 days prior to the date that the approval is to be considered. Failure of the landowner to request such an approval renders the plan not a "site specific development plan," and no vested property rights shall be deemed to have been created. The request shall be provided by the requestor to the Community Development Director.
2. Notice and hearing. No site specific development plan shall be approved until notice of such hearing has been published by the Town at least fifteenfive days before the hearing, and five days after a public hearing called for that purpose. Such notice may, at the Town's option, be combined with any other required notice. At such hearing, interested persons shall have an opportunity to be heard.
3. Approval, conditional approval, effective date, amendments, referendum and review.

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- a. The Town Board may approve a site specific development plan with terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. Such conditional approval will result in a vested property right, although failure to abide by all of such terms and conditions shall result in a forfeiture of the vested property rights.
 - b. In the event amendments to a site specific development plan are approved, the effective date of such amendments, for purposes of duration of a vested property right, shall be the date of the approval of the original site specific development plan, unless the Town Board specifically finds to the contrary and incorporates such findings in its approval of the amendment.
 - c. The approval of vested property rights shall be subject to all rights of referendum and judicial review.
 - d. The approval of a vested property right by the Town voids any and all pre-existing vested property rights on the same real property.

4. *Notice of approval.*

- a. Each plat or site-plan constituting a site specific development plan by this Article shall contain the following notice: "This plan constitutes a site specific development plan as defined in Article 68 of Title 24, C.R.S., as amended, and Chapter 30 of the Berthoud Development Code available at the Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513." Failure to contain this statement shall invalidate the creation of the vested property right.
- b. The developer shall publish a notice describing generally the type and intensity of the approved use, the specific parcel or parcels of property affected, the terms and conditions of any approval, and a statement that a vested property right has been created. The notice shall be published once, not more than ~~54~~4 days after approval of the site specific development plan in the newspaper of general circulation in Berthoud chosen by the Town for publishing public notices. Failure of the developer to publish the notice constitutes a waiver of the vested right by the developer. Evidence of publication shall be provided to the Town.

5. *Duration of vested property right.* A property right which has been vested as provided herein shall, upon compliance with the terms and conditions of the approval thereof, remain vested for a period of three years; except that the Town Board may, in its sole discretion, grant vested property rights for a longer period within a Development Agreement when warranted in light of all relevant circumstances, including but not limited to, the size and phasing of the development, economic cycles and market conditions. The vesting period shall not be extended by any amendments to a site specific development plan unless expressly authorized by the Town Board in an ordinance approving such amendments. For purposes of this code, completion of a development phase shall include installation of all engineered improvements (water, wastewater, streets, curb, gutter, sidewalks, fire hydrants, and storm drainage improvements) in accordance with the Town rules and regulations.

6. *Extensions.* A vested property right may be extended for one year by the Town Board. The property owner must request an extension in writing not later than 30 days prior to the date of expiration of the vested right. Prior to the expiration of the original three year timeframe or the one year extension identified above (four years total), an applicant may formally request an additional extension if substantial progress has been made on installation of public improvements. In considering whether or not to grant an extension, the Town Board shall apply the following criteria:

- a. That there is no conflict with the Town Code, or that any conflict with the code can be corrected by an amendment to the plan, which shall be presented with the request for extension;
- b. That the applicant has demonstrated that the plan continues to be compatible with adjacent properties and the surrounding areas, or that compatibility may be established by an amendment to the plan, which shall be presented with the request for extension; and
- c. That the applicant has demonstrated that the plan is consistent with the Town's Comprehensive Plan.

7. *Other provisions unaffected.* Approval of a site specific development plan shall not constitute an exemption or waiver of any other provisions or requirements of this Code or the Town pertaining to the development or use of property, adopted or applicable before or after the approval of the site specific development plan.
8. *Payment of costs.* In addition to any and all other fees and charges imposed by this Code, the applicant for approval of a site specific development plan shall pay all costs incurred by the Town related to such application including, but not limited to, publication of notices, public hearing costs, county recording fees and third-party review costs.
9. *Limitations.* This Section is enacted pursuant to the provisions of Article 68 of Title 24, C.R.S., as amended. In the event of the repeal of said Article or a judicial determination that said Article is invalid or unconstitutional, this Section shall be deemed to be repealed, and the provisions hereof no longer effective.
10. *Disclosure of previously granted vested property rights and hazards.*
- Any petition for annexation to the Town shall describe all vested property rights approved by any county or municipal government in effect at the time of the petition, if any, and be accompanied by all site specific development plans approved by any local government. Failure to so identify any previously approved vested property right and provide all approved site specific development plans shall constitute a waiver of the vested rights created by any other local government upon annexation to the Town unless specifically provided otherwise in the ordinance of annexation adopted by the Town.
 - The applicant shall be required to include with any plan submitted for approval as a site specific development plan notice of any natural or manmade hazards on or in the immediate vicinity of the subject property which are known to the applicant or could reasonably be discovered at the time of submission of the plan. Should a hazard on, or in the immediate vicinity of, the property be discovered subsequent to the approval of a site specific development plan which would impose a serious threat to the public health, safety and welfare and is not corrected by the applicant, the vested property right created by such site specific development plan shall be forfeited by the applicant.
11. *Development agreement.* Nothing herein shall be construed to limit the authority of the Town and a landowner to enter into a Development Agreement vesting property rights in the landowner. Such agreement shall be construed in accordance with the terms and conditions of said agreement and not be limited or expanded by the provisions of this Code.

Commented [AJ3]: Town's current Vesting process.

30-1-11230-3-107 Nonconformitiesng uses/buildings

- A. Purpose. This section governs nonconformities which are uses, buildings, structures, lots, signs and site features (such as landscaping), that were legally established prior to the adoption of this Code and no longer comply with one or more requirements of this Code. The provisions of this section are intended to recognize the interests of property owners in continuing to use nonconformities in a productive manner, while encouraging and establishing processes to bring as many aspects of the nonconformity into conformance with this Code and master plans affecting the nonconformity.
- B. Determination of Nonconforming Status. A property owner shall make a written request for the designatuion of a nonconformity. The burden of proof for establishing the existence of a nonconformity shall be the responsibility of the applicant with the approval of the property owner.
- A-C. Regulations applicable to all Nonconformities. General provisions:

Commented [AJ4]: Do we need more clarity on what is legal NCU vs. illegal NCU?

- Any building or structure nonconformity for which a building permit has been issued prior to the date of enactment of this Section may be completed and used in accordance with the plans, specifications and permits on which said building permit was granted, if construction is

commenced within two months after the issuance of said permit and diligently pursued to completion.

2. Ordinary repairs and maintenance of a nonconforming building or structure shall not be deemed an expansion of such nonconforming building or structure and shall be permitted.
3. No nonconforming use or building shall be altered, extended or restored so as to displace any conforming use.
4. A nonconforming building which has been damaged by fire, flood or other calamity causes may be restored to its original condition, provided that such work is commenced within six months of such calamity.
5. A nonconformity which has been damaged outside of a calamity may not be replaced to replicate the nonconformity.
- ~~4-6.~~ When a nonconformity has been discontinued for a period greater than six months, such nonconformity shall not thereafter be reestablished and any future use shall be made in conformance with the provisions of this Code.
7. Any nonconforming building or portion thereof declared unsafe by the Building Official which may be replaced, strengthened or restored to a safe condition by order of the Building Official.
8. If the nonconformity was approved through special review or other use- or site-specific permit process under a prior Land Use Code, that approval carries forward to this Code.
9. If the nonconformity was nonconforming under the previous Land Use Code and is conforming in this Code, it will lose its nonconforming status and be considered conforming.
10. If the nonconformity was nonconforming under the previous Land Use Code and requires special approval pursuant to this Code, it will remain nonconforming unless the property owner seeks to change the nonconformity, in which case the applicant will be required to either submit an application for approval of the nonconformity or cause the nonconformity to become conforming.

30-1-1135-102 Construction Rules and Regulations

- A. *Applicability and Purpose.* This section shall apply to all new development or re-development construction projects that include work visible to the public within the Town except for the renovation of an individual single-family home.

To ensure all Construction Activity conducted within the Town is done in the most sensitive manner possible and to minimize impacts, the following Construction Regulations shall be enforced during the construction period of all development projects unless otherwise approved by the Town. This document shall be known as the "Construction Rules and Regulations" and may be referred to herein as the "Regulations." The Town has the power to amend these Regulations from time to time, following notice requirements outlined in this Chapter. Each Owner shall ensure that all Construction Activity on their Construction Site shall be performed in accordance with the following requirements. Anyone found in violation of these Regulations shall be subject to citation, fines and other enforcement actions as allowed by the Town Municipal Code and Development Code.

1. Construction Activity is defined as any building, infrastructure, and/or construction related activity conducted outdoors at any time. Interior construction activity conducted entirely indoors, such as painting and some finishing work, is exempt from the requirements of this ordinance.
 2. Large Construction Vehicle is defined as vehicles with more than two axels engaged in activity related to Construction Activity.
- B. *Drainage, Erosion Control, and Vegetation Management.* The Town requires the owner or operator of a construction site to receive permit certification issued by the State of Colorado for any proposed construction activity that falls under the category of a General Construction Stormwater Permit as defined by the Colorado Department of Public Health and Environment (CDPHE). In addition, the town must review approve and permit a site-specific Stormwater Management Plan (SWMP) submitted by the owner of the construction site prior to the Town approving the construction activity. The owner of the construction site is responsible for preparing and submitting the SWMP to the Town. In no event shall silt, mud, debris, or other stormwater related issues be allowed to accumulate on lots, roads, Rights-of-Way (ROW), or other public areas for more than 72 hours.
1. In addition to implementing, monitoring, and updating the SWMP throughout construction, the Owner shall not allow standing water exceeding an area of 25 square feet to remain in place longer than 72 hours. Temporary pumps and associated piping may be used to remove areas of standing water and shall conform to best practices identified in the SWMP.
 2. All open space areas in each phase of a development shall be seeded or landscaped pursuant to the approved SWMP, erosion control plan and approved Landscape Plans prior to the time when 51 percent of the building permits are issued in said phase. Delays associated with weather will not be granted.
 3. Any material storage on site shall be done in such a way that proper vegetation management can continue unimpeded.
- C. *Construction Equipment and Material Storage.* Each Owner or Owner's Representatives and their contractors shall ensure all construction material is stored in a designated materials storage area. Such storage area shall only be located on lots with approved permits and shall be located to minimize the visual impact from adjacent properties and roadways. Construction materials shall not be stored in the Right-of-way for more than 72 hours without prior approval from the Town. Any materials stored with in Right-of-way shall not impede pedestrian and/or vehicular traffic and shall be marked with high visibility cones or other signage.
- D. *Debris and Trash Removal.* Owners, Owner's Representatives, and their contractors shall be responsible for assuring:
1. At the end of each day, all trash and debris on the Construction Site is cleaned up and stored in proper containers and not permitted to be blown about the Site or adjacent property, and

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2. At least once a week, all trash and debris are removed from the Construction Site to a proper dumpsite located off the Property.
 3. All trash and debris containers shall be located on the Construction site, off the road right of way, and not on sidewalks, or adjacent property except for in pre-approved storage areas. Any trash and debris containers shall be set in such a way that they do not create visual barriers for traffic and pedestrians. Determination of such barriers shall be at the sole discretion of the Town.
- E. *Construction Hours and Noise.* Construction Activities shall be limited to the following hours of operation:
1. Monday through Friday: 7:00 a.m.; 7:00 p.m. or Sundown, whichever occurs earlier
 2. Saturday: 8:00 a.m. — 7:00 p.m. or Sundown, whichever occurs earlier
 3. Sunday: 9:00 a.m. — 4:30 p.m.;
 4. Entrance to Construction Sites for SET-UP only, is permitted one half hour prior to hours of operation. (e.g. M—F 6:30 a.m.) During the half-hour set-up, the operation of heavy equipment, compressors, impact tools, or any activity that creates loud noise shall be prohibited. At all times each Owner shall use reasonable efforts to minimize external noise resulting from Construction Activity. No loud music shall be permitted.
- F. *Large Construction Vehicle Routes.* Delivery and haul routes for all vehicles with more than two axels shall avoid all local or neighborhood roads outside of the construction site. Large Construction Vehicles as defined herein must obey all posted speed limits and traffic regulations within the Town.
- G. *Prohibited General Practices.* All Owners will be responsible for the conduct and behavior of their Owner's Representatives in the Town. The following practices are prohibited within the Town and will result in an automatic fine:
1. Changing oil on any vehicle or equipment on the Construction Site without spill protection containment and safeguards. This activity shall take place in an approved containment area;
 2. Allowing concrete suppliers and contractors to clean their equipment on any property within the Town of Berthoud lot, roadway, right-of-way, ditch, easement, or other property without prior approval;
 3. Removing rocks, plant material, topsoil, or similar items from the property of others within Town;
 4. Using disposal methods or units other than those approved by the Town;
 5. Careless disposition of cigarettes and other flammable materials;
 6. Disturbing or removal of any native plant materials not identified for removal on the approved construction plans;
 7. Disruptive activity including, but not limited to, public drinking, public nuisances, and disturbing the peace;
 8. Working before or after the scheduled construction hours without prior permission;
 9. Driving haul trucks with uncovered loads in the Town.
 10. Storing building or landscape materials within the right-of-way, even prior to Town acceptance, for more than 72 hours.
- H. *Roadway Maintenance.* Owners and their contractors and sub-contractors shall keep all Town roads and road rights-of-way free and clear of all materials, rubbish, and debris resulting from Owner's Construction Activity and shall repair and revegetate any damage to roads, road rights-of way, landscaping, and other streetscape improvements within the Town caused by Construction Vehicles used in connection with Construction Activity by Owner's or Owner's Representative. No road cuts, deletions, or additions shall be made without a permit from the Town Engineer, or their designee. Contractors must keep the Site driveway and all adjacent roads clean from dust, dirt, mud, and debris at all times. If a contractor fails to keep roads

clean and if the Town arranges for cleaning, the cost of cleaning will be billed to the Owner, in care of the contractor, at a rate then set by the Town.

- I. *Sanitary Facilities.* On-Site, enclosed, chemical toilets must be available at all times when Construction Activity is taking place on a Construction Site. Chemical toilets shall be located to minimize any adverse impacts on adjacent lots. In no instance shall chemical toilets be placed within any road right-of-way or on the road.
- J. *Signage.* At least one temporary site sign, a minimum of 12 square feet and a maximum of 32 square feet in size, shall be located within the Site boundary and shall be easily visible and readable from the adjacent roadway or entry to the Site. The sign shall be either attached to construction fencing in a secure method; or posted separately with stable sign supports. Sign posting shall be done in a manner to withstand weather including wind. The sign is temporary and shall be removed following construction completion. The sign must contain the information shown below.
 1. Project logo and/or name.
 2. Work site address.
 3. Developer/Owner name and phone number.
 4. Contractor name and phone number.
 5. Builder name and phone number.
 6. CDPHE Number and phone number for CDPHE Inspector
 7. Work Site Rules.

