SECTION 11-106: PROTECTION OF WILDLIFE HABITAT AREAS

A. **PURPOSE.** The natural and scenic resources in Gunnison County, including wildlife, are essential components of the County's economic base and help to establish the rural character of the County. Tourists visit and recreate in Gunnison County because of the quality of these natural resources, including the abundance of wildlife species found in the area. These resources are also a basic element of the quality of life for residents of Gunnison County. The standards in this Section are intended to protect sensitive wildlife habitat areas, to protect biological field research, and to ensure that wildlife remains a part of Gunnison County's natural environment for generations to come. In addition, this Section is designed to:

   1. **SUSTAIN AND ENHANCE EXISTING POPULATIONS OF GUNNISON SAGE-GROUSE.** Sustain and enhance survival of the Gunnison Sage-grouse.

   2. **PRECLUDE THE NEED TO LIST, OR MINIMIZE THE IMPACT OF LISTING OF GUNNISON SAGE-GROUSE AS CANDIDATE SPECIES.** Help implement an effective strategy and programs that will preclude the need to list, or minimize the impact of listing of the Gunnison Sage-grouse as a candidate for threatened or endangered status pursuant to the *Endangered Species Act of 1973*, or at a minimum, demonstrate the intent of Gunnison County to preserve and protect habitat that will lessen the impact if listing does occur.

B. **APPLICABILITY.** All applications for Land Use Change Permits, including Building Permits, Individual Sewage Disposal System Permits, Gunnison County Access Permits, Gunnison County Reclamation Permits, and Land Use Change Permits shall be processed subject to the individual requirements of this Section, and assessed to determine if the location of the proposed activity is within the sensitive wildlife habitat areas designated on the maps referenced in *Section 11-106: C.: Maps Used to Identify Sensitive Wildlife Habitats.*

   1. **DEVELOPMENT ON INDIVIDUAL LOTS, WITHIN A BUILDING ENVELOPE, IN SUBDIVISIONS APPROVED BY GUNNISON COUNTY.** If a building envelope on individual lots in subdivisions approved by Gunnison County that was designated on an approved plat, recorded in the Office of the Gunnison County Clerk and Recorder, and is located in Tier 1 Sage-grouse habitat, the building envelope shall be relocated to avoid or minimize impacts to Gunnison Sage-grouse or their habitat, to the maximum extent feasible. This requirement is general in nature and applicable to property subject to land use regulation by Gunnison County. If it is determined that relocation of the building envelope is necessary to avoid or minimize impacts to Gunnison Sage-grouse or their habitat, the process to relocate the building envelope shall be handled as an administrative review by the Community Development Department.

C. **MAPS USED TO IDENTIFY SENSITIVE AND CRITICAL WILDLIFE HABITATS**. The general reference maps used to identify locations of sensitive wildlife habitats. Because maps depicting wildlife habitat are general in nature, and because animal distribution is fluid and animal populations are dynamic, the maps shall be used as "guides" or "red-flags."

   1. **COLORADO DIVISION OF PARKS AND WILDLIFE MAPS.** The Wildlife Resource Information System (WRIS) and Natural Diversity Information Source (NDIS) maps available from the Colorado Division of Parks and Wildlife.

   2. **GUNNISON COUNTY MAPS.** The Gunnison County *Gunnison Sage-grouse Habitat Map*. The purpose of this map is to place a landowner on notice that a parcel may contain important Sage-grouse habitat areas.

D. **INITIAL SITE-SPECIFIC ANALYSIS REQUIRED FOR ACTIVITY PROPOSED ON A PARCEL THAT IS WHOLLY OR PARTIALLY WITHIN GUNNISON SAGE-GROUSE HABITAT.** As part of the applicable required permit application review process, the Gunnison County Wildlife Conservation Coordinator, in consultation with the Colorado Division of Parks and Wildlife, shall

conduct an initial site-specific analysis of development that is proposed on a parcel that is wholly or partially within Gunnison Sage-grouse habitat.

E. **APPLICATIONS FOR BUILDING PERMITS, ACCESS PERMITS, INDIVIDUAL SEWAGE DISPOSAL SYSTEM PERMITS AND GUNNISON COUNTY RECLAMATION PERMITS ON A PARCEL THAT IS WHOLLY OR PARTIALLY WITHIN GUNNISON SAGE-GROUSE HABITAT.** Development located on a parcel that is wholly or partially within Gunnison Sage-grouse habitat that requires a Building Permit, Access Permit, an Individual Sewage Disposal System Permit, or a Gunnison County Reclamation Permit.

