

ARTICLE IV

Development Evaluation Standards

This Article establishes evaluation standards for the review of development within the Town. These provisions are necessary and desirable in order to: (1) protect ecologically and environmentally sensitive areas; (2) use land, public and private services and facilities efficiently; (3) ensure development occurs in an orderly and timely fashion; and (4) ensure that a project's design is compatible with the existing scale and character of the Town.

Division 1. Protection of Environmentally Sensitive Areas

Sec. 16A-4-10. Purpose.

Protect environmental, aesthetic and natural resources of the Brush Creek and Owl Creek valleys, including wildlife habitat, stream corridors, sensitive hillsides and other unique lands and significant natural features. This Division establishes standards to ensure that as development occurs, these environmentally sensitive areas are protected and to ensure that development does not contribute significantly to the degradation of air quality and does not generate noise which would result in materially adverse impacts relating to the use of the land in question or adjacent land or occupants thereof. (Ord. 4-1998 §1; Ord. 7-2000 §1)

Sec. 16A-4-20. Sensitive wildlife habitat areas.

(a) Purpose. This Section establishes procedures and standards to ensure that development is located, designed and used in such a way that these sensitive wildlife habitat areas are protected. Protection of wildlife habitat and promotion of biodiversity is important. Because wildlife habitat is sensitive to human activity, the Town intends to

manage development such that it does not diminish wildlife habitat and ensures the continuing existence of species in the area. The Comprehensive Plan includes maps that portray elk production areas, elk concentration areas, elk severe winter range, elk migration corridors, mule deer severe winter range, bighorn sheep winter range and the nest sites of golden eagles, goshawks and red-tailed hawks within and adjacent to the Town limits.

(b) Applicability. The provisions of this Section 16A-4-20 shall apply to any development application for PUD, amended PUD, subdivision or special review within the areas described in Subsection (c), Maps Incorporated, below. These provisions shall not apply to development of a lot subdivided prior to the effective date of this Development Code (September 2, 1998). However, development of such lots shall comply with any wildlife protection requirements that may have been applied to the property during the approval of the PUD or subdivision in which it is located.

(c) Maps Incorporated. The Wildlife, Mule Deer Seasonal Activity and Elk Seasonal Activity maps in the Comprehensive Plan contain general information that depict the locations of sensitive wildlife areas within and adjacent to the Town limits. These maps are hereby incorporated in this Development Code by reference. Copies of the maps are available for public review in the Building and Planning Department during normal business hours.

(1) Lands designated on maps. The following lands designated on the Wildlife, Mule Deer Seasonal Activity and Elk Seasonal Activity maps in the Comprehensive Plan shall be subject to the provisions of this Section 16A-4-20, Sensitive Wildlife Habitat Areas:

- a. Elk production areas.
- b. Elk concentration areas.

- c. Elk severe winter range.
- d. Elk migration corridors.
- e. Mule deer severe winter range.
- f. Bighorn sheep winter range.
- g. The nest sites of golden eagles, goshawks and red-tailed hawks.

(2) Lands not designated on maps. Because these maps are general maps, and because animal distribution is fluid and animal populations are dynamic, the maps are considered to be a "guide" to probable locations. All areas mapped as sensitive wildlife habitat shall be verified on the ground, pursuant to Subsection (d), Wildlife Habitat Analysis. There may also be lands that function as any of the above-listed types of wildlife habitat, but are not so designated on the maps. The Town, in consultation with the Colorado Division of Wildlife, may determine that lands not designated on the maps provide any of the above-listed types of wildlife habitat and, therefore, development proposed for such lands will be subject to the provisions of this Section 16A-4-20, Sensitive Wildlife Habitat Areas. This determination shall be made during sketch plan review for an application that is a PUD, or during preliminary plan review for an application that is a subdivision.

(d) Wildlife Habitat Analysis. An applicant proposing development on lands designated as sensitive wildlife habitat on the maps and for lands not so designated on the maps that are determined to be sensitive wildlife habitat shall complete a site specific wildlife habitat analysis. The analysis shall evaluate the relevant physical features of the property, shall make a site specific determination of the locations of wildlife habitat on the property and shall describe how the proposed development will comply with Subsection (e), General Standard. The analysis shall be

prepared and submitted by a qualified wildlife biologist/ecologist or similar qualified expert, and shall contain the following materials:

(1) Map. A map of the property depicting the activity patterns of the wildlife using the sensitive wildlife habitat, identifying migration routes, travel corridors or patterns, calving, nesting, feeding and watering areas, riparian areas, and any connections or relationships with habitat adjoining but outside the project site.