30-1-11~~40~~ Effective date

The provisions of this Code were originally adopted on March 27, 2012 and repealed and replaced in their entirety on September , 2025. Subsequent revisions to this Code are noted at the beginning of each Chapter with the relevant Ordinance number and effective date of change. Development plans approved under previous regulations that received vested property rights through a site specific development plan shall be valid for the duration of that vested property right provided that all terms and conditions of the site specific development plan are followed. Existing legal uses that may become nonconforming by adoption of this Code shall become legal nonconforming uses subject to the nonconformity provisions of this chapter~~Chapter 30-3: Zoning~~.

30-1-11~~52~~ Application fees

Application fees for all land use annexation, zoning and development applications shall be paid according to the Town of Berthoud fee schedule. The fee schedule may be revised by Board resolution and is available from the Town Clerk.

30-1-11~~63~~ Development review deposit and reimbursement of Town costs

Fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters will be charged to applicants for all permits and land use, plat approvals, zoning or zoning amendments, site plans, annexations, plan approvals, sign permits, variances, administrative relief and all other applications provided herein. In addition to the standard fees, the applicant and/or the owner of the property which is the subject of the application shall be required to pay any actual costs and fees incurred by the Town for review of the application by consultants, including but not limited to engineering, surveying, legal and planning plus actual costs for Town staff administrative costs and supplies. The deposit shall remain until the site has completed the warranty phase of development and through certificates of occupancy for any building activity and inspections related to this activity. The Town may require a deposit from applicants to offset the Town's costs for review prior to consideration of any

application submittal pursuant to this Code. Subsequent deposits may be required when the initial deposits are 85 percent depleted. These deposits may exceed the total amount of fees collected using the standard schedule of fees. The Town shall not continue processing of any application for which the applicant or the property owner has not deposited the funds to cover the Town's cost of review.

Any funds deposited in excess of the standard fees remaining after paying the actual costs incurred by the Town shall be refunded to the owner or applicant as appropriate. The Town may certify to the County Treasurer any amount due pursuant to this paragraph as a lien on the property for which the application is submitted to be due and payable with the real estate taxes for the Town if the applicant or the property owner does not pay such amount within 30 days of written request by the Town.

30-1-1174 Severability

If any part, section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Code.

30-1-1185 Computation of time

- A. In computing a period of days, the first day and the last day are included.
- B. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday or legal holiday.
- C. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

30-1-1196 Miscellaneous

- A. As used in this Code, words used in the singular include the plural and words used in the plural include the singular.
- B. The words "must," "shall" and "will" are mandatory; "may," "can," "should" and "might" are permissive.
- C. The word "lot" shall include the words "building site", "site", "plot" or "tract".
- D. A "building" or "structure" includes any part thereof.
- E. Words used in the present tense include the future tense.

30-1-12017 Definitions

The words and phrases used in this Code shall have the meanings defined below unless otherwise specifically provided or unless clearly required by the context. Questions of definition or wording usage shall be interpreted by the Town Administrator based on the context of their usage and the intention of the section of this Code in which they occur.

Access drive means a street or right-of-way providing ingress and egress to properties adjacent to a regional thoroughfare, arterial street, collector street, or local street.

Accessory means a use, activity, building or structure, or part of a building or structure that is subordinate and incidental to the main activity or building or structure on the site.

Accessory building or structure means a subordinate building or structure detached from and but located on the same lot as a principal building or structure. The use of an accessory building or structure must support the occupants must be identical and and be accessory to the use of the principal building or structure and shall be

under the same ownership in all respects. Accessory building or structures include but are not limited to storage sheds, detached garages, and gazebos.

Accessory dwelling unit means a residential dwelling unit located on the same lot as a single-family dwelling unit, either within the same building as the single-family dwelling unit or in a detached building, that provides complete independent living facilities, including but not limited to provisions for sleeping, eating, cooking, and sanitation for one or more persons. Mobile homes, ~~manufactured homes~~ and recreational vehicles shall not be included within the definition of the term Accessory Dwelling Unit. Accessory dwelling units shall be developed in accordance with the standards set forth in the Accessory Dwelling Unit section of this code and only in those zoning districts where the use is listed as a use by right. Also referred to as a 'Guest House' or 'Mother-in-Law Suite'.

Accessory use means a use of land or building or structure incidental to and subordinate to the principal use of the land or building or structure.

Adjacent means meeting or touching at some point, or separated from a lot or parcel by one of the following: a street, alley, or other right-of-way, lake, stream or open space.

Adjacent property owner means an owner of record of any estate, right or interest in real property abutting the subject property.

Affordable housing development ~~or project~~ means a development ~~or project~~ in which: (1) at least 75 percent of the gross acreage to be developed under the plan is to be developed as residential dwelling units or mobile home park spaces; (2) at least ten percent of said dwelling units or spaces (the "affordable housing units") are to be available for rent or purchase on the terms described in the definitions of affordable housing unit for rent or affordable housing unit for sale (as applicable); (3) the construction of the dwelling units or spaces is to occur as part of the initial phase of the project and (i) prior to the construction of the market rate units or (ii) on a proportional basis, according to the same ratio as the number of affordable units bears to the number of the market rate units; and (4) the units will be required by binding legal instrument acceptable to the Town and duly recorded with that County's Clerk and Recorder, to be occupied by and affordable to low-income households for at least 20 years.

Affordable housing unit for rent means a dwelling unit which is available for rent on terms that would be affordable to households earning 80 percent or less of the median income of that County's residents, as adjusted for family size, and paying less than 30 percent of their gross income for housing, including rent and utilities. The unit must be occupied by and be affordable to such low-income household(s) for a period of at least 20 years.

Affordable housing unit for sale means a dwelling unit which is available for purchase on terms that would be affordable to households earning 80 percent or less of the median income of residents, as adjusted for family size and paying less than 38 percent of their gross income for housing, including principal, interest, taxes, insurance, utilities and homeowners' association fees. The unit must be occupied by and affordable to such low-income household(s) for a period of at least 20 years or more.

Agricultural activity means farming, including plowing, tillage, cropping, seeding, cultivating or harvesting for the production of food and fiber products; horticulture, the grazing or raising of livestock (except in feedlots); aquaculture; sod production; orchards; Christmas tree plantations; nurseries; and the cultivation of products as part of a recognized commercial enterprise. Agricultural activity shall not include the cultivation of marijuana.

Agricultural land means land that is being used for agricultural activities.

Alley means a public or private minor or secondary way which is used primarily for vehicular service access to the back or side of properties that otherwise abut a street, described in [the Design Standards section of this Chapter](#).

Alteration means any change, addition or modification in construction, occupancy or use [of a building or structure](#).

Commented [AJ5]: Might need further discussion with Chris

Commented [AJ6R5]: Tawn, Erin mentioned ADU have a CRS definition. Please check this.

Alternative power generation facilities means any use of land in which alternative energies are produced. Alternative energies are those energy sources that are an alternative to fossil fuels, including but not limited to: solar, wind, biofuel, and hydrogen.

Amphitheater, outdoor means an outdoor space with tiers of seats for spectators at events.

Amusement center means an establishment providing primarily enclosed recreation activities including, but not limited to bowling, roller skating or ice skating, billiards, swimming pools, motion picture theaters, and related amusements. Accessory uses may include the preparation, serving and sale of food and/or sale or rental of equipment related to the uses.

Amusement park means an outdoor enterprise whose main purpose is to provide the general public with entertaining activity, where tickets are sold or fees collected at the activity. Commercial amusements include miniature golf courses, outdoor arcades, Ferris wheels, children's rides, roller coasters, skateboard parks, go-cart tracks, water parks and similar uses.

Animal boarding means the operation of an establishment in which domesticated animals other than household pets are housed, groomed, ~~bred~~, boarded, trained or sold. This term shall not include the operation of a kennel.

Animals, domestic means common household pets, such as dogs and cats, kept for amusement, companionship, decoration or interest.

Animal, exotic means all animals raised or boarded that are not commonly classified as household pets or livestock, but are wild in nature and may have the ability to inflict bodily harm on humans, including snakes in excess of four feet in length.

Animals, farm means animals commonly raised or kept in an agricultural, rather than urban, environment including but not limited to, chickens, pigs, sheep, goats, horses, cattle, llamas, emus, ostriches, donkeys and mules.

Animals, food means fish, fowl, cattle, swine, sheep and others raised for the purpose of food consumption.

Animal, household pet means any animal that has been bred or raised to live in or about the habitation of humans and is dependent on people for food and shelter, not including animals defined as livestock, exotic animals or animals capable of inflicting substantial physical harm to humans. Includes dogs, domestic cats, canaries, parrots, pygmy goats, hamsters, ferrets, potbellied pigs, guinea pigs and similar rodents, fish, reptiles, rabbits and such other species as would normally be sold at a pet shop.

Animals, livestock means cows, horses, swine, goats, donkeys, mules, sheep or chickens.

Animals, wild means animals, such as wolves, tigers, lions and snakes that are not normally a domestic animal or farm animal and would ordinarily be confined in a zoo or found in the wild.

Annexation means the act of attaching, adding, joining, or uniting a parcel of land to the legal entity known as the Town of Berthoud.

Appeal means a request by an applicant to the Board of Adjustment or Town Board for a review of an administrative interpretation of any provision of this Chapter or a request for a variance.

Appliance sales and service means a retail establishment for the sale and service of appliances including portable devices or instruments used for domestic functions such as vacuum cleaners, kitchen appliances, radios, ovens/ranges, dishwashers, washers, driers, refrigerators, freezers, for example.

Applicant means the owner of land; the owner's authorized representative, or the optionee of the land, as well as mineral owners and lessees; or the Developer applying for an approval by the Town pursuant to this Chapter.

Appurtenances mean the visible, functional, or ornamental objects accessory to and part of a building.

Aquifer recharge area means an area where water is absorbed into a natural aquifer adding to the zone of saturation.

Arcade means a series of arches supported on piers or columns.

Area light means a light that produces over 2,050 lumens. Area lights include, but are not limited to, street lights, parking lot lights and yard lights.

Area of lot means the total horizontal area within the lot line boundaries of a lot.

Area of special flood hazard means the area covered by the floodwaters of the base flood, and are typically delineated on National Flood Insurance Program (NFIP) maps.

Automatic timing device means a device that automatically controls the operation of a light fixture or fixtures, circuit or circuits. Photocells and light and or motion sensors should be considered automatic-timing devices

Automotive repair, (major) means an establishment primarily engaged in the repair or maintenance of commercial and heavy truck motor vehicles, trailers and similar large mechanical equipment, including paint, body and fender and major engine and engine part overhaul, provided it is conducted within a completely enclosed building. Such use shall not include the sale of fuel, gasoline or petroleum products.

Automotive repair, (minor) means an establishment primarily engaged in the repair or maintenance of passenger and light truck motor vehicles, trailers and similar mechanical equipment, including brake, muffler, upholstery work, tire repair and change, lubrication, tune ups and transmission work, car washing, detailing, polishing or the like, provided it is conducted within a completely enclosed building. Such use shall not include the sale of fuel, gasoline or petroleum products.

Average footcandle means the level of light measured at an average point of illumination between the brightest and darkest areas. The measurement can be made at the ground surface or at four to five feet above the ground.

Awning means a fixed or movable roof-like cover of canvas or other material extending in front of a doorway or window, or over a deck, to provide protection from the sun or rain.

Banks and financial institutions are open to the public and engaged in deposit banking, and that performs closely related functions such as making loans, investments, and fiduciary activities with or without drive through windows and/or an attached or stand-alone banking kiosk (Automated Teller Machine (ATM)).

Bar or tavern means an establishment providing or dispensing fermented malt beverages, and/or malt, vinous or spirituous liquors and in which the sale of food products such as sandwiches or light snacks is secondary.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year, also known as the 100-year flood, and is a standard used by the National Flood Insurance Program (NFIP).

Beacon, revolving means a rotating or blinking source of light or electronic simulation of a revolving source of light.

Bed and breakfast means an establishment operated in a principal dwelling or portion thereof, which provides

temporary accommodations to overnight guests for a fee and which is occupied by the operator of such establishment. A bed and breakfast may provide accommodation to individuals or multiple separate parties concurrently on both a reservation or a walk-in basis. The “party” as used in this definition shall mean one or more persons who stay at a bed and breakfast as a single group pursuant to a single reservation and payment. The maximum number of guests allowed in a Bed and Breakfast shall be twelve (12).

Bedroom means a fully enclosed portion of a building, designed or intended to be used for sleeping purposes and meets the definition found in the Town’s Building Code.

Berm means an earthen barrier of compacted soils preventing the passage of liquid materials, or providing screening from adjacent uses.

Bicycle parking, enclosed shall mean bicycle storage in lockers, a room or other space within a parking structure or other building, including a shed or carport. All types of enclosed bicycle storage must be easily accessible to entrances and walkways, secure, lighted and protected from the weather. Each storage space shall provide a minimum of six square feet in area. The storage space shall not impede fire exits or be located so that parked bicycles interfere with public access.

Bicycle parking, fixed shall mean bicycle parking that allows the bicycle frame and both wheels to be securely locked to the parking structure. The structure shall be of permanent construction such as heavy gauge tubular steel with angle bars permanently attached to the pavement foundation. Fixed bicycle parking facilities shall be at least two feet in width and five and one-half feet in length, with additional back-out or maneuvering space of at least five feet.

Bikeway means a path designed for use by bicyclists, which may be used by pedestrians.

Bike lane means a dedicated lane of a street intended for use by bicycles.

Billboard means a sign advertising products not made, sold, used, or served on the premise displaying the sign.

Blank wall means an exterior building wall with no openings and a single material and uniform texture on a single wall plane.

Block means a unit of land, or a group of lots, bounded by streets or by a combination of streets and public lands, or other rights-of-way other than an alley, waterways or any barrier to the continuity of development, or land which is designated as a block on any recorded subdivision tract.

Board means the governing body of the Town of Berthoud; also known as the Town of Berthoud Board of Trustees.

Board of Adjustment means the Town of Berthoud Planning Commission acting as the Board of Adjustment.

Boarding and rooming house means a building or portion of which is used to accommodate, for compensation, four or more boarders or roomers, not including members of the occupant's immediate family who might be occupying such building. The word compensation shall include compensation in money, services or other things of value.

Bollard means a pole used to protect a building from impact or to close a road or path to vehicles above a certain width.

Building means any permanent or temporary structure built for the shelter or enclosure of persons, animals, chattels or property of any kind, which is governed by the following characteristics:

- a. Is permanently affixed to the land, or

-
- b. Has one or more floors and a roof.

Building code(s) means the set of standards that must be followed in the construction and remodeling of buildings and structures.

Building envelope means the two dimensional (horizontal) space within which a building or structure is permitted to be built on a lot. The size of a building envelope is typically defined by setbacks, easements, and floor-area ratio.

Building frontage means the horizontal, linear dimension of that side of a building, which abuts a street, a parking area, a mall, or other circulation area open to the public and has either a main window display or a public entrance to the building.

Building height is measured from the average of finished grade at the center of all walls of the building to the top of the parapet or highest roof beam (whichever is higher) on a flat or shed roof, to the top of the parapet or deck level (whichever is higher) of a mansard roof, or the average distance between the highest ridge and its eave of a gable, hip, or gambrel roof.