1. **LOCATION WITHIN GUNNISON SAGE-GROUSE TIER 1 HABITAT.** All applications for Land Use Change Building Permits, Access Permits and Individual Sewage Disposal System Permits and Gunnison County Reclamation Permits shall be reviewed by the Gunnison County Wildlife Conservation Coordinator and shall require consultation with the Colorado Division of Parks and Wildlife.

2. **LOCATION WITHIN GUNNISON SAGE-GROUSE TIER 2 HABITAT.** All applications for Land Use Change Permits, Building Permits, Access Permits, Individual Sewage Disposal System Permits and Gunnison County Reclamation Permits shall be reviewed by the Gunnison County Wildlife Conservation Coordinator and may require consultation with the Colorado Division of Parks and Wildlife.

3. **PRE-APPLICATION CONFERENCE.** Owner(s) of land may request a pre-application conference with Gunnison County staff to review Gunnison Sage-grouse issues that reasonably may arise from an application pursuant to this Section. Upon receipt of such request, Gunnison County staff, and as available a representative of the Colorado Division of Parks and Wildlife, will meet with the owner(s) to review such issues and to identify potential solutions. The Community Development Department will coordinate the conference. Gunnison County shall consider the advice of applicant's wildlife biologist/ecologist or a similar qualified expert.

4. **REFERRAL TO GUNNISON COUNTY WILDLIFE CONSERVATION COORDINATOR AND ON-SITE CONSULTATION.** The Community Development Department and the Public Works Department shall forward a copy of the application(s) to the Gunnison County Wildlife Conservation Coordinator. The Gunnison County Wildlife Conservation Coordinator shall determine the habitat type and whether an on-site consultation is required. If an on-site consultation is required the Gunnison County Wildlife Conservation Coordinator shall coordinate and schedule an on-site consultation with the applicant and/or applicant's representative, the Community Development Department, Public Works Department and a representative from the Division of Parks and Wildlife. The purpose of the on-site consultation shall include location of any habitat, identification of site-specific data to inform the review process, and identification of potential mitigation of Sage-grouse related issues..

   a. **TIMELINE FOR REVIEW.** The County shall request that the Colorado Division of Parks and Wildlife submit comments about the application within 21 days after the on-site consultation; when comments are not provided within that time by the Division, the County shall proceed to complete the permit process without those comments.

F. **REVIEW, REFERRAL TO COLORADO DIVISION OF PARKS AND WILDLIFE OF MINOR AND MAJOR IMPACT PROJECT APPLICATIONS.** The Community Development Department shall refer Land Use Change Permit applications for Minor or Major Impact projects to the local office of the Colorado Division of Parks and Wildlife for that agency's review and comments to make use of the expertise and judgment of that agency in the protection of sensitive wildlife habitat, and its recommendations, if any, to reduce or eliminate adverse impacts to sensitive wildlife habitat and species that may result from proposed development. It is intended that the Division of Parks and Wildlife will review the application and participate in on-site consultations and provide timely comments to the Community Development Department that identify actions and/or recommendations to reduce or eliminate adverse impacts to wildlife.

1. **MINOR IMPACT PROJECTS.** The Department shall submit a copy of the Minor Impact project application to the Division pursuant to *Section 6-106: E: Request for Review by Other Agencies or Departments*, with a written request that the Division review the application and identify in a written

response whether or not the parcel on which the land use change is proposed is located within sensitive wildlife habitat, and issues that it believes appropriate to be addressed during the permitting process. Based upon the Division's knowledge of a specific site, the Division may also recommend that a wildlife habitat analysis be conducted, pursuant to *Section 11-106: F.4.: Wildlife Habitat Analysis of Minor Impact or Major Impact Projects,* which shall be required to be submitted by the applicant before a public hearing is scheduled on the Minor Impact project application.

2. **MAJOR IMPACT PROJECTS.** The Department shall submit a copy of the Preliminary Plan for a Major Impact project application to the Division pursuant *to Section 7-302: C: Review and Comment by Review Agencies,* with a written request that the Division review the application and identify in a written response whether or not the parcel on which the land use change is proposed is located within sensitive wildlife habitat and issues that it believes appropriate to be addressed during the permitting process. If the parcel is located within sensitive wildlife habitat, a wildlife habitat analysis conducted pursuant to *Section 11-106: F.4.: Wildlife Habitat Analysis* shall be submitted by the applicant before the public hearing on the Preliminary Plan is scheduled.

