Montrose County 1041 Regulations
Chapter 1, Article 1
Adopted November 4, 2013

Resolution No. 39-2013

RESOLUTION
OF
THE BOARD OF COUNTY COMMISSIONERS
FOR
MONTROSE COUNTY, COLORADO
CONCERNING
THE ADOPTION OF "1041" REGULATIONS
FOR THE PROTECTION OF GUNNISON SAGE GROUSE
OCCUPIED HABITAT

WHEREAS, the Gunnison Sage Grouse is a candidate species for listing as threatened or endangered under the federal Endangered Species Act, 15 USC 1531, *et seq*. ("the ESA"), and the United States Fish and Wildlife Service ("FSW") is presently considering whether to list the Gunnison Sage Grouse as endangered or threatened under the ESA; and

WHEREAS, the Division of Parks and Wildlife of the Colorado Department of Natural Resources ("CPW") has identified areas of occupied habitat within Montrose County, Colorado that are believed to be necessary to the continued viability of the species; and

WHEREAS, the Board of County Commissioners for Montrose County, Colorado ("the Board") has entered into an MOU with eleven counties in the region consisting of western Colorado and Eastern Utah, whereby the counties have agreed that:

> The Parties, individually and collectively, intend to ensure that reasonable and adequate work is being conducted, and shall continue to be conducted, to reach the goal of increasing the current abundance, viability and vitality of Gunnison Sage-grouse and their habitat. The purpose of this MOU is to identify measures and strategies to achieve this goal. This will be accomplished by sharing data, strategies, plans and tools, engaging in dialogue, providing among the Parties and to others recommendations and critique and fostering a rangewide perspective on Gunnison Sage-grouse and their habitat.; and

WHEREAS, in considering whether to list a species as endangered or threatened, in accordance with section 4(a)(1) of the ESA, 15 USC 1533, FSW will consider the following: A). Present or threatened destruction of habitat, B). Over utilization for commercial, recreational or other purposes, C). Disease or predation, D). Inadequacy of existing regulatory mechanisms, E). Other natural or manmade factors affecting continued existence; and

WHEREAS, CPW has identified the Gunnison Sage Grouse as a species of special concern in Colorado and has designated territory within Montrose County as important to the survival and

viability of Gunnison Sage Grouse, this habitat is shown on the "Gunnison Sage Grouse Occupied Habitat Map" contained in Attachment B to this Resolution and these 1041 Regulations and is hereby incorporated into this Resolution by this reference; and

WHEREAS, FWS has proposed to list the species as endangered or threatened under the ESA [*see*, Federal Register, Vol. 78, No. 8, at page 2486 - 2538 (January 11, 2013)]; and

WHEREAS, the Colorado Local Government Land Use Control Enabling Act, CRS 29-20-101, *et seq.*, authorizes a county to, within its jurisdiction, plan for and regulate the use of land by, among other things, protecting lands from activities which would cause immediate or foreseeable danger to significant wildlife habitat; and

WHEREAS, CRS 24-65.1-101, *et seq.* authorizes a local county government to designate areas of state interest and to develop guidelines to regulate development within such designated areas, such regulations are commonly referred to as "1041 Regulations"; and

WHEREAS, CRS 24-65.1-201 authorizes a local government, including a county, to designate certain areas of state interest, including from among other areas of state interest, areas having a significant impact upon natural resources of statewide importance; and

WHEREAS, CRS 24-65.1-104(12) defines "natural resources of statewide importance" to include areas of significant wildlife habitats in which wildlife species, as identified by the Division of Parks and Wildlife of the Colorado Department of Natural Resources, could be endangered; and