Building Official means a person or persons charged with implementing and enforcing provisions of the Building Code.

Bulb means the source of electric light — to be distinguished from the whole assembly (See Luminaire).

Bus shelters means a small, roofed structure, usually having three walls and located near a street. The structure is designed primarily for the protection and convenience of bus passengers who are waiting to board transit.

Business means any lawful commercial endeavor to engage in the manufacturing, purchase, sale, lease or exchange of goods and/or the provision of services.

CBT Unit means a Unit of the Colorado Big Thompson Project. A CBT Unit shall be defined to have a firm yield of 0.6 acre feet.

Caliper means the American Association of Nurserymen standard for trunk measurement of nursery stock, as measured at six inches above the ground for trees up to and including four-inch caliper size, and as measured at 12 inches above the ground for larger sizes.

Candela (cd) means a unit of luminous intensity.

Canopy means an ornamental or functional roof-like structure which is supported from the façade of a building. It may or may not be supported by columns.

Cantilever means an architectural element which projects from a structure and is supported at only one end.

Car and motor vehicle sales means storage and display of operational automobiles, motorcycles, RV's, boats and trucks in the open or in an enclosed space for sale or trade.

Car/motor vehicle washes means a building or portion of a building used for the washing of automobiles, light trucks and vans, but not commercial fleet, buses and heavy trucks. Operating functions are performed mechanically, manually (self-service), and some may include partial manual detailing by the operator/owner of the vehicle. Vacuum stations may be included.

Caretaker Dwelling means an accessory dwelling on a non-residential property, secondary to the non-residential use of the property, occupied by the person who oversees the non-residential operation 24 hours a day, and their family.

Cash in lieu of water dedication means a separate and distinct fee from water taps, as required in the Development Review and Impact Fee Section of this Chapter thereof, which fee shall be utilized primarily to acquire water rights and necessary facilities for all beneficial uses within the Town. The Town shall issue a Certification of Water Dedication Credits for cash in lieu of water dedication payments for future development of the Town.

Cash-in-lieu (also known as "fee-in-lieu") for all purposes except water dedication means that the applicant, at the discretion of Town staff with final approval by the Town Administrator, shall pay the Town money instead of dedicating land in those cases where such delivery or dedication is required.

Cemetery means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including mausoleums and mortuaries when operated in conjunction with, and within the boundaries of, such cemetery.

Center line means a line running midway between the bounding right-of-way lines of a street or alley. Where the bounding lines are irregular, the center line shall be determined by the Town Planner or Town Engineer.

Certificate of occupancy means a certificate issued by the Town only for the benefit of the Town after final inspection and upon a finding that the building, structure, site and/or development complies with all provisions of the applicable Town codes, permits, requirements and approved plans.

Change in use or Change in Land Use means a change in the purpose or activity for which a particular piece of land or its buildings is designed, arranged or intended or for which it is occupied or maintained as provided in the zoning regulations for the zone district in which the land is located.

Chapter means Chapter 30 of the Berthoud Municipal Code, also referred to as the Berthoud Development Code, both also referred to as this Code.

Character means those attributes, qualities and features that make up and distinguish a building or development and give it a sense of purpose, function, definition and uniqueness.

Child care center shall have the same definition as [C.R.S. §26-6-903102\(1.5\)](#) in effect at the time of interpretation.

Child care home means a residential home providing care to no more than twelve children.

Church or place of worship and assembly means a building containing a hall, auditorium or other suitable room or rooms used for the purpose of conducting religious or other services or meetings of the occupants of such structure. Church or place of worship and assembly shall include churches, synagogues or the like, but shall not include buildings used for commercial endeavors, including, but not limited to, commercial motion picture houses or stage productions.

Clerestory means a portion of an interior rising above adjacent rooftops and having windows admitting daylight to the interior.

Clinic means a building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

Clubs and lodges means organizations of persons for special purposes or for the promulgation of sports, arts, literature, politics or other common goals, interests or activities, characterized by membership qualifications,

Commented [A37]: Erin, can Mandi check all C.R.S. references in the definition section to ensure they're still correct and current? We've tried to highlight all.

dues or regular meetings, excluding clubs operated for profit and/or places of worship or assembly.

Commercial mineral deposits mean oil, gas, gravel and other natural deposits that may be extracted from a property for economic benefit.

Commercial and retail businesses, indoor sales and service – An establishment or place of business primarily engaged in selling merchandise or providing a service to individuals located indoors.

Common area means an area of land and buildings within a residential development which is developed for the use and enjoyment of all residents of the project, as distinguished from land designated for their individual, private use.

Common equestrian stabling and grazing means shared pastures and/or common barns for horses in a conservation subdivision and which is owned and maintained by a homeowner's association.

Community Design Standards means the standards set forth in the Design Section of this Chapter.

Community facility means a publicly owned facility or office building which is primarily intended to serve the recreational, educational, cultural, and administrative or entertainment needs of the community as a whole.

Community garden – A private or public facility used for the cultivation of fruits, flowers, vegetables or ornamental plants by more than one person or family.

Community influence area (CIA) means the area extending three miles or more beyond the Town's municipal boundaries, for which the Town may be statutorily required to undertake general land use planning activities. Also-known as the Future Land Use Area, Urban Growth Boundary or Three-Mile Plan.

Compatibility means the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include height, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, compatibility refers to the sensitivity of development proposals to nearby existing and proposed development.

Comprehensive Plan means the adopted Town of Berthoud Comprehensive Plan, as amended.

Compressed gravel means gravel that has 95 percent compaction at standard proctor densities at two percent ± optimum moisture content.

Condominium means a single dwelling unit in a multiple unit structure or a commercial/industrial building which is separately owned and which may be combined with an undivided interest in the common areas and facilities of the property.

Congregate Housing, group home, developmentally disabled means a group living facility accommodating at least four but no more than eight adults. The facility must be [licensed by the state](#). [Services and supports are provided to persons with developmental disabilities](#).

Congregate Housing, group home, elderly means an owner-occupied or nonprofit group home for the exclusive use of not more than eight persons aged 60 years or older and the appropriate staff.

a. "Nonprofit group home" means a group home for the elderly which is owned and operated by a person or organization as provided by [31-23-303, C.R.S., 1973](#).

b. "Owner-occupied group home" means a group home for the elderly which is owned and operated by an individual or individuals who actually reside at and maintain their primary place of residence in the group home.

Congregate Housing, Long-term care residential facility includes means any of the following:

a. Convalescent center means a health care institution that is planned, organized, operated and maintained to offer facilities and services to inpatients requiring restorative care and treatment and that is either an integral patient care unit of a general hospital or a facility physically separated from, but maintaining an affiliation with, all services in a general hospital. May require additional licensing from the State.

b. ~~Nursing care facility means a health care institution planned, organized, operated and maintained to provide facilities and health services with related social care to inpatients that require regular medical care and 24-hour per day nursing services for illness, injury or disability. Each patient shall be under the care of a physician licensed to practice medicine in the State of Colorado. The nursing services shall be organized and maintained to provide 24-hour per day nursing services under the direction of a registered professional nurse employed full-time.~~

B. Congregate Housing, Nursing facility means a facility, or a distinct part of a facility, which meets the state nursing home licensing standards, is maintained primarily for the care and treatment of inpatients under the direction of a physician, and meets the requirements in federal regulations for certification as a qualified provider of nursing facility services. "Nursing facility" includes private, nonprofit, or proprietary intermediate nursing facilities for the mentally or developmentally disabled. May require additional licensing from the State.

c. Congregate housing, Intermediate health care facility means a health-related institution planned, organized, operated and maintained to provide facilities and services which are supportive, restorative or preventive in nature, with related social care, to individuals who because of a physical or mental condition, or both, require care in an institutional environment but who do not have an illness, injury or disability for which regular medical care and 24-hour per day nursing services are required. May require additional licensing from the State.

D. Congregate Housing, Safe house for adults or children (up to 8 persons) means a facility providing temporary protective sanctuary for victims of crime or abuse, including emergency housing during crisis intervention for individuals, such as victims of a violent crime and abuse. May require additional licensing from the State.

E. Congregate Housing, Senior housing means multifamily residential structures that provide housing for an elderly population, and typically include minimum age restrictions. May require additional licensing from the State.

Conservation easement means a right to prohibit certain acts with respect to the property in order to maintain the property in a manner that will preserve its value for recreation, education, habitat, open space, or historical importance.

Construction documents means the written specifications and drawings showing the specific location and design of improvements to be installed for the subdivision or development project in accordance with all applicable requirements and land uses.

Container (also known as cargo or shipping container) means a truck trailer body or a cargo or shipping container that can be detached from the chassis for loading into a vessel, a rail car or stacked in a container depot. Containers may be ventilated, insulated, refrigerated, flat rack, vehicle rack, open top, bulk liquid or equipped with interior devices. Containers are intended for the temporary and mobile transport of goods, and may not be permitted for permanent use as storage, or as a permanent building.

Contractor's office/shop means an establishment for the indoor repair, maintenance, or storage of contractor's vehicles, equipment or materials for use in the mechanical, plumbing, electrical, electronic repair, small engine, landscaping contracting industry, for example. A contractor's office/shop may include the business office.

Convenience retail store means a retail store containing less than 5,000 square feet of gross floor area which sells everyday goods and services which may include, without limitation, ready-to-eat food products, groceries, over-the-counter drugs and sundries.

Convenience shopping center means a shopping and service center located in a complex which is planned, developed and managed as a single unit, and located within and intended to primarily serve the consumer demands of adjacent employment areas and residences.

Cooperative Planning Area (CPA) means the broader region within which land use activities are deemed to potentially impact the Town. While the Town may not have land use jurisdiction over much of this area, it is considered to be an area of significant planning influence.

Cornice means a continuous, molded projection that crowns a wall or other construction, or divides it horizontally.

Covenant means a private written agreement outlining regulations specific to a development. It is not enforced by the Town. No covenant shall be construed to be a waiver or modification of a requirement of this Code.

Cremation facility means a business containing properly installed, certified apparatus intended for use in the act of cremation.

Critical feature of Flood Control System Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Critical plant community means vegetation which is essential to the conservation of threatened or endangered species and which may require special management considerations or protection.

Crosswalk means a designated area for pedestrians to cross a street or other right-of-way.

Cul-de-sac means a local street with only one outlet and having the other end for the reversal of traffic movement.

Cultural assets means buildings, locations and other features considered historically or socially significant to the community.

Dedicated land means land transferred to the Town by platting, title, deed or other legal method approved by the Town Attorney.

Dedication means any grant to a public entity by a landowner of a right to use that land for public purposes. It involves a transfer of property rights and an acceptance of the dedicated property by the appropriate public agency.

Density (gross) means the overall average number of dwelling units located in a development and calculated on a per-acre basis. Gross density is calculated by dividing the total number of residential units by the total acreage contained within a development.

Density (net) means the number of dwelling units located in a development divided by the developable area. Developable area includes the entire residential portion of the development, except land dedicated for public and private streets, detention ponds, third-party easements, rights-of-way, parks, open space, and other land areas open to the public.

Design standards mean the standards that set forth specific requirements for buildings and infrastructure.

Detached structure means any structure having no party wall or common wall with another structure. Bridges, tunnels and other similar means of connecting one structure to another shall not be considered to constitute a party wall or a common wall.

Detention basin means a man-made or natural water collection facility designed to collect surface and sub-surface water in order to impede its flow and to release the water into natural or manmade outlets at a rate that is not greater than the rate of flow prior to the development of the property.

Developer means any person, partnership, joint venture, limited liability company, association or corporation who participates as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a development.

Development means the carrying out of any building activity or mining operation, the making of any material, [a](#) change in the use or appearance of any structure or land, or the dividing of land into two or more parcels. When appropriate in context, development shall also mean the act of developing or the result of development [or redevelopment](#).

- a. Development shall also include:
 - i. Any construction, placement, reconstruction, alteration of the size, or material change in the external appearance of a structure on land;
 - ii. Any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on a tract of land or a material increase in the intensity and impacts of the development;
 - iii. Any alteration of a shore or bank of a river, stream, lake, pond, reservoir or wetland;
 - iv. The commencement of drilling oil or gas wells, mining, stockpiling of fill materials, filling or excavation on a parcel of land;
 - v. The demolition of a structure;
 - vi. The clearing of land as an adjunct of construction;
 - vii. The deposit of refuse, solid or liquid waste, or fill on a parcel of land;
 - viii. The installation of landscaping within the public right-of-way, when installed in connection with the development of adjacent property;
 - ix. The construction of a roadway through or adjoining an area that qualifies for protection as a wildlife or natural area; and
 - x. Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.
- b. Development shall not include:
 - i. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way;
 - ii. Work by any public utility for the purpose of inspecting, repairing, renewing or constructing on established rights-of-way any mains, pipes, cables, utility tunnels, power lines, towers, poles, or other infrastructure. This exemption shall not include work by a public entity in constructing or enlarging mass transit or fixed guide way mass transit depots or terminals or any similar traffic-generating activity;
 - iii. The maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure;
 - iv. The use of any land for an agricultural activity;
 - v. A change in the ownership or form of ownership of any parcel or structure; or
 - vi. The creation or termination of rights of access, easements, covenants concerning development of land, or other rights in land.

Development agreement means an agreement by a developer with the Town which clearly establishes the developer's responsibility regarding project phasing, the provision of public and private facilities and improvements and any other mutually agreed to terms and requirements.

Development plan means the written and graphical documents that detail the provisions for development of a [parcel of land](#) -. These provisions may include, and need not be limited to, easements, covenants and restrictions relating to: use; location and bulk of buildings and other structures; intensity of use or density of development; utilities, private and public streets, ways, roads, pedestrians, areas, and parking facilities; common open space, and other public facilities.

Developmental disability means a disability that manifests before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected person, and that is attributable to an intellectual and developmental disability or related conditions, including Prader-Willi syndrome, cerebral palsy, epilepsy, autism, or other neurological conditions when the condition or conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability. [\(C.R.S. 25.5-6-403\)](#)

Distillery means any establishment where spirituous liquors are manufactured. Distilleries may include a tasting room and retail sales where such manufactured liquors may be sold and consumed on-site. Distilleries are regulated and licensed in accordance with the Colorado Department of Revenue Liquor Enforcement Division. *Dormer* means a projecting structure built out from a sloping roof, usually with a vertical window or vent.

Downtown means the central business district of the Town. The boundary of downtown may change as the Town grows.

Drive aisle means the lanes in a parking lot devoted to the passage of vehicles, as opposed to the parking stalls. The term drive aisle does not include lanes used only, or primarily for, drive-in customer service.

Drive-through use means an establishment which by design, physical facilities, service, product or packaging procedures encourages or permits customers to receive services, obtain goods or be entertained while remaining in their motor vehicles.

Driveway means a constructed vehicular access serving one or more properties and abutting a public or private road.

Dwelling means a building used primarily for residential occupancy, including single-family dwellings, two-family dwellings and multi-family dwellings. Dwellings may include home occupations as defined by this Code [through the Home Occupation permit process](#).