3. **PRE-APPLICATION CONFERENCE FOR MINOR OR MAJOR IMPACT PROJECTS LOCATED ON A PARCEL WHOLLY OR PARTIALLY WITHIN GUNNISON SAGE-GROUSE HABITAT.** A Pre-Application Conference is required for any Minor or Major Impact project located wholly or partially on a parcel within Gunnison Sage-grouse habitat.

4. **WILDLIFE HABITAT ANALYSIS OF MINOR IMPACT OR MAJOR IMPACT PROJECTS**. If Colorado Division of Parks and Wildlife comments indicate that the proposed land use change for a Minor Impact or Major Impact project is within sensitive wildlife habitat, the applicant shall be required to submit 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 *Section 11-106: G.: General Standards for Development in Sensitive Wildlife Habitat Areas.* The analysis shall be prepared by a wildlife biologist/ecologist or similar qualified expert in consultation with the Colorado Division of Parks and Wildlife. It shall be submitted with the Preliminary Plan application for a Major Impact project, or before the public hearing is scheduled on a Minor Impact project, and shall contain the following:

   a. **MAP.** A map of the property shall be submitted, depicting the activity patterns of the wildlife using the sensitive wildlife habitat, identifying, where relevant, migration routes, travel corridors or patterns, nesting, feeding, watering and production areas, and any critical connections or relationships with habitat adjoining, but outside of, the project site. The map shall also identify whether the land immediately surrounding the proposed land use change is privately owned or is public land owned by the U.S. Forest Service, U.S. Bureau of Land Management, Colorado Division of Parks and Wildlife, or other similar agency.

   b. **REPORT.** A report shall be submitted that describes the activity patterns of the wildlife using the habitat, using a scientifically valid time period. It will also identify 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 are species of special concern.

      1. **EVALUATE IMPACTS.** The report shall evaluate the potential impacts of the proposed land use change on the sensitive wildlife habitat and the species using that habitat, including whether it could be a threat to the viability of the species, cause a reduction in the diversity of wildlife species in the county, or change the status of its federal or state listing. The report shall identify the types of potential impacts that are anticipated (including stress due to human presence, interference with reproduction, change of migration routes, etc.) and the time periods (spring, summer, fall, winter, year-round, etc.) during which wildlife are expected to be affected by the proposed land use change.

      2. **CUMULATIVE IMPACTS.** The report addressing any Major Impact project (and any proposed land use change classified as a Minor Impact project that the Planning Commission determines requires such evaluation) shall also evaluate the cumulative impacts on wildlife habitat beyond the project site. The report shall also address whether the cumulative impacts of the proposed land use change when added to the past and

present impacts of other land use changes, will eliminate, reduce, or fragment wildlife habitat in the county to the extent that the viability of an individual species is threatened or the diversity of species found in the county is reduced, or the population of a species in the impact area will be significantly reduced.

3. **MITIGATION PLAN.** The report shall include a wildlife habitat mitigation plan that describes how the proposed development will comply with *Section 11-106: G.: General Standards for Development in Wildlife Habitat Areas,* providing detail regarding the avoidance, mitigation, and enhancement techniques, monitoring and performance criteria that will be employed.

G. GENERAL STANDARDS FOR DEVELOPMENT IN SENSITIVE WILDLIFE HABITAT AREAS. All development shall comply with the following standards when it is located on lands designated as sensitive wildlife habitat, including but not limited to parcels located partially or wholly in habitat areas delineated on the Gunnison County *Gunnison Sage-grouse Habitat Map*, and all lands determined to be sensitive wildlife habitat pursuant to Section 11-106: B: *Applicability.*

1. **MITIGATION OF ADVERSE IMPACTS TO SENSITIVE HABITAT.** A proposed land use change must mitigate adverse impacts it causes to lands determined to be sensitive wildlife habitat including but not limited to a Gunnison Sage-grouse habitat. Proposed land use changes that are found to have a significant net adverse impact that cannot be mitigated upon sensitive wildlife habitat, shall be denied.

   a. **CONSIDERATION OF BENEFICIAL EFFORTS**. Gunnison County shall consider, and affirmatively recognize as mitigation in the permitting process, conservation easements/covenants (and similar mechanisms), and documented management agreements/programs accomplished, or to be accomplished, in coordination with the Colorado Division of Parks and Wildlife or other agencies (such as the Natural Resources Conservation Service or the U.S. Fish and Wildlife Service) that are beneficial to the Gunnison Sage-grouse. Each case will be reviewed on an individual basis to determine if the easement, covenant or deed restriction satisfies all of these standards.