(2) Report. A report that describes the activity patterns of the wildlife using the habitat and identifies any species that use the property that are listed by the U.S. Department of the Interior or the State of Colorado as endangered, threatened or species of special concern. The report shall also evaluate the potential impacts of the proposed development on the sensitive wildlife habitat and the species using that habitat.

(3) Mitigation and enhancement plan. If the applicant proposes development within any of the sensitive wildlife habitat areas listed above, then the applicant shall submit a wildlife habitat mitigation and enhancement plan that describes how the proposed development will comply with Subsection (f), Wildlife Mitigation and Enhancement Standards, providing detail regarding the wildlife mitigation and enhancement techniques that will be employed. The plan shall include schedules for the applicant to report to the Town Council on progress and shall include provisions to ensure both implementation and monitoring of the plan by the applicant. As applicable, the report shall refer to any other wildlife enhancement or management plan that has been approved by the Town for this or other properties that would affect this property, to ensure consistency between previously approved and newly proposed mitigation and enhancement measures.

(e) General Standard. Development shall be prohibited in elk production areas, elk concentration areas, elk severe winter range, elk migration corridors, mule deer severe winter range, bighorn sheep winter range and the buffer areas surrounding the nest sites of golden eagles, goshawks and red-tailed hawks. However, development may be considered within these areas if at least four (4) out of five (5) of the members of the Town Council adopt a resolution authorizing consideration of some development in such areas.

(1) Resolution. The resolution shall direct the developer to formulate and present to the Town Council a proposed wildlife mitigation and enhancement plan for such areas prepared pursuant to the requirements of Subsection(d)(3), Mitigation and Enhancement Plan. However, such direction to the developer by the Town Council shall not constitute a decision to authorize development in such areas.

(2) Ordinance. To authorize any development in such areas, the Town Council shall then adopt an ordinance, approved by at least four (4) out of five (5) of the members of the Town Council, identifying the reasons why the development is unable to avoid the habitat areas. Considering this finding, the ordinance shall then define the nature and the extent of the development that will be allowed, taking into account the wildlife habitat analysis and wildlife mitigation and enhancement plan. The ordinance shall also include findings that the development complies with Subsection (f), Wildlife Mitigation and Enhancement Standards.

(f) Wildlife Mitigation and Enhancement Standards. Development proposed within any of the above-listed sensitive wildlife habitat areas shall comply with the following standards:

(1) Elk, mule deer and bighorn sheep habitat areas.

a. Location. The proposed development shall be sensitively located in relation to elk, mule deer or bighorn sheep habitat areas. This shall include locating development so it does not: (1) force elk to use new migration corridors or expose them to significantly increased predation, interaction with vehicles, intense human activity or more severe topography or climate; or (2) encircle elk, mule deer or bighorn sheep habitat with development.

b. Not generate excessive intrusion. The proposed development shall not generate excessive human intrusion during periods when elk, mule deer or bighorn sheep use the area. When appropriate, the development proposal shall include techniques to minimize human intrusion, including: (1) visual and sound buffers, to screen structures and activity areas from habitat areas through effective use of topography, vegetation and similar measures; and (2) seasonal limitations on, or stoppages of, intrusive human activities during sensitive time periods, such as when elk migration or elk calving is occurring.

c. Maintain native vegetation. The proposed development shall be designed to maintain large patches of native vegetation intact, so as to preserve areas that supply food or cover for wildlife. This shall include, but not be limited to, locating roads on the edge of habitat areas, so as to prevent fragmentation of habitat. When development removes native vegetation within habitat areas, a mitigation plan shall be devised that replaces it with vegetation that is equivalent in type and quantity. Disturbed areas shall be revegetated no later than the next growing season with native browse species with high food value, especially heavy seed, berry and fruit producing species.

d. Enhancement. Where replacement of vegetation is not feasible, then the applicant shall commit to ongoing on-site or off-site wildlife habitat enhancement. Enhancement is the process of increasing wildlife carrying capacity on undisturbed habitat to replace the lost wildlife carrying capacity on habitats impacted, disturbed and/or destroyed by development. Enhancement can take many forms, including, but not limited to, prescribed burns, seeding, brush cutting and fertilization, as determined to be appropriate by the Town, based upon the advice of the Colorado Division of Wildlife. Enhancement shall be authorized for the following habitat types at the following ratios:

1. Severe winter ranges. Eight (8) acres of enhanced habitat shall be provided for every one (1) acre of disturbed elk or mule deer severe winter range.