Dwelling, factory-built means a dwelling which is partially or entirely manufactured in a factory and designated for long-term residential use; built in multiple sections. Factory built homes must be constructed to the standards of the State of Colorado Factory Built Construction Certificate Code (8 CRR 1302-3) and bear a certificateon insignia in compliance with those standards.

Dwelling, Mobile home means a unit partially or entirely manufactured in a factory, built on a permanent chassis, and which is designed to be transported on streets to the place where it is to be occupied as a dwelling unit, is at least eight feet wide and 32 feet long; and is designed to be used as a dwelling without permanent foundation when connected to required utilities. A mobile home is a manufactured home produced prior to June 15, 1976. A mobile home does not include a factory built home, manufactured-home, or a recreational vehicle (RV).

Dwelling, Manufactured home means a single-family dwelling which:

- a. Is partially or entirely manufactured in a factory;
- b. Is ~~not less than at least~~ 24 feet wide and 36 feet ~~in length-long~~;
- c. Is permanently affixed to, and installed on an engineered permanent foundation at the entire perimeter of the dwelling;
- d. ~~Is connected to the required utilities, and includes plumbing, heating, air conditioning and electrical systems;~~
- d. Has a pitched or cosmetically equivalent roof of at least 4/12 pitch;

e. ~~Has~~ ~~and~~ brick, wood, or cosmetically equivalent ~~wood~~-exterior siding; and

e. Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. 5401, et seq., as amended.

Dwelling, Model home means a dwelling temporarily used as a sales office or demonstration home for a residential development under construction, said dwelling being used as an example of a product offered for sale to purchasers (by a realtor, building developer or contractor). The dwelling may be furnished but not occupied as a residence while being used as a "model home." A model home is required to meet the architectural diversity requirements found in this Chapter as well as the lot development standards approved with the subdivision.

Dwelling, multi-family means a dwelling containing three or more dwelling units, not including hotels, motels, fraternity houses and sorority houses and similar congregate housing group-accommodations.

Dwelling, single-family means a building designed exclusively for occupancy by one family, but not including mobile homes, except as otherwise provided herein.

Dwelling, single-family attached means a residential building containing dwelling units, each of which primary ground floor has access to the outside and which are attached to each other by party walls without openings. The term is intended primarily for such dwelling types as townhouses and duplexes.

Dwelling, single-family detached means a single-family dwelling which is not attached to any other dwelling or building by any means, excluding mobile homes.

Dwelling, two-family means a building designed for occupancy by two families living independently of each other.

Dwelling unit means any building or a portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the International Building Code or the International Residential Code, as locally amended.

Easement means a right generally established in a real estate deed or on a recorded plat to permit the use of land by the public, a corporation or particular persons for specified uses.

Eave means the overhanging lower edge of a roof.

Eighty-five-degree full cut-off type fixtures means fixtures that do not allow light to escape above an 85-degree angle measured from a vertical line from the center of the lamp extended to the ground.

Elevation means the external vertical plane of a building.

Employment campus means an area characterized by single and multi-tenant uses commonly including corporate headquarters, research and development facilities, laboratories, offices and light industrial uses.

Engineer means a professional engineer licensed by the State of Colorado.

Entertainment facilities and theaters mean a building or part of a building devoted to showing live performances.

Environmentally sensitive areas mean aquifer recharge areas, significant wildlife habitat and migration corridors, unique vegetation and critical plant communities, and ridge lines.

Equipment (small) rental establishments without outdoor sales means the display of equipment entirely within a building for sale or rent, and outdoor storage or display of equipment is not permitted. Equipment allowed

through this definition are typically hand-operated, intended to be stored indoors, and geared to the general public and not the construction industry, such as ladders, blowers, mowers, saws, generators, etc.

Equipment rental (heavy) establishments with outdoor sales means the display of heavy equipment outside of a building for sale or rental purposes. Examples of such equipment includes, but is not limited to tractors, dozers, cranes, harvesters, etc.

Exhaust pipe means a pipe used to guide waste exhaust gases away from a controlled combustion inside an engine or stove.

Exhaust vent means a continuous open passageway from the flue collar or draft hood of the appliance to the outside atmosphere for the purpose of removing flue gases.

Extension of water service means any extension of the Town water service for which a tapping charge is assessed or any increase in Town water service resulting from a Change in Land Use.

Exterior lighting means temporary or permanent lighting that is installed, located or used in such a manner to cause light rays to shine outside. Fixtures that are installed indoors that are intended to light something outside are considered exterior lighting.

Façade means the elevation or exterior face of a building.

Family as defined by Colorado State Statute means two or more persons, whether or not related by blood, marriage, or adoption, who live or expect to live together as a single household in the same home, a single person who is either at least sixty-two years of age or has a disability. (C.R.S. 29-4-703)

Commented [AJ8]: Erin

Family care, elderly day care center means a facility providing care for the elderly and/or functionally impaired adults in a protective setting for a portion of a 24-hour day. No overnight care is provided.

Farmer's Market means a temporary or occasional location for the outdoor retail sales of farm produce, art, fresh flowers, craft items, food and beverages from vehicles or temporary stands.

Feedlot means any tract of land or structure, pen or corral, wherein cattle, sheep, goats, emus, ostriches or swine are maintained in close quarters for the purpose of raising such livestock.

FEMA means Federal Emergency Management Agency.

Fence means any structure that is comprised of posts, boards, wire, stakes, rails or any combination of similar elements that provides a physical barrier, enclosure or boundary.

FHA means Federal Housing Administration.

Final acceptance means the acknowledgement by the Town that the guaranty or warranty period for public improvements has expired and there are no outstanding items to be corrected under the provisions of the guaranty or warranty.

Commented [AJ9]: Erin, What are the terms in the DA to be defined? Construction Acceptance, Start of Warranty, End of Warranty?

Final Development Plan (FDP) means a development review process under previous versions of the Land Development Code.

Final plat means a completed map of a subdivision setting forth fully and accurately all legal information, survey certification and any accompanying materials as required by this Code.

Fire station means a building used to store and maintain fire equipment and to house firefighters.

Fireworks sales – temporary means an establishment for the sale of fireworks on a temporary basis.

Fixture means the assembly that holds the lamp in a lighting system. It includes the elements designed to give light output control; such as a reflector (mirror) or refractor (lens), the ballast, housing, and the attachment parts.

Flood or flooding means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or the unusual and rapid accumulation of runoff or surface waters from any source.

Floodplain or flood hazard area means areas which have been designated by the Board, the Colorado Water Conservation Board or FEMA as susceptible to flooding.

Floodprone means areas subject to flooding which have not been designated as a floodplain or flood hazard area by the Board, the Colorado Water Conservancy Board or FEMA.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.5 foot.

Flood Insurance Rate Map (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

Flood light means light that produces up to 1,800 lumens and is designed to "flood" a well-defined area with light. Generally, floodlights produce from 1,000 to 1,800 lumens.

Floor area, also called *gross floor area*, means the total square footage of the building measured along the outside walls of the building and including each floor level, but not including open balconies, garages or other enclosed automobile parking areas and basement storage areas, and not including one-half of all storage and display areas for durable goods.

Floor Area Ratio (FAR) means the amount of gross floor area of all principal buildings on a lot or block, as the case may be, divided by the total area of such lot, or the block size, respectively, on which such buildings are located. For mixed-use blocks, the residential square footage shall be added to the commercial development for a total block FAR.

Flow line means the low point within a street section wherein water collects and flows, typically the gutters along each edge of the pavement.

Footprint, also called *ground level footprint*, means the outline of a building's perimeter at ground level.

Foot-candle means the illumination produced on a surface one foot from a uniform point source of one candela. Foot-candles will be measured by a light meter.

Foster care home shall have the same meaning as [§26-6-903\(10\) of the Colorado Revised Statutes](#) applicable at the time of interpretation.

Frontage means the length of property along one side of a street between property or lease boundary lines.

Full cutoff fixture means a fixture which, as installed, gives no emission of light above a horizontal plane.

Funeral home means a building used for the preparation of deceased persons for burial or cremation, for the display of deceased persons and/or for ceremonies or services related thereto, including cremation and the storage of caskets, funeral urns, funeral vehicles and other funeral supplies.

Gable means the triangular portion of wall enclosing the end of a pitched roof from cornice or eaves to ridge.

Garage means a building or part of a building wherein motor vehicles are housed or stored.

Gasoline station means any building, land area, premises or portion thereof, where gasoline or other petroleum products or fuels are sold and in which light maintenance activities such as engine tune-ups, lubrication and minor repairs may be conducted. Gasoline stations shall not include premises where heavy automobile maintenance activities such as engine overhaul, automobile painting and body and fender work are conducted.

Geologic hazards mean unstable or potentially unstable slopes, undermining, faulting, landslides, rock falls, flood, wildfire or similar naturally occurring dangerous features or soil conditions or natural features unfavorable to development.

Glare means intense light that results in discomfort and/or a reduction of visual performance and visibility.

Grade means the degree of rise or descent of a sloping surface.

Grade, finished means the final elevation of the ground surface after development.

Grade, natural means the elevation of the ground surface in its natural state, before man-made alterations.

Grocery store, large means a retail establishment which primarily sells food, but also may sell other convenience and household goods, and which occupies a space greater than 25,000 square feet. The term large grocery store is synonymous with supermarket.

Grocery store, small means a retail establishment primarily selling food, as well as other convenience and household goods, which occupies a space of not more than 25,000 square feet.

Gross square footage (GSF) means the total floor area designed for occupancy and use, including basements, mezzanines, stairways and upper floors, if any, expressed in square feet and measured from the centerline of joint partitions and from outside wall faces.

Growth Management Area (GMA) means the existing incorporated area of the Town as well as additional areas outside of the current Town limits determined to be feasible for development at greater than county densities within the next 20 years. [May also be referred to as the Future Land Use Map or the Three-Mile Plan.](#)

Guaranty means any form of security in an appropriate amount and form satisfactory to the Town. "Guaranty" shall cover construction performance and warranty term provisions.

~~*Guest house* means an accessory structure which is physically detached from a single family dwelling unit, is serviced through the same utility meters or connections as the principal use, and is intended for temporary occupancy by visitors to the family residing in the single family dwelling.~~

Health club means a facility that provides physical fitness services and/or equipment to its members.

Highway, corridor means the area within and adjacent to the rights-of-way of Colorado Highway 56, Colorado Highway 287 and Interstate 25.

High intensity activity node means a land use that caters to the needs of local residents and visitors alike and may contain a wide palette of uses that include commercial, office, residential, civic and transit amenities.

Hip roof means a roof having sloping ends and sides meeting at an inclined projecting angle.

Historic district means an area related by historical events or themes by visual continuity or character or by some other special feature that helps give it a unique historical identity. Such area may be designated a historic district by local, state, or federal government and given official status and protection.

Historic site means a structure or place of historical significance. Such structure or place may be designated a historic site by local, state, or federal government and given official status.

Holiday lighting means festoon type lights, limited to small individual bulbs on a string, where the output per bulb is no greater than 15 lumens.

Home occupation means an occupation or business activity conducted by the resident which results in a product or service and which is actively conducted by a person on the same lot on which the person resides.

Homeowners association means the association set up to enforce the covenants and to maintain all common areas and buildings for a development. Also known as an "Owners Association."

Horticulture means the growing of turf, fruits, vegetables, herbs, flowers or ornamental plants.

Hospital means an institution providing health services for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training and central services facilities and staff offices.

Hotel/motel/lodging establishment means a building intended and used for occupancy as a temporary abode for individuals who are lodged with or without meals, in which there are 12 or more guest rooms.

Human scale (pedestrian scale) means the proportional relationship between the dimensions of a building or building element, street, outdoor space or streetscape element and the average dimensions of the human body, taking into account the perceptions and walking speed of a typical pedestrian.

I-25 corridor/Hwy. 56 gateways means the land near this intersection that may include bridge enhancements, entrance monumentation and special landscape treatments designed to announce entrance into the community.

Illuminance means the amount of light that covers a surface, measured by foot-candle or lux.

Illuminating device means the following:

1. *Light fixture types*
 - a. *Full cutoff fixture types* — A fixture which, as installed, gives no emission of light above a horizontal plane.
 - b. *Floodlights and spotlights* — Fixtures defined as having a full beam width or beam spread of less than 110 degrees.
2. *Lamp types*
 - a. *Incandescent lamps* — Lamps which produce light via an electrically heated metallic filament.
 - b. *Fluorescent lamps* — Lamps that use fluorescence of a phosphor to produce visible light.

High intensity discharge (HID) lamps mean lamps, which produce visible light directly by the electrical heating or excitation of a gas. Examples of such lighting include, but are not limited to, Metal Halide, High Pressure Sodium, Low Pressure Sodium and Mercury Vapor. Fluorescent lights are not considered HID lighting.

Illumination, concealed means an artificial light source either internal to a sign structure or shielded from public view and from the surrounding properties used to illuminate only the face of a sign and not any area beyond the face.

Illumination, direct means lighting by means of an unshielded light source (including neon tubing) which is effectively visible as a part of the sign, where light travels directly from the source to the viewer's eye.

Illumination, external or indirect means lighting by means of a light source directed at a reflecting surface in a way that illuminates the sign from the front, or a light source that is primarily designed to illuminate the entire building facade upon which a sign is displayed. Indirect illumination does not include lighting which is primarily used for purposes other than sign illumination; e.g., parking lot lights, or lights inside a building that may silhouette a window sign but are primarily installed to serve as inside illumination.

Illumination, internal means lighting by means of a light source that is within a sign having a translucent background, silhouetting opaque letters or designs, or which is within letters or designs that are made of a translucent material.

Industrial, Heavy means uses engaged in the processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous conditions. Heavy industrial also means those uses engaged in the cleaning of equipment or work processes involving solvents, solid waste or sanitary waste transfer stations, recycling establishments, truck terminals, public works yards, and container storage.

Industrial, light means uses engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales or distribution of products, provided all manufacturing activities are contained entirely within a building and noise, odor, smoke, heat, glare and vibration resulting from the manufacturing activity are contained entirely within the building. Light industrial shall also mean uses such as the manufacture of electronic instruments, preparation of food products, pharmaceutical manufacturing, research and scientific laboratories or the like. Light industrial shall not include uses such as mining and extracting industries, petrochemical industries, rubber refining, and primary metal or related industries.

Infrastructure means those man-made structures which serve the common needs of the population, such as: potable water systems; wastewater disposal systems; solid waste disposal sites or retention areas; storm drainage systems; electric, gas or other utilities; bridges; roadways; bicycle paths or trails; pedestrian sidewalks, paths or trails; and transit stops.

Initial acceptance means an acknowledgment by the Town that to the best of the Town's knowledge, all work has been completed in accordance with the plans and specifications.

Commented [AJ10]: DA language, group all together

Inn means a building intended and used for occupancy as a temporary abode for individuals who are lodged with or without meals, in which there are less than 12 guest rooms. *Integrate* means to combine or coordinate separate elements (such as housing, recreation, jobs, and shopping) to provide a harmonious, interrelated whole; organized or structured so that constituent parts function cooperatively.