      1. **TERMS OF EASEMENT ARE PERPETUAL AND SATISFACTORY TO COUNTY**. The terms of the existing easement, covenant or deed restriction are perpetual and acceptable to the County.

      2. **PRESERVED LANDS PROVIDE GUNNISON SAGE-GROUSE HABITAT**. That both the preserved land provides Gunnison Sage-grouse habitat, and the restrictions imposed by the pertinent easement, covenant or deed restriction are sufficient to justify the determination that adverse impacts have been substantially or wholly mitigated by such preservation.

      3. **ADDITIONAL BENEFITS SUBSTANTIALLY OR WHOLLY MITIGATE ADVERSE IMPACTS.** Additional preservation efforts substantially or wholly mitigate adverse impacts to sensitive wildlife habitat.

2. **IRRIGATION DITCHES.** Pursuant to Colorado law, owners of irrigation ditches have the right to maintain irrigation ditches, headgates and other diversion structures. Gunnison County shall not require mitigation that will interfere with the right of ditch owners to maintain ditches, headgates or other diversion structures.

3. **MITIGATION TECHNIQUES**. Mitigation techniques to protect wildlife species that the County determines may be impacted by a proposed land use change on lands identified in Section 11-106: B: *Applicability,* including, but not limited to:

   a. **LIMITATIONS.** Requirements to avoid sensitive wildlife habitat during seasons the wildlife species use the habitat. When appropriate, the proposal shall include techniques to minimize human intrusion, including, but not limited to:

      1. **BUFFERS.** Visual and sound buffers to screen structures and activity areas from habitat areas through effective use of topography, vegetation, and similar measures.

2. **LIMITATIONS OF HUMAN ACTIVITIES DURING SENSITIVE TIME PERIODS**. Seasonal avoidance limitations on, or stoppages of intrusive human activities during sensitive time periods, including limiting construction activities and recreational uses during sensitive time periods such as elk migration, elk calving or when sage grouse mating, nesting or brood rearing is occurring on parcels located partially or wholly in habitat areas delineated on the Gunnison County *Gunnison Sage-grouse Habitat Map.*

3. **LOCATIONAL CONTROLS.** Controls on the location of development, so it does not force wildlife to use new migration corridors, or expose wildlife to significantly increased predation, interaction with vehicles, intense human activity, or more severe topography or climate, or encircle wildlife habitat with development.

b. **WATERING AREAS**. Measures to avoid disturbance of waterholes, springs, seepages, marshes, stream beds, stream banks, wetlands, streamside vegetation, ponds, and watering areas to the maximum extent feasible. Catchment basins may be required to prevent stream siltation.

c. **HABITAT COMPENSATION**. Requirements to develop additional habitat, or to acquire and permanently protect existing habitat to compensate for habitat that is lost to development, in the form of ongoing on-site or off-site wildlife habitat enhancement. Enhancement is the process of increasing wildlife carrying capacity on undeveloped habitat and may include prescribed burns, seeding, brush cutting, and fertilization, as determined to be appropriate by the County, based on the advice of the Colorado Division of Parks and Wildlife or other technical experts.

d. **DOMESTIC ANIMAL CONTROLS.** Controls on domestic animals within or near areas of sensitive wildlife habitat. Dogs may be prohibited within one-half mile of elk, deer, and bighorn sheep critical winter ranges and winter concentration areas. The number of cats and dogs allowed in a development may also be limited.

1. **DOGS AND CATS PROHIBITED OR CONTROLLED NEAR GUNNISON SAGE-GROUSE HABITAT.** Requirements in the form of conditions of a permit, and/or inclusion within declarations of a subdivision's protective covenants enforceable by Gunnison County, may be required prohibiting, or requiring control by kenneling or other physically-secure methods within Gunnison Sage-grouse lek or within Gunnison Sage-grouse habitat.

e. **PROTECTION FROM ANIMAL-BORNE DISEASES**. Gunnison County may impose limitations on the introduction or possession of non-native species to lessen the possibility of the introduction of disease to native wildlife populations.

f. **CONTROL OF NUISANCES.** Controls on lighting, noise, excess use of fertilizers or pesticides, and similar nuisances that could have a significant net adverse effect on Gunnison Sage-grouse habitat and the continued use of the area by other wildlife.

g. **DENSITY RELOCATION.** Residential development may be clustered to avoid sensitive wildlife habitat.

h. **ROAD CONSTRUCTION.** Requirements to avoid new road construction through sensitive wildlife habitat.