WHEREAS, the Board published notice in the Montrose Daily Press and the San Miguel Basin Forum of a public hearing to consider the adoption of 1041 regulations as set forth in this Resolution, with said notice being published for a period of at least thirty (30) days in accordance with law, and on the date of this Resolution's enactment conducted such public hearing, and in this Resolution and the associated Montrose County 1041 Regulations, the Board considered and finds:

a. that it is a matter of state interest, as well as local and federal concern, to insure the existence of areas of suitable habitat for the Gunnison Sage Grouse in order to protect the survival and vitality of the Gunnison Sage Grouse; and

b. that the listing of the Gunnison Sage Grouse as an endangered or threatened species will have negative consequences for economic development in Montrose County and for the full and beneficial use of publicly and privately owned real property within Montrose County,

c. that it is in the interest of the citizens and residents of Montrose County that the Board use best efforts to obviate any need to list the Gunnison Sage Grouse as an endangered or threatened species; and

d. that these Montrose County 1041 Regulations are prudent because of the intensity of current and foreseeable development within the boundaries of the unincorporated territory of Montrose County, Colorado; and

e. that the adoption of local regulations designed to provide controls on development within occupied Gunnison Sage Grouse habitat is necessary to mitigate impacts on the Gunnison Sage Grouse from development wholly or partially within occupied habitat areas and will provide an adequate regulatory mechanism upon which FWS can rely in determining that an ESA listing is not warranted for the Gunnison Sage Grouse; and

f. that the areas of occupied habitat designated on the map contained in Attachment B are areas of significant wildlife habitat that are important to the continued survival and vitality of the Gunnison Sage Grouse as determined by the CPW; and

g. that reasonable development and use of these areas of occupied habitat can proceed in a manner that will allow man to function in harmony with, rather than destructive to Gunnison Sage Grouse, provided that appropriate mitigation measures are required to protect the habitat and to provide for co-existence with Gunnison Sage Grouse; and

h. that the areas identified in the map contained in Attachment B constitute a natural resource of statewide importance and are areas in which it is necessary to take measures to preserve and protect wildlife habitat for the Gunnison Sage Grouse and that adverse impacts to the continued survival and vitality of the Gunnison Sage Grouse could result from uncontrolled development in these areas; and

i. that regulations for wildlife habitat impact mitigation as provided in Attachment A for the areas identified in Attachment B are necessary for the protection of natural resources and environment of Montrose County and the State of Colorado.

NOW, THEREFORE, the Board of County Commissioners for Montrose County, Colorado hereby resolves as follows:

A. That, pursuant to the authority provided under CRS 24-65.1-101, *et seq.* and CRS 29-20-101, *et seq.*, the Board hereby adopts the Montrose County 1041 Regulations, Chapter 1 - Guidelines and Regulations for Development in Areas Containing or Having a Significant Impact on Natural Resources of Statewide Importance, Article 1-Wildlife Impact Mitigation Regulations -- Gunnison Sage Grouse, contained in the Attachment A hereto and which are incorporated herein by this reference.

B. That, pursuant to the authority provided under CRS 24-65.1-101, *et seq.*, the areas identified as occupied habitat for the Gunnison Sage Grouse on the map prepared by CPW and contained in Attachment B hereto are hereby declared to be and designated as areas of natural resources of statewide importance essential to Gunnison Sage Grouse habitat in which uncontrolled development could result in adverse impacts to habitat and could result in harm to the Gunnison Sage Grouse and contribute to a decline of the

species. Such map contained in Attachment B is hereby incorporated into this Resolution and the Montrose County 1041 Regulations, Article 1 of Chapter 1 by this reference.

C. That such development or land uses as identified in Attachment A and that are located wholly within or partially within the areas designated on Attachment B shall not be permitted or authorized under applicable County land use code unless a Development Permit or Statement of No Significant Impact is first approved as provided in the Wildlife Impact Mitigation Regulations -- Gunnison Sage Grouse, Attachment A.

D. That the Montrose County 1041 Regulations adopted by this Resolution shall apply to any application or planned application for a development or land use activity covered under the Regulations that is submitted on or after the date of adoption of these 1041 Regulations.

BE IT FURTHER RESOLVED, that the Board hereby finds, determines, and declares that this Resolution is necessary for the immediate preservation of the public health, safety, and welfare of the residents of Montrose County, Colorado.

Adopted this 4th day of November, 2013.