2. Concentration areas and winter range. Five (5) acres of enhanced habitat shall be provided for every one (1) acre of disturbed elk concentration area or bighorn sheep winter range.

e. Preserve watering areas. The proposed development shall preserve waterholes, springs, seepages, marshes, ponds and other watering areas to the maximum extent possible.

f. Dogs prohibited. Dogs shall be prohibited within or adjacent to elk production areas, elk concentration areas, elk severe winter range, mule deer severe winter range and bighorn sheep winter range, except for dogs working as part of a bona fide agricultural operation. Dogs shall be kenneled within one-quarter (1/4) mile of an elk migration corridor during the periods of May 1 to June 20, and October 1 to 31.

g. Nuisances. The development shall not allow excessive lighting, noise or similar nuisances that could have a significant adverse effect on the continued use of the area by wildlife.

h. Fences. Applicants should not fence the perimeter of their property. Any fences that are permitted shall be designed so that they do not adversely affect the movement of wildlife, including, at a minimum, compliance with the following standards:

1. Height. Fences shall not exceed forty-two (42) inches in height.

2. Materials. Wire fences shall be limited to a maximum of three (3) strands of smooth fence and shall not be made of woven wire. Rail fences shall be limited to three (3) rails of rounded or split rails. Wire fences shall have a kickspace (distance between the top two [2] wires) of twelve (12) inches. Rail fences shall have a distance of eighteen (18) inches between the rails.

3. Removable sections. Fences in migration corridors shall have removable sections or openings to allow for seasonal passage of wildlife. It shall be the applicant's responsibility to remove fence sections when migration is occurring. Lay down fences are preferable over removable sections.

4. Existing fences. Applicants proposing development within sensitive wildlife habitat areas shall, as a condition of development approval, agree to remove or to alter any existing fences on the property to comply with the above provisions.

5. Fences around residences. Fences located in the immediate vicinity of a dwelling unit shall be exempt from these limitations.

6. Two-rail fences. At the discretion of the Town Council, a two-rail wooden fence not to exceed thirty-six (36) inches in height may be required.

i. Retaining walls. If a retaining wall is planned within a migration corridor, it shall be designed to permit passage of wildlife. This may include limiting the height of the wall to less than six (6) feet for any wall that is in excess of twenty-five (25) feet in length, or designing the wall so that it steps up in sections, so wildlife can climb over the wall.

j. Trail management. The proposed development shall not include trails that cannot be managed, including closure by the applicant during critical wildlife use periods.

k. Construction management plan. The proposed development shall be subject to a construction management plan that limits construction activity to acceptable levels during sensitive wildlife use periods.

l. Access. The applicant shall provide access to CDOW personnel and Town staff to assist in the implementation and enforcement of wildlife mitigation and enhancement plans and to monitor wildlife activities.

(2) Nest sites.

a. Buffer. No development shall occur within a radius of three hundred (300) feet of a golden eagle nest site or within a radius of one hundred (100) feet of a goshawk or red-tailed hawk nest site.

b. Limitations. If development is permitted to occur within or adjacent to the buffer area, it shall be designed to ensure

there is no disturbance to the nest site between December 1 and June 1 and to ensure the eagle's or hawk's prey base in the vicinity of the nest is maintained. The development shall also be designed to retain tall, overly mature and standing dead trees that provide nesting or perching habitat for eagles and hawks. (Ord. 4-1998 §1; Ord. 7-2000 §1)

**Sec. 16A-4-30. Brush Creek Impact Area.**

(a) Establishment of Brush Creek Impact Area. The Environmental Sensitivity Map in the Town's Comprehensive Plan identifies the Brush Creek Impact Area as an area that is sensitive to the environmental impacts of development. The Comprehensive Plan designates this area as an important environmental resource area for its aesthetic features, riparian habitat, wetlands and hydrological values. This Section establishes the Brush Creek Impact Area as an environmentally sensitive area and provides standards for development proposed within this area.

(b) Applicability. The provisions of this Section 16A-4-30 shall apply to any development proposed within the areas described in Subsection (c), Map Incorporated.