Integrate means to combine or coordinate separate elements (such as housing, recreation, jobs, and shopping) to provide a harmonious, interrelated whole; organized or structured so that constituent parts function cooperatively.

Intra-neighborhood connections mean connections (such as trails and roads) within the same neighborhood.

Inter-neighborhood connections mean connections (such as trails and roads) between neighborhoods.

Irrigation ditch or canal means a channel designed to transport irrigation water.

Junk means scrap brass, iron, lead, tin, zinc; all other scrap metals and the alloys; bones; rags; used cloth, rope, rubber, tinfoil, bottles; old or used machinery of any type; used tools; used appliances; used lumber or crates; building materials; industrial equipment, fabrication of any material; used pipe or pipe fittings; used conduit or conduit fittings; used automobile parts; derelict vehicles, farm and heavy equipment construction vehicles; used tires and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition.

Junkyard means a building, structure or parcel of land, or portion thereof, used for collecting, displaying, storing, selling or reselling junk. Junkyards shall not include a recycling facility.

Kennel means a facility licensed to house dogs, cats or other household pets and/or where grooming, boarding or training of animals is conducted as business. Outdoor runs may be allowed when screened from view of adjacent properties and where sound mitigation is established.

Laboratory and/or research facility means a facility primarily engaged in scientific research, analysis, production, and/or experimentation of a product.

Lamp or bulb means the light-producing source installed in the socket portion of a luminaire.

Landowner means any owner of a legal or equitable interest in real property, and includes the heirs, successors, and assigns of such ownership interests.

Landscaping means any combination of living plants such as trees, shrubs, plants, vegetative ground cover or turf grasses, and may include structural features such as walkways, fences, benches, works of art, reflective pools or fountains. Landscaping shall also include irrigation systems, mulches, topsoil and soil preparation, re-vegetation and the preservation, protection and replacement of existing trees.

Land improvements means physical changes made to land and/or structure placed on or under the land surface in order to change the natural or preexisting conditions of the land.

Lane means a private street, portion of a roadway delineated for a single line of vehicles; or a secondary means of access to the lots abutting a street and not intended for general traffic circulation.

Laundry and dry-cleaning retail outlet means a laundry or dry-cleaning business which consists primarily of serving retail customers, provided that any laundry and dry-cleaning processing that occurs on the premises is limited to items which are brought directly to the premises by the retail customer.

Legal building site means a lot that can be developed within the provisions of this Code and within other rules and regulations adopted by the Town and/or State of Colorado.

Commented [AJ11]: Erin re SB72

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Light pollution means any adverse effect of manmade light including, but not limited to, light trespass, up-

lighting, the uncomfortable distraction to the eye, or any man made light that diminishes the ability to view the night sky. Often used to denote urban sky glow.

Light trespass means any light emitted by a luminaire falls where it is not wanted or needed or shines beyond the property on which the luminaire is installed.

Lighting means any or all parts of a luminaire that function to produce light.

Lighting, indirect when applied to the lighting of signs, shall mean reflected light only from a concealed light source outside the sign face which reflects from the sign face only or from the sign face and sign copy.

Limited indoor recreation facility means a place where recreation activities occur completely within an enclosed structure including but not limited to bowling alleys, skating rinks, pool halls, and video and pinball parlors.

Limited outdoor recreation facility means a place with outdoor activities including but not limited to miniature golf, batting cages, water slides, skateboard parks, driving ranges, and go-cart tracks.

Live work buildings are used for both living and working. The particular building is officially designated to allow the occupant of the residential portion of the building to operate their business. An example is a professional or business office on the first floor and residential uses on the second floor.

Lot means an area of land, created through the subdivision process, plat or otherwise permitted by law, to be separately owned, used, developed, or built upon. An area of land occupied or intended for occupancy by one main use permitted in this code, including a principal building and its accessory buildings or as otherwise provided in this code. A lot shall meet all minimum requirements as established by this code including but not limited to minimum size and width, and shall have direct access to a public or private street. Also refer to the definition of Outlot and Tract.

Lot, corner means a lot or ~~area parcel~~ of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees. All corner lots shall have one front yard, one back or rear yard and two side yards. The Town Planner and Building Official shall designate these yards and will base their decision on the orientation of the structure on the lot and the street to which the structure is addressed to.

Lot depth means the average distance between the front lot line and the rear lot line.

Lot, flag means a lot so shaped and designed that the main building site area is set back from the street on which it fronts and includes a narrow access strip connecting the main building site with the frontage street.

Lot line, front means the property line dividing a lot from a street. On a corner lot only one street line shall be considered as a front line, and the shorter street frontage shall be considered the front line. Where the lot is accessed by an alley or is alley loaded, the front shall be defined as the lot line opposite the alley lot line.

Lot line, rear means the line opposite the front lot line.

Lot, reverse corner means a corner lot having its side street line substantially a continuation of the front lot line of the first lot to its rear.

Lot line, side means any lot lines other than the front lot line or rear lot line.

Lot size means the total horizontal area within the lot lines of a lot; synonymous with area of lot.

Lot width means the distance parallel to the front lot line, measured at the front building setback line. Lot width

on a curving front lot line means the distance parallel to the tangent of the front lot line at the building setback line. The lot width and the lot frontage may have different lengths on an irregularly shaped lot as they are measured at different points on the lot.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

Lumen means a unit of luminous flux; the flux emitted within a unit solid angle by a point source with a uniform luminous intensity of one candela. One foot-candle is one lumen per square foot. One lux is one lumen per square meter.

Luminaire means the complete lighting unit, including the lamp, the fixture, and other parts.

Luminance means at a point and in a given direction, the luminous intensity in the given direction produced by an element of the surface surrounding the point divided by the area of the projection of the element on a plane perpendicular to the given direction. Units: candelas per unit area. The luminance is the perceived brightness that can be seen, the visual effect of the illuminance, reflected, emitted or transmitted from a surface.

Machine shop means a workshop where power-driven tools are used for making, finishing, or repairing machines or machine parts.

Management Agency means the agency in charge of the "208 Water Quality Plan" in the Berthoud area.

Manager means the Town Manager or Administrator of the Town of Berthoud.

Manufacturing means a business which makes products by hand or by machinery.

Marina means a waterfront establishment where docking, moorings and dry storage is offered for boats and marine sporting equipment. Retail sales of supplies may be included.

Massing means the distribution of the volume of a structure or landscape and the visual weight relationships of the various forms of a structure or landscape to one another and to the structure or landscaping as a whole.

Master plan means a development plan that shows how an entire site is proposed for development in a general fashion including a delineation of proposed construction phases.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Measurement of luminance means a lamp output with the following characteristics:

- a. *Total output*: Measurement of total output is in lumens. This should be understood to be the initial lumen value for the lamp.
- b. *Illuminance*: Measurements of illuminance are expressed in initial lumens per square foot. (A desktop illuminance of 20 initial lumens per square foot is adequate for most purposes.)
In measuring illuminance, the light detector or meter should be pointed directly at the light source or sources. The intervening light path should be free of obstruction.

Median means an area in the approximate center of a street or highway which is used to separate the directional flow of traffic.

Medical and dental office or clinic means an establishment operated by one or more duly licensed members of the human health care professions including, but not limited to, physicians, dentists, chiropractors, psychiatrists and osteopaths, where patients are not lodged overnight but are admitted for outpatient examination and/or treatment.

Marijuana store, medical means a person licensed pursuant to C.R.S. Title 44, Article 10, to operate a business as described in C.R.S. Section 44-10-501 that sells marijuana to registered patients or primary caregivers defined in section 14 of article XVIII of the state constitution.

Marijuana store, retail has the same meaning as defined in Section 16(2)(n) article XVIII of the state constitution.

Medical marijuana-infused products manufacturer means a person licensed pursuant to C.R.S. Title 12, Article 43.3 to operate a business as described in C.R.S. Section 12-43.3-404.

Marijuana products manufacturer, retail has same meaning as defined in section 16(2)(i) article XVIII of the state constitution.

Marijuana cultivation facility, medical means a person licensed pursuant to C.R.S. Title 12, Article 10 to operate a business as described in C.R.S. Section 44-10-502.

Marijuana cultivation facility, retail has the same meaning as defined in section 16(2)(h) article XVIII of the state constitution.

Marijuana business, medical has the same meaning as defined in C.R.S. Section 44-10-103(35).

Marijuana business, retail has the same meaning as defined in C.R.S. Section 44-10-103(58).

Marijuana business, allowed business as used in this Chapter 30 shall mean collectively and exclusively medical marijuana stores, retail marijuana stores, medical marijuana products manufacturers, retail marijuana manufacturers, medical marijuana cultivation facilities and retail marijuana cultivation facilities and excludes all other medical marijuana businesses and retail marijuana businesses.

Meeting place and place for public assembly means a hall, auditorium or other suitable room or rooms used for the purpose of conducting meetings of the membership and guests of the owner of such structure. The same shall not include commercial endeavors such as commercial movie picture houses, stage productions or the like.

Micro-brewery means any establishment that manufactures malt liquors or fermented malt beverages on-site, including the sale and consumption of such beverages on-site. Micro-brewery can also mean brew pub, where food is permitted to be served for consumption on-site. Breweries and brew pubs are regulated and licensed in accordance with the Colorado Department of Revenue Liquor Enforcement Division.

Mixed use shall mean the development of a lot tract or parcel of land, building or structure with two or more different uses including but not limited to residential, office, retail, public uses, personal service or entertainment uses, designed, planned and constructed as a unit.

Mixed use building means a building designed, planned and constructed as a unit, used partially for residential use and partly for commercial uses including, but not limited to, office, retail, public uses, personal service or entertainment uses.

Mixed use dwelling unit means the dwelling unit in a mixed use building. For purposes of calculating residential density, each dwelling unit shall count as one-half dwelling unit.

Model plans means a set of standard plans for a home.

Modified grid pattern means a grid pattern of streets and blocks adapted to the topography, unique natural features, environmental constraints, and peripheral open space areas.

Movie Theater: A structure that contains audience seating, on one or more screens and auditoriums, and a lobby with or without a refreshment station. If more than one auditorium/theater will be in one overall structure, they shall share a box office/ticket office, lobby areas, parking facilities, restrooms, concession areas, signs, and other service and maintenance facilities.

Mullion means a slender vertical member dividing the opening for a pair of double doors, sometimes removable to permit the passage of large objects, or also, a vertical member between the lights of a window.

Municipality means an incorporated city or town.

Muntin means a strip of wood or metal that separates and holds panes of glass in a window.

Museum means an institution devoted to the procurement, care, study, and display of objects of lasting interest or value.

Native Seed Area means an area that is planted using broadcast native or drought-tolerant seed mix, resulting in a drought-tolerant turf. These areas have a water dedication requirement of 0.8 acre-feet per acre.

Natural Area means an area that (a) is appropriately vegetated and free of weeds; (b) is capable of maintaining the existing vegetation without irrigation; (c) has been dedicated to and accepted by the Town; and (d) is a wetland under the criteria in the Wetlands Delineation Manual utilized by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency in effect at the time of dedication to the Town. All Natural Areas shall be encumbered by a conservation easement. Natural Areas do not require any irrigation. In order to qualify as a Natural Area, the Developer must pay the Town's fees and expenses incurred in determining whether the area is a wetland and appropriately vegetated, and the Natural Area must be accepted by the Town at the Town's sole discretion by and through the Town Administrator.

Natural preserve/open lands means areas identified on the Town Comprehensive Plan Preferred Land Use map or related maps including but not limited to: parks, bodies of water, the Hwy. 287 buffer area, trail corridors, conservation easements, irrigation ditches, floodplains and flood ways, natural drainage and water ways, significant native trees and vegetation, wildlife travel corridors, special habitat features, remnant native prairie habitat, plains cottonwood galleries, and any wetland greater than one-quarter acre in size.

Neighborhood means a geographical area, the focus of which are residential uses, but also may include a mixture of activities that people need to live. A neighborhood may include a diversity of housing types, schools, parks, shopping and jobs (frequently service-type), and civic buildings.

Neighborhood commercial center means a shopping center which contains businesses that are intended to provide goods and services to the immediate neighborhood (within a one-quarter mile radius).

New construction means structures for which the start of construction or remodeling commenced on or after the effective date of this Code.

Nightclub means a bar or tavern containing more than 100 square feet of dance floor area.

Nonconforming building means a building or structure, or portion thereof, that does not conform to the regulations of this Code, but that was lawfully constructed under the regulations in force at the time of construction.

Nonconforming sign means a sign which does not conform to the regulations within this Code but was lawfully erected under the regulations in force at the time it was erected.

Nonconforming use means a use that does not conform to the use regulations of this Code, but that was lawfully established under the regulations in force at the time the use was established and has been in regular use since that time.

Noxious weeds means plants that are determined by the State of Colorado, Larimer or Weld County, or the Town as a noxious weed or an alien plant that is aggressively invasive. [Also refer to the Town's Landscape Design Guidelines, including but not limited to Leafy Spurge, Russian Knapweed, Spotted Knapweed, Diffuse Knapweed, Canada Thistle, Musk Thistle, Field Bindweed, Volunteer Rye, and Jointed Goatgrass.](#)

Off-site improvement means any improvement on property wholly or partly located outside the area of the property being subdivided, whether or not in the same ownership of the entity doing the subdivision.

Oil and gas operation means any structure, facility or activity which is constructed on or disturbs land in association with oil or gas drilling, production or waste treatment and disposal, including but not necessarily limited to wells, tanks or tank batteries, pits, access roads for ingress and egress and pipelines.

Oil or gas well means a well that produces oil or gas.

Open space means any land or water area with its surface open to the sky, which serves specific uses of providing park and recreation opportunities, conserving natural areas and environmental resources and protecting areas of agricultural, archeological or historical significance. Open space shall not be considered synonymous with vacant or unused land. Usable open space shall exclude areas used for off-street parking, off-street loading, service driveways, setbacks from oil and gas wells and their appurtenances, or other hazards to the public, native open areas on steep slopes, floodways, or easements for utilities.

Open space, common means a parcel of land, an area of water, or a combination of land and water within a development designed and intended primarily for the use or enjoyment of residents, occupants and owners of that development.

[Open space, functional](#) means open space which is large enough to serve a practical purpose such as recreation, wildlife habitat or preservation of areas of agricultural, archeological or historical significance and shall exclude areas used for off-street parking, off-street loading, service driveways and setbacks from oil and gas wells or their appurtenances, or other hazards to the public.

Open space, public means an open space area conveyed or otherwise dedicated to the Town for public recreational or conservation uses. Public open spaces are to be unencumbered by oil and gas wells, their appurtenances or other hazards to the public.

Open Water means a body of water, such as a pond or reservoir, whether existing or created and whether for purposes of water storage, aesthetic, or recreation, that has an adequate physical and legal water supply to maintain the open water condition year round, and that has been accepted by the Town for Open Water land use.