BOARD OF COUNTY COMMISSIONERS
MONTROSE COUNTY, COLORADO

Ronald D. Henderson, Chair

absent
David S. White

Gary Ellis, Commissioner

Attest:

Marie Simons
Montrose County Deputy Clerk and Recorder

MONTROSE COUNTY, COLORADO
SEAL
COUNTY CLERK

ATTACHMENT A

MONTROSE COUNTY 1041 REGULATIONS

CHAPTER 1

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

ARTICLE I. WILDLIFE IMPACT MITIGATION REGULATIONS -- GUNNISON SAGE GROUSE

1. Purpose:

The Purpose of these Regulations is to provide local protection to Gunnison Sage Grouse and occupied Gunnison Sage Grouse habitat to sustain and enhance the survival of Gunnison Sage Grouse. It is also the intent of these Regulations to implement a locally based program that is more effective than the protections which would be provided by listing of the species as an endangered or threatened species under the Endangered Species Act ("ESA").

2. Title

These Regulations are authorized pursuant to Sections 24-65.1-101, *et seq.* of the Colorado Revised Statutes and shall be titled Article 1 - Wildlife Impact Regulations -- Gunnison Sage Grouse of Chapter 1 - Guidelines and Regulations for Development in Areas Containing or Having a Significant Impact on Natural Resources of Statewide Importance. Throughout this Article, these Montrose County Wildlife Impact Regulations -- Gunnison Sage Grouse are sometimes referred to as "these Regulations."

3. Designation of Authority

The Montrose County Board of County Commissioners is designated as the authority responsible for implementing and enforcing these Regulations and that these Regulations shall be administered by the Montrose County Planning and Development Director as specified herein.

4. Findings:

The Board of Montrose County Commissioners, in adopting these Wildlife Impact Mitigation Regulations -- Gunnison Sage Grouse, has considered and finds:

a. that it is a matter of state interest, as well as local and federal concern, to insure the existence of areas of suitable habitat for the Gunnison Sage Grouse in order to protect the survival and vitality of the Gunnison Sage Grouse; and

b. that the listing of the Gunnison Sage Grouse as an endangered or threatened species will have negative consequences for economic development in Montrose County and for the full and beneficial use of publicly and privately owned real property within Montrose County,

c. that it is in the interest of the citizens and residents of Montrose County that the Board use best efforts to obviate any need to list the Gunnison Sage Grouse as an endangered or threatened species pursuant to the Endangered Species Act; and

d. that these Montrose County 1041 Regulations are prudent because of the intensity of current and foreseeable development within the boundaries of the unincorporated territory of Montrose County, Colorado.

e. that the adoption of local regulations designed to provide controls on development within occupied Gunnison Sage Grouse habitat is necessary to mitigate impacts on the Gunnison Sage Grouse from development wholly or partially within occupied habitat areas and will provide an adequate regulatory mechanism upon which FWS can rely in determining that an ESA listing is not warranted for the Gunnison Sage Grouse; and

f. that the areas of occupied habitat designated on the map contained in Attachment B are areas of significant wildlife habitat that are important to the continued survival and viability of the Gunnison Sage Grouse as determined by the Division of Parks and Wildlife of the Colorado Department of Natural Resources ("the CPW"); and

g. that reasonable development and use of these areas of occupied habitat can proceed in a manner that will allow man to function in harmony with, rather than destructive to, Gunnison Sage Grouse provided that mitigation measures are required to protect the habitat and to provide for co-existence with Gunnison Sage Grouse; and

h. that the areas identified in the map contained in Attachment B constitute a natural resource of statewide importance and are areas in which it is necessary to take measures to preserve wildlife habitat for the Gunnison Sage Grouse and that adverse impacts to the continued survival and vitality of the Gunnison Sage Grouse could result from uncontrolled development in these areas; and

i. that these Regulations for Wildlife Habitat Impact Mitigation -- Gunnison Sage Grouse are necessary for the protection of natural resources and environment of Montrose County and the State of Colorado.