(c) Map Incorporated. The Brush Creek Impact Area, as depicted on the Environmental Sensitivity Map in the Town's Comprehensive Plan, is hereby incorporated in this Code by reference. A copy of the Environmental Sensitivity Map is available for public review in the Building and Planning Department during normal business hours.

(1) Purpose of map. The Environmental Sensitivity Map is a general map that identifies the locations of lands whose development would impact Brush Creek and its associated riparian habitat and wetlands. Its purpose is to identify those lands that are subject to the provisions of this Section 16A-4-30.

(2) Lands outside of Brush Creek Impact Area. Because the Environmental Sensitivity Map is a general map, the map should be considered to be a "guide." Lands mapped within this area shall be verified on the ground, pursuant to Subsection (d), Brush Creek Impact Report. There may also be lands located outside of the boundaries of the Brush Creek Impact Area whose development would impact Brush Creek and its associated riparian habitat and wetlands. The Town, in consultation with appropriate governmental agencies or other qualified natural resource specialists, may determine that the proposed development of such lands outside of (but in close proximity to) the boundaries of the Brush Creek Impact Area will also be subject to the provisions of this Section 16A-4-30. This determination shall be made during sketch plan review for an application that is a PUD, or during preliminary plan review for an application that is a subdivision.

(d) Brush Creek Impact Report. Because the Environmental Sensitivity Map is a guide, an applicant proposing development on lands located within the boundaries of the Brush Creek Impact Area, or on lands located outside of the Brush Creek Impact Area whose development is determined to have the potential to impact Brush Creek and its associated riparian habitat and wetlands, shall first complete a site specific analysis of the property. The analysis shall evaluate the relevant hydrologic features, make a site specific determination of the location of riparian habitat and wetlands on the property, analyze how these areas contribute to water quality and wildlife habitat, and describe how the proposed development will comply with Subsection (e), Standards. The analysis shall be prepared by a natural resource specialist qualified in the appropriate disciplines, and shall contain the following materials:

(1) Map. A map of the property shall be submitted that depicts the locations of riparian habitat, wetlands and the important hydrological features of the property in relationship to planned development areas.

(2) Report. A report shall be submitted that evaluates the potential impacts of the development on Brush Creek and its associated riparian habitat and wetlands. It shall describe the activity patterns of the wildlife using the riparian area and wetlands, identifying breeding areas, nesting areas, watering areas and movement or travel corridors. It shall also identify any species that use the land that are listed by the State as endangered, threatened or species of special concern. The report shall also describe the current hydrologic conditions associated with the property and provide an evaluation of the potential impacts of the proposed development on water quality, the water cycle and the stream channel. Finally, the report shall describe how the proposed development will comply with Subsection (e), Standards, including proposed wildlife and water quality mitigation and enhancement measures.

(e) Standards. Development subject to the provisions of this Section shall comply with the following standards:

(1) Setback. Development shall not take place within the stream channel and shall not alter the channel of Brush Creek or its capacity, except as expressly permitted herein. Development shall be set back a minimum of twenty-five (25) feet, measured horizontally from the outer edge of any riparian or wetland areas that are subject to the provisions of this Section 16A-4-30, Brush Creek Impact Area. Development shall also comply with the provisions of Section 16A-4-40, Flood plain and Wetland Areas, with regard to the location of development in relation to one-hundred-year flood plains and jurisdictional wetlands, including establishment of a larger setback, if necessary, to ensure compliance with federal and local regulations.

a. Exception for water-dependent structures. Recreation access sites, irrigation devices, water diversion facilities, erosion control devices and similar water-dependent structures may be permitted within this setback, provided any other applicable federal, state and local permits have been obtained, and the installation will comply with all other applicable standards of this Section.

b. Exception for other necessary structures. Underground utilities, roads, trails, bridges and similar facilities may be permitted within this setback when the applicant demonstrates that: (1) it is necessary and appropriate to locate the structures outside of the setback; (2) any other applicable federal, state and local permits have been obtained; and (3) the installation will comply with all other applicable standards of this Section, including submission of a plan for restoration of disturbed areas, pursuant to Subsection (e)(2)b, Restoration Plan.

c. Exception for stream restoration. Where the natural channel has previously been altered, efforts may be undertaken to restore the channel to its natural state or to enhance aquatic conditions within the stream. Where such efforts are permitted, provision shall be made for the following:

1. Fish passage and wildlife movement. Provision shall be made to permit passage of fish and movement of wildlife through the structures.