Outdoor light fixture means when an outdoor illuminating device, outdoor lighting or reflective surface, luminous tube, lamp or similar device, permanently installed or portable, used for illumination, decoration, or advertisement. Such devices include, but are not limited to, lights used for:

- a. parking lot lighting;
- b. roadway lighting;

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- c. buildings and structures;
 - d. recreational areas;
 - e. landscape lighting;
 - f. billboards and other signs (advertising or other);
 - g. product display area lighting;
 - h. building or structure decoration; or
 - i. building overhangs and open canopies.

Outdoor storage means the keeping, in an unenclosed area, of any equipment, goods, junk, material, merchandise or vehicles, including boats, RV's and trailers, in the same place for more than 24 hours. Containers may not be permitted for use as permanent storage or building purposes without site plan and/or building permit approval.

Outlot means an area of land, created through the subdivision process that is not a building lot and for which no building permit shall be issued. An outlot is typically held in common ownership by a homeowner's association or similar and is reserved for open space and other public purposes such as utility and/or drainage easements. Also refer to the definition of Lot and Tract.

~~*Overall Development Plan (ODP)* means a development plan that shows how an entire site is proposed for development and which may be processed as a Planned Unit Development in accordance with the previous Land Development Code.~~

Owner means any person who alone, jointly or severally with others, or as an agent, trustee, executor or other representative capacity, has legal or equitable title to any property.

Parapet means a low, protective wall at the edge of a terrace, balcony or roof, especially that part of an exterior wall, fire wall, or party wall that rises above the roof.

~~*Parcel* means any legally described piece of land under common ownership, whether or not it is platted into one or more lots developed for a single use. A parcel is often created by a subdivision, deed, or other instrument recorded with the appropriate recorder. A parcel may be a Lot, Tract or Outlot or a combination thereof.~~

~~*Parcel* means a tract or plot of land.~~

Park means an area open to the general public and reserved and usable for recreational, educational or scenic purposes.

Park, pocket means an approximately one-half acre park including playground equipment that is developed, owned and maintained by persons other than the Town of Berthoud.

Parking area (off-street) means all off-street areas and spaces designed, used, required or intended to be used for the parking, storage, maintenance, service, repair, display or operation of motor vehicles, including driveways or access ways in and to such areas, but not including any outdoor storage area used principally as a "recreational vehicle, boat or truck storage" use, storage areas for landscaping and other bulk items or public streets and rights-of-way.

Parking garage means an off-street parking area within a building.

Parking lot means an outdoor off-street parking area or vehicular use area.

Parking space means an area of at least 200 square feet with dimensions of ten feet by 20 feet exclusive of driveways, aisles or maneuvering areas. All parking spaces shall have direct unobstructed access to a street, drive aisle or alley.

Parkway means that portion of the public right-of-way between the curb line and the adjoining property line.

Partially shielded light means when the bulb of the fixture is shielded by a translucent siding and the bulb is not visible at all. Light may be emitted at the horizontal level of the bulb.

Pergola is a structure of parallel colonnades supporting an open roof of beams and crossing rafters or trellis work.

Permanent monument means any structure of masonry and/or metal permanently placed on or in the ground, including those expressly placed for surveying reference.

Person means a natural person, joint venture, stock company, partnership, association, club, company, corporation, business, trust or organization or the manager, lessee, agent, representative, officer or employee of any of the foregoing entities, acting as a unit.

Personal and business service shops means shops primarily engaged in providing services generally involving the care of the person or such person's appearance or rendering services to business establishments such as laundry or dry-cleaning retail outlets, portrait/photographic studios, beauty or barber shops, employment service, or mailing and copy shops.

Phase means a portion of property that is being platted and engineered for development at one time.

Pilaster means a rectangular support or pier treated architecturally as a column, with a base shaft and capital.

Planned Unit Development (PUD) Overlay means an overlay zone that may be used to modify permitted or conditional land uses and specific standards including lot size, building bulk, gross density, and lot coverage or floor area ratios. [The A-PUD overlay is not a recognized development method in the Town of Berthoud as of DATE. See the Zoning Section of this Chapter for additional information regarding existing PUD Districts. may only be used to modify the existing zoning of a parcel.](#)

Places of assembly (neighborhood scale) means any structure or place wherein worship, ceremonies, rituals, and education are held in place less than 25,000 square feet in size.

Places of assembly (community scale) means any structure or building larger than 25,000 square feet in size wherein worship, ceremonies, rituals, and education are held.

Plant nursery and greenhouse means any land or structure used primarily to raise trees, shrubs, flowers or other plants for sale or for transplanting.

Plat means a map of certain described land showing property and lot boundaries, location of public utilities, easements and other information prepared in accordance with the requirements of this Code, approved by the Town and recorded in the records of the respective County Clerk and Recorder.

~~*Preliminary Development Plan (PDP)* means a development review process under previous versions of the Land Development Code.~~

[Preliminary Plat means a development review process outlined in the Development Code.](#)

Prime farmland means land that has the best combination of physical, water supply and chemical characteristics for producing food, feed, forage, fiber and oilseed crops, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor and without intolerable soil erosion, as determined by the Secretary of Agriculture. Prime farmland includes land that possesses the above characteristics but is being

used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage.

Principal use means the main use of land or of a structure as distinguished from a subordinate or accessory use.

Private school means a school that does not derive its support, in whole or in part, from moneys raised by a city, town, state, county or school district tax.

Professional office means an office for professionals such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, teachers, accountants and others who through training are qualified to perform services of a professional nature and where no storage or sale of merchandise exists, except as accessory to the professional services.

Program deficiency means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the National Flood Insurance Program standards.

Proof of ownership means ownership as specified in a current title insurance commitment, title policy, certification of title issued by a title insurance company licensed by the State of Colorado or recorded deed or copy of current property taxes.

Property means all real property subject to development regulation by the Town.

Property line means the boundary of any lot, parcel or tract as the same is described in the conveyance of such property to the owner; and does not include the streets or alleys upon which the said lot, parcel or tract abuts.

Property Owner for purposes of the Use Specific Standards for Short Term Rentals means a person who owns property, and any person related to the property owner

Public areas means streets, parks, open spaces and other property designated or described for public use on a map or plat approved by the Town and for which fee title is vested in the Town or other public entity.

Public facilities means those constructed facilities, including but not limited to, transportation systems or facilities, water systems or facilities, wastewater systems or facilities, storm drainage systems or facilities, fire, police and emergency systems or facilities, electric, gas, telecommunication utilities or facilities, and publicly owned buildings or facilities.

Public hearing means a meeting called by the Board of Trustees, Planning Commission, or the Board of Adjustment for which public notice has been given and which is held in a place at which interested parties may attend to hear issues and to express their opinions.

Public improvement means any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree lawn, landscaped open space, off-street parking area, lot improvement or other facility which benefits the public.

Public school means a school that derives all or a portion of its support from moneys raised by a general state, county or school district tax and is controlled and operated by the Thompson R2J or Weld County School District.

Public utility means a common carrier supplying electricity, wire telephone service, natural gas, water, wastewater or storm water service or similar public services, but shall not include railroads or other forms of rail mass transit or depots or terminals supporting the same; or wireless telecommunication facilities. A public utility includes main lines, transmission lines and substations.

Push cart means a mobile vending cart, pushcart or trailer that is not motorized or attached to a vehicle for towing and that does not exceed ten feet in length, four feet in width or eight feet in height. A pushcart may be used to cook and prepare food for vending or to serve commissary prepared, ready-to-eat or packaged food in individual servings.

Raw water means water rights acceptable to the Town for domestic purposes after treatment, or water rights acceptable to the Town that may be used for irrigation of public facilities.

Raw Water Credit means the number of S.F.E.s for which dedication credits are certified by the Town in exchange for cash in lieu of water dedication payments or water rights dedications to the Town.

Recessed light means when a light is built into a structure or portion of a structure such that the light is fully cut-off and no part of the light extends or protrudes beyond the underside of a structure or portion of a structure.

Recreational vehicle (RV) means a vehicle primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is drawn by another vehicle. The following shall be considered a recreational vehicle:

- a. *Camping trailer or tent trailer* means a folding structure, constructed of canvas, plastic or similar water repellent material designed to be mounted on wheels and designed for travel and recreation.
- b. *Motorized camper, motor home, recreational conversion van or bus* means a recreational vehicle consisting of a portable, temporary dwelling to be used for travel, recreation and vacation uses, and constructed as an integral part of a self-propelled vehicle.
- c. *Pick-up camper* means an enclosure designed to be mounted on or loaded into a pick-up truck chassis for use as a temporary dwelling for travel and recreation.
- d. A *tent*, meaning a portable or temporary cover or shelter, with or without side panels, which is supported by poles and is made of canvas, plastic or similar materials.
- e. A *travel trailer*, meaning a towed vehicle designed as a temporary dwelling for travel and recreation. Travel trailer, self-contained, means a trailer which can operate independently of connections to sewer, water and electric systems. It contains a water-flushed toilet, lavatory, shower or bath and kitchen sink, all of which are connected to water storage and sewage holding tanks located within the trailer.

Recreational vehicle park means a parcel of land specifically developed for locating only recreational vehicles on lots on a short-term basis.

~~*Recreational vehicle site* means a plot of ground within a recreational vehicle park intended for the accommodation of a recreational vehicle, tent or other individual camping unit on a temporary basis.~~

Recycling facility means a building or lot used for the collection and/or processing of recyclable material. Processing shall mean the preparation of material for efficient shipment by such means as baling, compacting, flattening, grinding, crushing, mechanical sorting or cleaning. Such a facility, if entirely enclosed within a building or buildings, shall be considered a warehouse.

Related to means, with respect to a natural person, the spouse of the individual; the domestic partner of an individual, a brother, brother-in-law, sister, or sister-in-law of the individual; an ancestor or lineal descendant of the individual or the individual's spouse or domestic partner; and any other relative, by blood or marriage, of the individual or the individual's spouse or domestic partner who shares the same home with the individual

Related to means, with respect to a business entity, if a partnership, all the partners of the partnership who are making an application for a license under this article. If any other type of business entity, all the officers, directors, and owners of at least ten percent of the entity making an application for a license under this article

Places of assembly (neighborhood scale) means any structure or place wherein worship, ceremonies, rituals, [special events](#).

and education are held in place less than 25,000 square feet in size.

Places of assembly (community scale) means any structure or building larger than 25,000 square feet in size wherein worship, ceremonies, rituals, [special events](#) and education are held.

Research facilities means a building or lot used for research, development, testing, manufacturing, assembling, repair of goods and products. The facilities shall be free of dust, smoke, fumes, odors or unusual vibrations and noise. The waste shall meet the requirements of the appropriate health authority.

Resource extraction, processing and sales means removal or recovery by any means whatsoever of sand, gravel, soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, exposed or submerged.

Restaurant, drive-through means any establishment in which the principal business is the sale of foods and beverages to the customer in a ready-to-consume state and in which the design or principal method of operation of all or any portion of the business is to allow food or beverages to be served directly to the customer in a motor vehicle without the need for the customer to exit the motor vehicle.

Restaurant, fast food means any establishment in which the principal business is the sale of food and beverages to the customer in a ready-to-consume state, and in which the design or principal method of operation includes the following characteristics.

- a. Food and beverages are usually served in paper, plastic or other disposable containers;
- b. The consumption of food and beverages is encouraged or permitted within the restaurant building, within a motor vehicle parked upon the premises, or at other facilities on the premises outside the restaurant building; or the food and beverages are available for carry-out or pick up from drive-through facilities.

Restaurant, standard means any establishment in which the principal business is the sale of food and beverages to customers in a ready-to-consume state; where fermented malt beverages, and/or malt, special malt or vinous and spirituous liquors may be produced on the premises as an accessory use; and where the design or principal method of operation includes one or both of the following characteristics:

- a. Customers are served their food and/or beverages by a restaurant employee at the same table or counter at which the items are consumed; or
- b. Customers are served their food and/or beverages by means of a cafeteria-type operation where the food or beverages are consumed within the restaurant building.

Resubdivision means the changing of any existing lot or lots, street rights-of-way or easements of a subdivision plat previously recorded with the Larimer or Weld County Clerk and Recorder.

Retail establishment, large means a retail establishment, or any combination of retail establishments in a single building, occupying a total of more than 50,000 gross square feet of floor area, except that no supermarket shall be deemed to be a large retail establishment.

Retail establishment, small means a retail establishment, or any combination of retail establishments in a single building, occupying a less than 50,000 gross square feet of floor area.

Retail and supply yard establishments with outdoor storage means any use where building supply products such as lumber or landscape materials are offered for sale, and are displayed and stored in an unenclosed area.

Retention basin means a pond, pool or basin used for permanent storage of water runoff.

Right-of-way means a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, irrigation ditch or for another special use. The usage of the term "right-of-way" for land platting purposes shall mean that every right-

of-way established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions of such lots or parcels. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains or any other use involving maintenance by a public agency shall be dedicated to that public use on the plat on which such right-of-way is established.

Roadside or temporary retail stand/tent means a temporary structure not permanently affixed to the ground and is readily removable in its entirety, which is used solely for the display or sale of farm products produced on the premises upon which such roadside stand is located. There shall be no more than one roadside stand on any one property. A building permit is required as necessary.

Roof, gable means a roof sloping downward in two parts from a central ridge, so as to form a gable at each end.

Roof, hip means a roof having sloping ends and sides meeting at an inclined projecting angle.

Sales of farm implements, heavy equipment, mobile/manufactured homes – An establishment for the sale of farm implements, heavy equipment or manufactured homes without repair facilities.

Salvage or wrecking yard means a place where motor vehicles and parts are wrecked, disassembled, repaired and resold, a place where secondhand goods including waste paper, bottles, automobile tires, clothing, other scrap materials and salvage are collected to be stored and a place where used lumber and used building materials are stored for sale or resale.

Sanitary facilities mean toilets, urinals, lavatories, showers, utility sinks and drinking fountains, and the service buildings containing these units.

Sanitary waste station means a facility used for removing and disposing of waste from self-contained camping vehicle sewage holding tanks.

Schools, public and private (preschool – grade 12) means an institution for the teaching of children on a site that is operated as a school, and which contains all improvements required by local, state or federal regulations necessary for general academic instruction.

Schools, including colleges, vocational and technical training means an institution for the teaching of adults including colleges, professional schools, dance schools, business schools, trade schools, art schools, and similar facilities on a site that is operated as a school, and which contains all improvements required by local, state or federal regulations necessary for general academic instruction.

Searchlight means an apparatus used to project a beam of light.

Service building means a structure housing toilet, lavatory, bath, laundry, service sink and other such sanitary facilities as may be required.

Setback means the required unoccupied space between the nearest projection of a structure and the property line of the lot on which the structure is located. [Setback is measured from the lot line.](#)

Setback, front yard means the distance a building or structure must be placed from the front lot line.

Setback, rear yard means the distance a building or structure must be placed from the rear lot line.

Setback, side yard means the distance a building or structure must be placed from the side lot line.