i. **STREAM ALTERATIONS OR DIVERSIONS.** Controls on alterations or diversions of streams to retain the character and productivity of the streams. Such alterations will be subject to all applicable local, state and federal codes and regulations.

j. **ALTERATIONS OF EXISTING WET MEADOW/SAGE HABITAT INTERFACE AREAS.** Controls on alterations of existing wet meadow/sage habitat interface areas.

k. **STRUCTURES TO MINIMIZE HAZARDS.** Requirements to design, locate, construct and maintain game-proof fencing, one-way gates, game underpasses, or other structures to minimize hazards to wildlife, such as requiring a minimum distance between high-power electric wires to avoid electrocution of eagles.

l. **AGENCY ACCESS.** Where applicable, the provision of access to Colorado Division of Parks and Wildlife or other applicable agencies to facilitate maintenance of wildlife and wildlife habitat.

H. **STANDARDS SPECIFIC FOR DEVELOPMENT PROPOSED ON PARCELS THAT ARE WHOLLY OR PARTIALLY WITHIN GUNNISON SAGE-GROUSE HABITAT.** In addition to the standards and mitigation techniques included within this Section, the following standards shall apply specifically to development proposed on a parcel that is wholly or partially within Gunnison Sage-grouse habitat:

1. **DISTURBANCE GUIDELINES**. Development activity shall comply with the GUSG *Disturbance Guidelines in the Gunnison Sage-grouse Rangewide Conservation Plan, Appendix 1*, as may be adopted and amended from time to time by the Board.
2. **LIMITATION ON HUMAN ACTIVITIES INCLUDING RECREATIONAL USES DURING GUNNISON SAGE-GROUSE SENSITIVE TIME PERIODS**. Seasonal avoidance or limitations of intrusive human behavior during sensitive time periods, including but not limited to winter and when Gunnison Sage-grouse are mating or raising chicks.
3. **UNDERGROUND UTILITIES REQUIRED NEAR GUNNISON SAGE-GROUSE LEKS**. Utility lines shall be placed underground within Gunnison Sage-grouse habitat, to discourage avian predators.

I. **FENCES.** Design of fences other than those associated with agricultural operations ~~to~~ shall ensure they do not adversely impact wildlife. Design standards for fences are as follows:

1. **MAXIMUM HEIGHT**. Fences shall not be higher than 42 inches.
2. **MATERIALS.** Fences should be limited to a maximum of three strands or rails. Rail fences should only use rounded rails. Wire fences should not be made of woven wire, unless they are used to enclose sheep or goats. Wire and rail fences shall have a kick-space (distance between the top two wires or rails) of not less than 18 inches that uses wire or rail that has a smooth surface. The top rail should be made of a solid material in heavy use areas, to make it more visible to wildlife.
3. **REMOVABLE SECTIONS**. Fences in migration corridors should have removable sections or openings to allow for seasonal passage of wildlife. The applicant shall be responsible for removing fence sections when migration is occurring and replacing those sections when the season of migration has ceased.
4. **UPGRADING EXISTING FENCES.** As a condition of development approval, applicants proposing land use changes within sensitive wildlife habitat areas should agree to remove or to alter any existing fences on the property to comply with the above requirements.
5. **FENCES AROUND RESIDENCES EXEMPT.** Fences located in the immediate vicinity of a residence shall be exempt from these limitations.
6. **DESIGN AND LOCATION.** Fence location and design should minimize adverse impacts to sensitive wildlife habitat.

J. **VEGETATION.** Proposed land use changes shall be designed to comply with the recommendations of the Colorado Division of Parks and Wildlife regarding vegetation, and to preserve large areas of vegetation utilized by wildlife for food and cover. Roads shall be located on the edge of wildlife habitat areas, to prevent fragmentation of wildlife habitat. When native vegetation must be removed within habitat areas, it shall be replaced with native and/or desirable non-native vegetation capable of supporting post-disturbance land use. Individuals planting vegetation away from the homesite should consider using vegetation suitable for wildlife cover and food. Vegetation removed to control noxious weeds shall not be required to be replaced, unless the site requires revegetation to prevent erosion or noxious weeds from becoming established.

1. **TIME ALLOTTED FOR REVEGETATION.** Vegetation required pursuant to *Section 13-115: Reclamation and Noxious Weed Control* shall be established and growing within two growing seasons (730 days) of the issue date of the applicable Gunnison County Reclamation Permit.

K. **CDOW ACCESS.** Where applicable, the applicant shall continue to provide historical access or agreed-upon new access other than the historical access, for the Colorado Division of Parks and Wildlife to manage wildlife and to monitor wildlife activities.