2. Pools and other cover. Stream enhancement shall be undertaken to compensate for any development activities that alter existing pools, or undercut banks and other stream cover used by fish and wildlife. This shall include the creation of new pools, the placement of trees, boulders and similar submerged objects, or the installation of drop structures and deflectors, based on the subject stream conditions.

3. Stream sedimentation. The development shall not cause stream bank erosion and sedimentation. Any lands subject to cut or fill activity shall be stabilized with erosion control mechanisms as soon after disturbance as is practical. Vegetation that is removed shall be replaced, in compliance with the provisions of Subsection (e)(2), Vegetation Removal.

d. Exception for other types of development. The Town Council may authorize other types of development not listed above to occur within the setback area if at least four (4) out of five (5) of the members of the Town Council approve an ordinance, identifying the reasons why the development is unable to avoid the setback area.

(2) Vegetation removal. Development subject to the provisions of this Section shall avoid or minimize the removal or loss of vegetation characteristic of the riparian area, paying particular attention to soil-binding stream bank vegetation. Vegetation removal necessary for control of noxious weeds, as defined by the Colorado Cooperative Extension Service, shall be permitted.

a. Erosion control. If vegetation is removed, or if soil is otherwise subject to erosion, then best management practices for the control of erosion shall be instituted during construction to protect water quality. Engineered stream bank stabilization practices, such as exposed rip-rap, shall be avoided wherever possible, and shall be limited to locations where more natural techniques cannot practically be utilized.

b. Restoration plan. A restoration plan shall be prepared for the site, ensuring that vegetation which is removed is replaced on-site within the next growing season.

1. Type of vegetation. Replacement vegetation shall be limited to native species that are typically found in riparian habitat and wetlands. Replacement vegetation shall be equivalent in type, quality and function to that removed because of development.

2. Amount of vegetation. Vegetation should be replaced at a ratio of one to one (1:1), measured in terms of foliage mass and tree caliper size, giving consideration to expected vegetation growth. A lesser replacement ratio may be approved if vegetation was removed for the express purpose of permitting greater visibility of, or greater access to, the creek.

3. Guarantee. The Town may require the applicant to guarantee performance of the restoration plan by providing security of not less than one hundred percent (100%) of the cost of the replacement vegetation.

(3) Pollutants. Development shall not introduce organic or inorganic pollutants into Brush Creek. Herbicides may be used for noxious weed control when nonchemical methods will not be practical or effective. Hazardous materials associated with any use in the Brush Creek Impact Area shall be stored and used in compliance with applicable state and federal hazardous materials regulations. Measures shall be designed and implemented to contain fuel storage areas, to prevent spilled fuels, lubricants or other hazardous materials from entering the creek during the construction or operation of any use, and to control parking lot runoff from entering the creek.

(4) Water cycle. Development shall not interfere with the water cycle that supports any riparian habitat or wetlands on the property. Water shall not be diverted from the site, and no development activities shall be undertaken that would lower the water table, or would

cause the temperature of water in the creek to increase beyond the tolerance levels of trout and other aquatic habitat. (Ord. 4-1998 §1; Ord. 7-2000 §1)

**Sec 16A-4-40. Flood plain and wetland areas.**

(a) General Standard. No development shall be allowed that would adversely affect the quantity, quality or accessibility of the water resources of the Town or region, or which would occur at the expense of established water-dependent agricultural activities, or which would result in increased salinization of water courses, loss of minimum stream flows, diminishment of wildlife habitat, or major expenditures to reacquire or redistribute major water resources. Development shall not be allowed to pollute or interfere with the natural changes of the river, stream or other tributary, including erosion and/or sedimentation during construction. Increased on-site drainage shall be accommodated within the parcel to prevent entry into the river or onto its banks. Pools or hot tubs cannot be drained outside the designated building envelope.

(b) Flood Plains. Flood plains are an extension of the stream channel cross-sections required to accommodate increased stream flow during flood periods. Their obstruction or alteration will alter stream behavior, leading to siltation, stream bank erosion and aggravated flood conditions. All development proposed in an application for PUD, subdivision or special review shall be located outside of the limits of the one-hundred-year flood plain, as depicted on the most recent edition of the Federal Emergency Management Agency (FEMA) Flood Insurance Rates Maps for areas within the Town. An applicant for a subdivision, PUD or special review proposed in an area where there are no detailed flood elevations depicted on the FEMA maps shall be required to submit a study that identifies the limits of the one-hundred-year flood plain on the property and to locate all proposed development outside of the limits of that area. A professional engineer licensed in the State shall prepare the study.