Sexually-oriented or adult-oriented use means a use of property where the principal use, or a significant or

substantial adjunct to another use of the property, is the sale, rental, display or other offering of live entertainment, dancing or material which is distinguished or characterized by its emphasis on depicting, exhibiting, describing or relating to "specified sexual activities" or "specified anatomical areas" as the primary attraction to the premises, including, but not limited to:

- a. *Adult arcade* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.
- b. *Adult bookstore, adult novelty store or adult video* means a commercial establishment which devotes a significant or substantial portion of its stock-in-trade or interior floor space to, or has as one of its principal business purposes, the sale, rental or viewing, for any form of consideration, of (a) any books, magazines, periodicals or other printed matter or photographs, films, motion pictures, videocassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, or (b) any instruments, devices or items which are designed or intended for use with or in specified sexual activities.
- c. *Adult cabaret* means a nightclub, bar, restaurant, concert hall, auditorium or similar commercial establishment which features:
 - i. Persons who appear in a state of nudity;
 - ii. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
 - iii. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- d. *Adult motel* means a hotel, motel or similar commercial establishment which offers private rooms to the public and provides patrons live performances or closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions.
- e. *Adult motion picture theater* means a commercial establishment which is distinguished or characterized by showing of films, motion pictures, videocassettes, slides or similar photographic reproductions with an emphasis on depicting or describing specified sexual activities or specified anatomical areas which are regularly shown for any form of consideration.
- f. *Adult theater* means a theater, concert hall, auditorium or similar business which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.
- g. *Adult photo studio* means any establishment which, upon payment of a fee, provides photographic equipment and/or models for the purpose of photographing "specified anatomical areas."
- h. *Commercial establishment with respect to the regulation of sexually oriented businesses* may have other principal business purposes that do not involve the depicting or describing of specified sexual activities or specified anatomical areas and still be categorized as a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas. The term commercial establishment includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations with paid memberships.
- i. *Nude model studio* means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons.
- j. *Nudity or state of nudity* means:
 - i. The appearance of human bare buttock, anus, male genitals, female genitals or the areola or nipple of the female breast; or

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- ii. A state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.
 - k. *Peep booth* means a viewing room, other than a private room, of less than 150 square feet of floor space upon the premises of a sexually oriented business where there are exhibited photographs, films, motion pictures, video cassettes or other video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.
 - l. *Private room* means a room in an adult motel that is not a peep booth, has a bed in the room, has a bath in the room or adjacent to the room, and is used primarily for lodging
 - m. *Sexual encounter establishment* means a business or commercial establishment which, as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas, when one or more of the persons exposes any specified anatomical area.
 - n. *Sexually oriented business* means an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, sexual encounter establishment or other similar business and includes:
 - i. The opening or commencement of any sexually oriented business as a new business;
 - ii. The conversion of an existing business, whether or not a sexually oriented business, to a sexually oriented business;
 - iii. The addition of any sexually oriented business to any other existing sexually oriented business;
 - iv. The relocation of any sexually oriented business; or
 - v. The continuation of a sexually oriented business in existence on the effective date of the initial ordinance codified herein.
 - o. *Specified anatomical areas* means:
 - i. Less than completely and opaquely covered: human genitals, pubic region, buttocks, and female breast below a point above the top of the areola.
 - ii. Human male genitals in a discernibly turgid state even if completely and opaquely covered.
 - p. *Specified sexual activities* means acts, simulated acts, exhibitions, representation, depictions or descriptions of:
 - i. Human genitals in a state of sexual stimulation or arousal.
 - ii. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
 - iii. Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal.
 - iv. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function.
 - v. Flagellation, mutilation or torture for purposes of sexual arousal, gratification or abuse.
 - q. *Stage* means a raised floor or platform at least three feet above the surrounding floor measured perpendicularly from the edge of the stage to the surrounding floor and at least 36 square feet in area.

Shielded light means when the light emitted from the fixture is projected below a horizontal plane running through the lowest point of the fixture where light is emitted. The bulb is not visible with a shielded light fixture, and no light is emitted from the sides of the fixture. Also considered a full cut-off fixture.

Shopping center means a group of retail and service establishments located in a complex which is planned, developed, owned or managed as a unit, with off-street parking provided on the property.

Side loaded garage means a garage that is oriented so that the garage doors are perpendicular to the front street.

Sidewalk means the hard surface path within the street right-of-way for use by pedestrians and/or bicyclists.

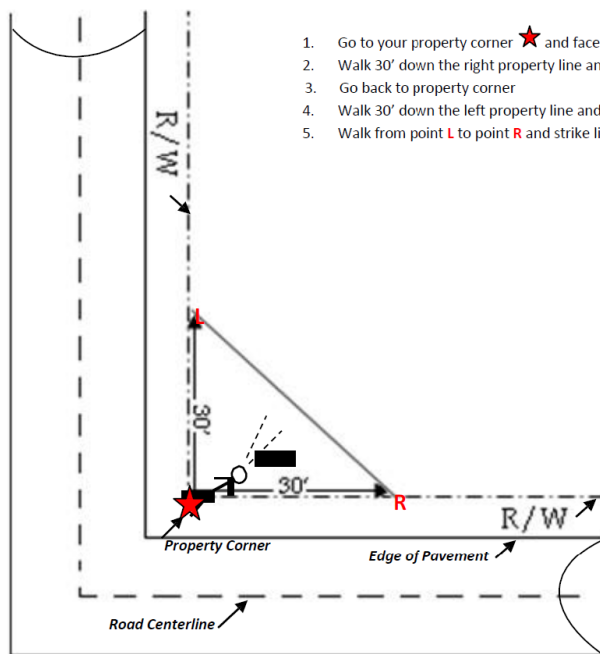
Short-term Rental means a principal dwelling rented to transient guests who are part of one party for short-term lodging (30 days or less) when not occupied by the owner/operator. The term "party" as used in this definition shall mean one or more persons who stay at a short-term rental as a single group pursuant to a single reservation and payment.

- a. Maximum Number of Guests: A Short-term Rental shall be limited to 10 or fewer guests who are part of one party or single group of renters.

Sight distance triangle means the area defined by the intersection of any two right-of-way lines of streets or railroads and a straight line intersecting those two right-of-way lines at points 30 feet from the intersection, no obstruction to vision between a height of two and one-half feet and 12 feet above the imaginary plane defined by those three points of intersection permitted, at the plane of the street. This includes structures, walls, fences, shrubbery or trees except that shade trees will be permitted where all branches are not less than eight feet above the street level.

Simple directions to find sight triangle:

1. Go to your property corner  and face your property
2. Walk 30' down the right property line and mark point **R** for right
3. Go back to property corner
4. Walk 30' down the left property line and mark point **L** for left
5. Walk from point **L** to point **R** and strike line, this area is the sight triangle



Sign means any device that is sufficiently visible to persons not located on the lot where the device is located, affixed or placed on a structure, land, or produced by painting on or posting or placing any painted, lettered, pictured, figured or colored material on any building structure or surface.-

Sign, abandoned means a sign, including sign face and supporting structure which is unsafe, constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, or obsolescence and/or is not kept in good repair; or which contains no sign copy on all sign faces for a continuous period of three months.

Sign, animated means a sign having an intermittent or continuing variation in the physical position of any part of the device, except such variations necessary for displaying time-of-day information or temperature information.

Sign, awning means a sign which is painted, stitched, sewn or stained onto the exterior of an awning.

Sign, banner means any sign intended to be hung either with or without frames, possessing characters, letter, illustrations or ornamentations applied to paper, plastic, vinyl or fabric of any kind.

Sign, canopy means a sign that is permanently affixed to a roofed shelter attached to and supported by a building, by columns extending from the ground or by a combination of a building and columns.

Sign, directional means any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

Sign, handheld means a temporary sign held, suspended or supported by a person. Handheld signs do not include handheld signs used for traffic control or safety purposes. Also known as a human directional, sign spinner, sign twirler or sign twister sign.

Sign, incidental means a small sign affixed to a residential or non-residential building or structure, machine, equipment, fence, gate, wall, gasoline pump, public telephone, or utility cabinet.

Sign, monument means a permanent freestanding sign supported by, or integrated into a base or pedestal at least two-thirds the dimension of the width and thickness of the sign it supports.

Sign, freestanding means a sign which is supported by one or more columns, uprights, poles or braces extended from the ground, or which is erected on the ground.

Sign, off-premises means a sign advertising a business, person, activity, good, products or services not Provided on the site upon which the sign is located, or that directs persons to any location not on that site.

Sign, permanent means any sign constructed of durable materials and affixed, lettered, attached to or placed upon a fixed, non-movable, non-portable supporting structure.

Sign, projecting means a sign supported by a building wall and projecting more than 12 inches from that wall. Also known as a blade sign.

Sign, public means a sign erected by the Town or by any federal, state or county government agency, including but not limited to traffic control and safety signs.

Sign, roof means a sign erected above the highest point of the coping of a flat roof; or to the deck line of a mansard roof; or to the average height of a gable, pitched or hipped roof. Also, any sign mounted on a pitched or sloping wall and extending higher than the lowest portion of the adjoining roof shall constitute a roof sign.

Sign, sidewalk means a movable advertising or business ground side constructed in such a manner as to form an "A" or a tent-like shape, hinged or not hinged at the top, with each angular face held at an appropriate distance by a supporting member.

Sign, site means a temporary freestanding sign constructed of vinyl, plastic, wood or metal and designed or intended to be displayed for a limited period of time on a site with an active listing for sale or for rent, or on properties with active building permits, e.g., a construction site.

Sign, special event means a temporary sign directing attention to an activity of limited duration.

Sign, temporary means any sign based upon its materials, location and/or means of construction, e.g., light fabric, cardboard, wallboard, plywood, paper or other light materials, with or without a frame, intended or designed to be displayed for a limited period of time.

Sign, time and/or temperature means a sign displaying the time and/or temperature and capable of being viewed from any public right-of-way, parking area or neighboring property.

Sign, vehicular means a sign displayed on a truck, bus, trailer or other vehicle which is being operated or stored in the normal course of a business, such as signs which are located on moving vans, delivery trucks, rental trucks and trailers and the like, provided the primary purpose of such vehicles is not for the display of signs and provided they are parked or stored in areas appropriate to their use as vehicles.

Sign, wall means any sign printed on, painted on, incorporated in or affixed to the building wall, or any sign consisting of cut-out letters or devices affixed to the building wall with no background defined on the sign other than the building wall itself.

Sign, wall accessory means a sign that has less importance and prominence than the main sign on the wall in size, location, and design emphasis.

Sign, window means a sign that is painted on, applied or attached to a window or that can be read through the window from the public right-of-way.

Sign, yard means a temporary freestanding sign constructed of paper, vinyl, plastic, wood, metal or other comparable material, and designed or intended to be displayed for a limited period of time on a lot containing one or more existing permanent structures.

Significant wildlife habitat and migration corridors are areas designated by the Colorado Division of Wildlife and/or the Colorado Natural Diversity Information Source (www.ndis.nrel.colostate.edu) as areas of landscape that provide food, cover and water sufficient to meet the needs of a given species to survive and reproduce.

Single Family Equivalent Unit ("SFE" or S.F.E.) means a number related to the volume of water necessary to meet the demand and use requirements including systems losses and consumptive use requirements, of an average single family dwelling unit. [Further information is found in the Water Right Dedication Requirements Section of this Code.](#) ~~which is defined herein as 0.4 acre feet. An S.F.E. shall be defined as 0.4 acre feet for all purposes. The S.F.E. unit value assigned to such average dwelling unit is 1.0.~~

Single room occupancy boarding house means a housing type consisting of one room, often with cooking facilities and with private or shared bathroom facilities.

Site plan means a scale drawing of a lot, showing the actual measurements, the size and location of any existing or proposed buildings, the location of the lot in relation to abutting streets, and other details such as parking areas, access points, landscaped area, building areas, setbacks from lot lines, building heights, floor areas, densities, utility locations and easements.

Site specific development plan shall mean and be limited to the Final Plat of a subdivision, [Conveyance Plat, or either a Final Development Plan of a PUD, or a Site Plan or Use by Special Review](#) when approved as a site specific development plan by the Planning Commission or Board.

Significant wildlife habitat and migration corridors are areas designated by the Colorado Division of Wildlife and/or the Colorado Natural Diversity Information Source (www.ndis.nrel.colostate.edu) as areas of landscape that provide food, cover and water sufficient to meet the needs of a given species to survive and reproduce.

Single room occupancy boarding house means a housing type consisting of one room, often with cooking facilities and with private or shared bathroom facilities.

Commented [AJ12]: Erin to confirm

Commented [AJ13R12]: Site Plans are administratively approved

Site plan means a scale drawing of a lot, showing the actual measurements, the size and location of any existing or proposed buildings, the location of the lot in relation to abutting streets, and other details such as parking areas, access points, landscaped area, building areas, setbacks from lot lines, building heights, floor areas, densities, utility locations and easements [and prepared according to the standards found in this Chapter](#).

Split garages means having at least two separate garages that are oriented in different directions.

Spotlight or floodlight means any lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction (see definition for floodlight).

Staff means a full or part-time employee of the Town. Staff may also include professional firms and/or persons designated by the Town to act within a certain capacity including legal, engineering, planning, code enforcement, inspection and other professional fields.

Start of construction for structures means ~~includes substantial improvement, and means~~ the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the [building permit issuance](#) date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Commented [AJ14]: Erin, Let's include similar language for start of construction for sites other than a single dwelling consistent with DA.

Storage facilities, enclosed means a building or a group of buildings, not consisting of containers as defined herein, comprised of separate, individual self-storage units divided from the floor to ceiling by walls, each with an independent entrance from the exterior of the building and that are designed to be rented or leased on a short-term basis to the general public for private storage of personal goods, materials and equipment.

Storage facilities, outdoor means property for use as storage for RV's, boats, trailers, etc. outdoors screened from adjacent properties. The facility shall be free of dust, smoke, fumes, odors or unusual vibrations and noise. There shall be no waste disposal on site.

Street means a public thoroughfare which affords the principal means of vehicular access to abutting property. The term includes public or private streets.

Street, arterial means a street as described in [the Design Standards section of this Chapter](#) [Section 30-2-105](#).

Street, collector means a street as described in [the Design Standards section of this Chapter](#) [Section 30-2-105](#).

Street, local means a street as described in [the Design Standards section of this Chapter](#) [Section 30-2-105](#).

Street, rural means a street as described in [the Design Standards section of this Chapter](#) [Section 30-2-105](#).

Street furniture means constructed objects, such as outdoor seating, kiosks, bus shelters, sculpture, tree grids, trash receptacles, fountains and telephone booths, that have the potential for enlivening and giving variety to streets, sidewalks, plazas and other outdoor spaces open to and used by the public.

Streetscape means the distinguishing character of a particular street, within the public right-of-way, including paved materials, and the adjacent space extending along both sides of a street including landscaping, sidewalks, medians, lighting, street furniture, and signage.

Structure means a combination of materials to form a construction for use, occupancy or ornamentation whether installed on, above or below the surface of land or water.

Subdivider or developer means any person, partnership, joint venture, limited liability company, association or corporation who participates as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a development.

Subdivision means the platting of a lot or the division of a lot, tract or parcel of land into two or more lots, plots or sites.