(c) Wetlands. Areas that are considered to be jurisdictional wetlands, as defined by the United States Army Corps of Engineers, are prohibited from development unless appropriate mitigation is approved by the Corps of Engineers, by appropriate permit, or authorization under Section 404 of the Clean Water Act, and by the Town Council. This prohibition shall not apply to the development of a lot subdivided prior to the effective date of this Development Code (September 2, 1998). However, development of such lots shall comply with any wetlands protection and mitigation requirements that may have been applied to the property during the approval of the PUD or subdivision in which it is located.

(d) Land Under Water. Whenever there is proposed for development a tract of land partially under water at any time during the year, there shall be excluded from development those areas of the tract that are under water, up to the mean high water mark, except where such a requirement would prevent construction of even one (1) single-family residence within the property.

(e) Guarantee. A guarantee must provide in the event a watercourse or riparian area is altered or relocated, that applies to the developer and his or her heirs, successors and assigns that ensures that the flood-carrying capacity and riparian habitat on the parcel is not diminished and that no situation is created which causes additional erosion of streambanks into the watercourse. (Ord. 4-1998 §1; Ord. 7-2000 §1)

**Sec. 16A-4-50. Geologic hazard areas, steep slopes and ridgeline protection areas.**

(a) Purpose. Steep slopes are prone to erosion and soil instability, are difficult to revegetate and may also be subject to geologic hazards. The purpose of this Section is to ensure that development does not occur on slopes that are excessively

steep, unstable or hazardous. Applicants are also referred to Section 16A-4-320, Landscaping, Grading and Other Design Standards, to ensure that development which is permitted on slopes that are more stable is done in a manner that minimizes environmental and aesthetic impacts on the Town.

(b) Applicability. The standards in this Section shall apply to all development proposed within the Town.

(c) Development Prohibited in Geologic Hazard Areas. No development proposed in any SPA, PUD, subdivision or special review application shall be approved in any area that the Town Council finds, on the basis of competent engineering or geologic data, to be unsuitable for the proposed activity or use due to the potential harm to the public health, safety or welfare that would be posed by mud flow, rock slide, avalanche, steep or unstable slopes or soils, or other geologic hazards, features or conditions.

(d) Development Prohibited on Slopes Greater Than Thirty Percent (30%). No development shall be allowed on any slope greater than thirty percent (30%), except in the following circumstances:

(1) Ski area improvements. Construction of roads, driveways, ski trails and related ski area improvements including, but not necessarily limited to lift towers, but excluding restaurants and similar structures that are intended for human occupancy, may be allowed on slopes greater than thirty percent (30%).

(2) Lots subdivided prior to January 1, 1987. Development may be allowed on lots and within approved building envelopes containing areas of slopes greater than thirty percent (30%) if the lot was subdivided prior to January 1, 1987.

(3) Man-made slopes. Development may be permitted on slopes greater than thirty percent (30%) that are the result of minor man-made cutting or filling of an otherwise continuous natural slope.

(4) Other circumstances. The Town Council may authorize development on slopes greater than thirty percent (30%) in circumstances not listed above if at least three-quarters (¾) of the members of the Town Council present and voting approve an ordinance finding that:

a. The development is unable to avoid the steep slopes, and the reasons therefor; and

b. On the basis of competent engineering or geologic reports and data and testimony received, the design and/or construction techniques that will be incorporated within the development will satisfactorily mitigate the risk of potential harm to the public health, safety or welfare.

(5) Engineer's opinion. For the Town to allow development under any of the above circumstances, the applicant shall provide an opinion from a professional geotechnical engineer licensed in the State stating that:

a. The slope is not prone to instability or failure; or

b. The proposed development will not cause greater slope instability or increase the potential for slope failure, and that therefore, there will be no significant risk that damage to adjacent property will result from the proposed construction.

(e) Avoid Activities Which May Affect Stability on Slopes Greater Than Fifteen Percent (15%). Development activities that decrease the stability of any slope that is greater than fifteen percent (15%) shall be avoided. These activities include, but are not limited to, activities that add water to a slope, activities that add weight to the top of a slope and activities that steepen the existing grade of a slope.

(f) Ridgeline Protection Areas.