Subsidence means a local mass movement that involves the downward settling or sinking of the solid Earth's surface. Subsidence may be due to natural geologic processes or man's activity such as coal mining.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would be equal to, or exceed, 50 percent of the market value of the structure before it was damaged.

Substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- a. Before the improvement or repair is started; or
- b. If the structure has been damaged and is being restored, before the damage occurred.
- c. For the purpose of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. Substantial improvements shall be calculated cumulatively over a period of the previous ten years.

The term does not, however, include either:

- d. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- e. Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

Supplemental Irrigation Water means additional potable water which will be required for irrigation at times when water is not available through a non-potable irrigation system.

Swing-in garage means a garage that is oriented so that the garage doors are perpendicular to the street.

Tandem garage means a garage that allows for the parking of one car in front of another.

Tandem parking means parking two cars in a driveway or parking space so that one car is right in front of the other and the front car cannot move until the back car is moved.

Tavern see "Bar or tavern".

Technical Review Committee (TRC) means the committee established to review development proposals and subdivision applications on behalf of the Town.

Temporary business or use means a business or use commonly recognized as being conducted for regularly scheduled or occurring portions of a year — not to exceed four consecutive months. Examples of a temporary business or use include, but are not limited to, Christmas tree sale lots, farmer's markets, circuses, carnivals, new

home sales operations, etc. and shall obtain a vendor license, as applicable. A temporary business or use shall not include continuing a nonconforming building or use.

Temporary directional sign means a free-standing sign giving direction to an open house, house for sale, garage sale or a temporary business.

Temporary lighting means lighting that is intended to be used for a special event for seven days or less.

Title commitment means formal documentation from a title insurance company licensed by the State of Colorado listing the name of the owner of the property under consideration, the legal description of the property and any encumbrances of the property such as easements, rights-of-way, liens or mineral interests.

Tourist facility means an establishment set up to primarily provide local tourist information to visitors.

Town means the Town of Berthoud, a municipal corporation of the State of Colorado. The Town may act through the Board or an official of the Town specifically authorized to perform the act.

Town Administrator means the Town Administrator of the Town of Berthoud, Colorado.

Tract means an area of land, created through the subdivision process that can be legally sold but cannot be developed until further legal subdivision. Tracts are typically identified for future development or investment purposes. Also refer to the definition of Lot and Outlot.

Tree lawn means a strip of landscaping within the right-of-way, generally between the street and an adjacent sidewalk.

Truck depot means an establishment engaged primarily in the fueling, servicing, repair or parking of tractor trucks or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. A truck stop may also include overnight accommodations, showers or restaurant facilities primarily for the use of truck crews.

Undermining means land that has been mined under the surface of the ground.

Uplighting means lighting that is directed in such a manner as to shine light rays above the horizontal plane.

Use by right means a use that is permitted by the zoning district regulations per the Land Use Table found in this Chapter.

USGS datum means United States Geological Survey basis of elevations.

Vacant land means land that does not have structures or other development on it.

Variance means a grant of relief from the requirements of this Code which permits construction in a manner that would otherwise be prohibited by this Code.

Vegetation means plants growing in a place, including, but not limited to trees, shrubs, vines, grasses and groundcover.

Vehicle trip means a single or one-way vehicle movement to or from a property or study area. Vehicle trips can be added together to calculate the total number of vehicles expected to enter and leave a specific development or site over a designated period of time.

Vested property right means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan approved as provided in this Code.

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Veterinary hospital means any facility which is maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases.

Veterinary facilities, small animal clinic means any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases wherein the animals are limited to dogs, cats or other comparable household pets and wherein the overnight care of said animals is prohibited except when necessary in the medical treatment of the animal.

Walkable means a distance of one-fourth mile or within a five to ten minute walk.

Walkway means:

- a. A right-of-way dedicated to public use that is not within a street right-of-way, to facilitate pedestrian access through a subdivision block by means of a hard surface path; or
- b. Any portion of a parking area restricted to the exclusive use of pedestrian travel.

Walkway, connecting means:

- a. Any street sidewalk; or
- b. Any walkway that directly connects a building entrance(s) to a sidewalk adjoining a street sidewalk, and connects other origins and destinations for pedestrians, including but not limited to commercial establishments, schools, parks, dwellings, work places and transit stops, without requiring pedestrians to walk across parking lots or driveways, around buildings or following parking lot outlines which are not aligned to a logical route.

Warehouse and distribution means storage, wholesale, and distribution of manufactured products, supplies or equipment, including accessory offices or showrooms, including incidental retail sales, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions.

Warehousing means a business which stores or stocks merchandise or commodities.

Water right means a decreed right to use in accordance with its priority a certain portion of the waters of the State by reason of the appropriation of the same. It shall include both direct flow and storage rights. Water right shall also be used in the context of water right dedications to include allotment contracts with the Northern Colorado Water Conservancy District and its Municipal Subdistrict.

Water surface elevation means the height, in relation to the **NGVD of 1929** (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Wetland means lands as defined by Federal standards where there is a transition between terrestrial and aquatic systems, where the water table is usually at or near the surface, or the land is covered by shallow water.

Wireless telecommunication equipment means any equipment used to provide wireless telecommunication service which is not affixed to or contained within a wireless telecommunication facility, but is instead affixed to or mounted on an existing building or structure that is used for some other purpose. Wireless telecommunication equipment also includes a ground mounted base station used as an accessory structure that is connected to an antenna mounted on or affixed to an existing building.

Wireless telecommunication facility means any freestanding facility, building, pole, tower or structure used to provide only wireless telecommunication services, and which consists of, without limitation, antennae, equipment and storage and other accessory structures used to provide wireless telecommunication services.

Wireless telecommunication services means services providing for the transmission of wireless communications utilizing frequencies authorized by the Federal Communications Commission for paging systems, enhanced specialized wireless telecommunication, television, personal communication services or cellular telephone.

Workshop and custom small industry means a facility wherein goods are produced or repaired by hand, using hand tools or small-scale equipment, including small engine repair, furniture making and restoring, upholstery, restoration of antiques and other art objects, or other similar uses, with or without sales occurring on site.

Yard means that portion of the open area on a lot extending open and unobstructed from the ground upward from a lot line for a depth or width specified by the regulations for the zone district in which the lot is located.

Yard, front means a yard extending across the full width of the lot between the front lot line and the nearest line or point of the building.

Yard, rear means a yard extending across the full width of the lot between the rear lot line and the nearest line or point of the building.

Yard, side means a yard extending from the front yard to the rear yard between the side lot line and the nearest line or point of the building.

Zone district means a zone district of the Town as established in Section 3 of this Chapter, unless the term is used in a context that clearly indicates that the term is meant to include both the zone district(s) of the Town and the zone district(s) of an adjoining governmental jurisdiction. Also referred to as "zoning district."

Zoning map means the official zoning map adopted by the Town by ordinance, as amended.

30-1-12148 Public hearing and general notice provisions

- A. *Specific purposes.* Public hearings are open meetings conducted by local boards to gather information from the public and to survey public opinion as part of the local rule-making process. Public hearings are required by either the State of Colorado or Town of Berthoud and will be conducted before the Planning Commission, the Board of Trustees or the Planning Commission acting as the Board of Adjustment as appropriate. Public hearings will be conducted under the following general conditions:
1. Before reviewing an application for a permit that requires a public hearing, said hearing shall be scheduled within a reasonable time as allowed by the schedules of Town officials and staff. Town staff is responsible for the scheduling of all public hearings.
 2. ~~Subject to Subsection C below, the~~The hearing shall be open to the public to provide comments regarding the proposed application, and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments.
 3. The Board of Trustees, Planning Commission or Board of Adjustment conducting the hearing may place reasonable and equitable limitations on the presentation of evidence, arguments and the cross-examination of witnesses.
- B. *Public notice requirements.* The Town shall give notice of any public hearing required as provided below. The applicant shall be responsible for all costs of such notice.
1. Where required by statute or ordinance to give notice to surrounding property owners, notice shall be given by mailing a written notice as specified in the Public Hearing and General Notice Provisions Table 1-1, not later than fifteen days before the hearing to those persons who have listed for taxation any real property located within 500 feet of the lot, parcel or property area that is the subject of the application or appeal.
 2. Where required by statute or ordinance to give notice to other interested property owners such as mineral interest owners of record, mineral and oil and gas lessees for the property, and appropriate ditch companies notice shall be given by the applicant by mailing a written notice not later than 15 days before the hearing. Evidence of mailing shall be provided to the Town.
 3. Where required by statute or ordinance to give notice to other parties of interest or referral agencies, notice shall be given by mailing a written notice not later than 15 days before the hearing as specified in the Public Hearing and General Notice Provisions Table 1-1.
 4. Where required by statute or ordinance to give notice of annexation hearings to special districts, school districts and Larimer or Weld County Commissioners and the Larimer or Weld County Attorney, notice shall be given as specified in the Public Hearing and General Notice Provisions Table 1-1 by a certified mailing of a written notice not later than 25 days before the hearing.
 5. When required by the notice of public hearing table (Public Hearing and General Notice Provisions Table 1-1) in this section, the applicant must post a sign along each street frontage of the property. The Town will provide signs when a complete application is made. The applicant is responsible for erecting and maintaining the sign(s) for the time period specified and removing them after the last public hearing. Signs must be placed as near the property line as possible and in a manner that is readily visible from the street or road. Posting the property is a courtesy to the public and the failure of anyone to observe a sign does not invalidate any public hearing. A deposit will be collected to cover the cost of replacing the sign. When signs are returned in good condition, the deposit will be refunded.
 6. The applicant shall provide (prior to the hearing) an affidavit showing the property was posted within the specified time.
 7. The Town shall give notice of any public hearing required as follows:

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- a. Notice shall be given to potentially interested persons by publishing a notice one time in a newspaper having general circulation in the area as specified in the Public Hearing and General Notice Provisions Table 4-1~~not less than 15 days prior to the hearing.~~
 - b. This notice shall state the date, time and place of the hearing, reasonably identify the lot, parcel or property that is the subject of the application or appeal, and give a brief description of the action requested or proposed. Proof of publication shall be made part of the record at the time of the public hearing.
 - c. The applicant shall provide the required ~~number of mailing labels and a mailing list~~ and map in a format acceptable to the Town with application materials. The applicant shall certify the source for the mailing list and map labels.
- C. *Hearing and notification requirements.* Listed below are the notification requirements in the Town of Berthoud. Abbreviations used below include C.R.S. (Colorado Revised Statutes) and Hearing (Public Hearing). ~~Hearings will be noticed per the Town of Berthoud in most instances, but a~~ Notice requirements for annexation must follow provisions of the Colorado Revised Statutes. Mailed notices identified below would normally include notice of both the Planning Commission meeting and Town Board ~~meeting~~/hearings as appropriate.

Public Hearing and General Notice Provisions Table

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	Referral agency notice	Hearing	Publication	Mailed notice	Post sign
Annexation	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item. Before Town Board per C.R.S.	4 successive weeks starting at least 30 days prior to Statutory Hearing.	Yes, to property owners within 500 feet no less than 25 days and no more than 30 days prior to Statutory Hearing. To Special Districts no less than 25 days prior to Statutory Hearing.	Yes, no less than 30 days prior to Statutory Hearing.
Zoning	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as hearing.	No less than 15 days prior to Commission meeting.	Yes, to property owners within 500 feet sent no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Rezoning	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Board as hearing.	No less than 15 days prior to Commission meeting. hearing.	Yes, to properties within 500 foot area sent no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Text Amendment to Development Code (Chapters 10-11)		Before Planning Commission as regular item and Town Board as hearing. Before Board as hearing.	No less than 15 days prior to Commission meeting. hearing.	No.	No.
Neighborhood Master Plan	Upon acceptance of application for processing.	Before both Planning Commission as regular item and Board as hearing. regular agenda items.	No less than 15 days prior to Commission. Board meeting.	Yes, to properties within 500 feet; no less than 15 days prior to Commission	Yes, to properties no less than 15 days prior to Commission meeting.
Preliminary Plat	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Board as hearing.	No less than 15 days prior to Commission meeting.	Yes, to property owners within 500 feet no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Final Plat or a Replat	Upon acceptance of application for processing.	Before Planning Commission as Hearing. No Board meeting or hearing.	No less than 15 days prior to Commission meeting.	Yes, to property owners within 500 feet no less than 15 days prior to Commission meeting hearing.	Yes, no less than 15 days prior to Commission meeting hearing.
	Amended PUD: Changes to a previously-approved PUD shall follow both the Change of Zone and Neighborhood Master Plan process as found in Chapter 30 and in this Table				
Comprehensive Plan Amendment		Before Planning Commission regular agenda item as hearing and Board as regular hearing agenda item.	No less than 15 days prior to Commission hearing.	No	No
Text Amendment to Development Code (Chapters 1-9)		Before Planning Commission as regular item and Town Board as hearing.	No less than 15 days prior to hearing.	No.	No.
Variances and Appeals	Upon acceptance of application for processing.	Board of Adjustment (BOA) as hearing.	No less than 15 days prior to BOA hearing.	Yes, to property owners within 500 feet no less than 15 days prior to BOA hearing.	Yes, no less than 15 days prior to BOA hearing.
Use by Special Review	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Board as hearing.	No less than 15 days prior to Commission hearing.	Yes, to property owners within 500 feet, and referral agencies no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Use By Special Review Allowed Marijuana Business/Oil and Gas	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as a hearing.	No less than 15 days prior to Commission hearing.	Yes, to property owners within 500 feet, and referral agencies no less than 15 days prior to Commission Board meeting.	Yes, no less than 15 days prior to Commission Town Board meeting.
Minor Subdivision	Upon acceptance of application for processing.	Before Planning Commission as hearing. No Board hearing.	No less than 15 days prior to Commission hearing.	Yes, to property owners within 500 feet no less than 15 days prior to Commission hearing.	Yes, no less than 15 days prior to Commission meeting hearing.
Site Plan Review and Action	Upon acceptance of application for processing.	Administrative approval unless referred to Planning Commission by Administrator.	No notice required	Upon application acceptance to property owners within 500 feet.	Upon application acceptance.
Wireless Communications Facilities as Uses by Special Review	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as a hearing.	No less than 15 days prior to Commission hearing.	Yes, to property owners within 500 feet, and referral agencies no less than 15 days prior to Commission Board meeting.	Yes, no less than 15 days prior to Commission Town Board meeting.

D. *Modification of application at hearing.*

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Trustees, Planning Commission or Board of Adjustment, the applicant may agree to modify their application, including the plans and specifications submitted.
2. Unless such modifications are so substantial or extensive so as to materially change the plans, the hearing body may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Town for review and approval as an administrative act.

E. *Hearing continuations.* The Board of Trustees, Planning Commission or Board of Adjustment may continue the hearing to a subsequent meeting at a certain date and time or may close the hearing and continue the meeting to deliberate the issues until a final decision is made. If a hearing is continued to a certain date and time, no further notice of a continued hearing or meeting need be published.

F. *Record.* A recording shall be made of all hearings, and transcripts of such hearings may be requested within 30 days of the close of the hearing. Transcripts shall be provided within a reasonable time after deposit of the cost of the preparation of the transcript with the Town.