(1) Ridgeline protection areas. Ridgeline protection areas are those lands that are visible from Brush Creek Road, Owl Creek Road or the Town Community Park and are at the crest or highest elevation of a ridge or hillside, or are within fifty (50) feet of elevation, measured vertically, from the crest of a ridge or hillside. These lands frame the natural mountain setting within the Town and include lands outside the Town boundary. It is the intent of the Town to ensure that the mountaintops surrounding Snowmass Village retain their natural appearance by preventing structures from being built at or near the crest of a ridge or hillside.

(2) Ridgeline penetration prohibited. Except as provided in subparagraph (f)(3) below, no development of new structures shall be designed or located within a ridgeline protection area in such a way that it will appear to penetrate above the crest of a ridgeline protection area as seen from Brush Creek Road, Owl Creek Road or the Town Community Park when viewed from within the park or road surface edge at a height of five (5) feet. In addition, any existing structure that is located within a ridgeline protection area that is demolished may only be rebuilt if its design complies with the standards of this Subsection (f).

(3) Exception for single-family residence or existing structures. The Planning Director may approve an application for a single-family residence or the reconstruction, relocation or alteration of an existing structure if the prohibitions of paragraph (2) above would prevent the development of a single-family residence on a lot subdivided prior to the effective date of this Land Use and Development Code (September 2, 1998) or where the reconstruction, relocation or alteration of an existing structure does not cause the structure to encroach into a ridge-line protection area to a greater extent in any dimension or configuration, specifically height, width or mass, than the existing structure. The Planning Director shall only approve the application if it is found that the development complies with the standards that follow below and all other applicable standards of this Land Use and Development Code. The Planning Director is authorized to require the applicant to submit such visual sight line analysis information as may be necessary to determine the application's compliance with these standards and is also authorized to impose such conditions on the application as are necessary to ensure its compliance with these standards.

a. Mass. The mass of the proposed development shall be broken into smaller forms and stepped down or along the hill or shall be otherwise configured to follow the slope of the terrain so as to minimize the amount of the building that penetrates above the ridgeline.

b. Form. The form of the development (in particular, its roof form) shall replicate, parallel or complement the natural form of the ridgeline, so it appears to be an element of that natural form.

c. Preserve existing trees. Existing live trees on the site shall be preserved to the maximum extent possible, so as to screen or soften the appearance of the development. Trees that must be removed shall be replaced with the same size tree that was removed. Replacement trees shall be planted, or, for sites that do not contain trees, new trees shall be planted in locations that will help to screen the development.

d. Exterior materials. The exterior materials of the structure, including roofs, shall be built, painted or stained to blend with or replicate the predominant colors of the surrounding land features or vegetation (earth tones). Reflective roof materials shall not be used, unless the materials are treated to eliminate reflections. Reflective or mirrored glass shall not be used on the exterior of the structure.

e. Exterior lighting. Any exterior lighting used on the property shall be down-directional and contained so that the bulb or other light source is opaquely shielded from view. Floodlights shall not be used to illuminate the structure or adjacent land features.

(4) Exception for community or ski area facility. The Town Council may grant an exception from the prohibitions of paragraph (2) above for a community or ski area facility, when the applicant demonstrates, to the satisfaction of the Town Council, that the function of the facility requires it to be located within a ridgeline protection area. The Town Council shall only grant the exception if the Town Council finds that the development will comply with the standards of paragraph (3) above that can be accommodated by the applicant without preventing the facility from functioning, and will comply with all other applicable standards of this Land Use and Development Code.

(5) Exception for Town Council approval. The Town Council may, upon such terms and conditions as it deems necessary and proper, grant approval of a development which fails to comply with the standards of paragraph (2) above, if the development complies with the standards of paragraph (3) above and all other applicable standards of the Land Use and Development Code. When reviewing any request to penetrate the ridgeline, the Town Council shall consider the recommendations of the Planning Commission in determining:

- a. The extent of the visual encroachment;
- b. The visual significance of the ridgeline or skyline being affected;
- c. The effectiveness of the mitigation being proposed by the applicant to minimize the visual impact; and
- d. Whether the encroachment is unavoidable or necessary to provide for the reasonable use of the land.

Any approval of a development by the Town Council which does not comply with this Subsection (f) may only be granted upon approval by at least three-quarters ( $\frac{3}{4}$ ) of the Town Council members present and voting, for good cause shown and by identifying the reasons why the noncompliance is warranted. (Ord. 4-1998 §1; Ord. 7-2000 §1; Ord. 5-2001 §1; Ord. 06-2004 §1)