5. Gunnison Sage Grouse Occupied Habitat Map:

a. The Board of County Commissioners for Montrose County hereby adopts the Gunnison Sage Grouse Occupied Habitat Map, which is based on geospatial data mapped

and prepared by CPW and contained in Attachment B to these Regulations, as establishing areas of state interest in Montrose County, Colorado and containing or having a significant impact upon natural resources of statewide importance.

b. If CPW alters the range of occupied habitat for the Gunnison Sage Grouse as shown on Attachment B, the Board shall conduct a public hearing to consider whether any amendments to the Map contained in Attachment B or to these Regulations are appropriate or necessary.

6. Applicability:

a. These Wildlife Impact Mitigation Regulations shall apply exclusively to property located wholly within or partially within the territory designated on the "Gunnison Sage Grouse Occupied Habitat Map," which map is contained in Attachment B and is incorporated herein by this reference. Copies of this map shall be kept and made available to the public at the Montrose County Planning and Development Department.

b. Unless exempt under these Regulations, no land use action, permit, or approval, identified in this Section 6, Paragraph c, below, shall be approved or authorized for any property located within or partially within the areas identified in Attachment B, unless the person has first obtained a Development Permit or a Statement of No Significant Impact as provided in these Regulations.

c. The requirements of these Regulations shall apply to the following actions within any properties located wholly within or partially within the territory designated on the Gunnison Sage Grouse Occupied Habitat Map, Attachment B:

1. Special Use Permits under the Montrose County Zoning Resolution
2. Amendments to the Montrose County Zoning Resolution.
3. Planned Unit Developments including Final Development Plans under the Montrose County Zoning Resolution.
4. Building Permits for any new structures issued under the Montrose County Building Code.
5. Subdivision of property under the Montrose County Subdivision Regulations.

e. The Planning and Development Director, or his or her designee, shall notify any applicant for any of the development or land use activity approvals designated in this Section 6, paragraph c, above, of the need to obtain a Development Permit under these Regulations if the applicant's property is located wholly within or partially within the territory designated on the Gunnison Sage Grouse Occupied habitat Map, Attachment B.

7. Exemptions

These Regulations shall not apply to any development or land use activity wholly within or partially within the occupied territory designated on Attachment B, if:

a. The specific development or activity existed prior to the adoption of these Regulations and no new building permit, zoning, or subdivision approval is required under the Montrose County Building Code, Zoning Resolution, or Subdivision Regulations.

8. Relationship to Other County and State Requirements

a. Whenever these Regulations are found to be inconsistent with any other resolution, code, regulation, or other enactment of the County of Montrose, the enactment imposing the more restrictive standards or requirements shall control.

b. In the event that these Regulations are found to be less stringent than the statutory criteria for administration of matters of state interest set forth in Section 24-65.1-202, CRS, then the statutory criteria shall control.

c. In the event these Regulations are found to be more stringent than the statutory criteria for administration of matters of state interest set forth in Section 24-65.1-202, CRS, then these Regulations shall control pursuant to the authority of Section 24-65.1-402(3), CRS.

d. These Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of the County of Montrose, including but not limited to the Montrose County Building Code, the Montrose County Zoning Resolution, and the Montrose County Subdivision Regulations.

9. Application Requirements

a. Unless exempt under these Regulations, any person seeking to obtain County permit approval for any of the development or land use activities identified in Section 6, Paragraph c, above, for any property located wholly within or partially within Occupied Gunnison Sage Grouse Habitat as identified in the map contained in Attachment B shall first submit an application for a Development Permit under these Regulations.

b. The application shall be completed on a form provided by the Montrose County Planning and Development Department and shall be submitted to the Planning and Development Department. The applicant shall submit 3 copies each of the application and application materials required to be submitted therewith.

c. Information to be included with such application shall include:

(1). The applicant's name, address and telephone number; and

(2). A description of the proposed development or land use activity, including, but not limited to, proposed building, improvement, and infrastructure locations; and

(3). A complete and accurate legal description of the applicant's property; and

(4). Sufficiently detailed maps or a scaled plat/drawing showing the location of applicant's property in relation to the Occupied Sage Grouse Habitat shown on Attachment B, the location of the proposed development or land use activity on the applicant's property, the location of surrounding topographic features such as water courses, bodies of water, significant geological features, roads, or existing structures on or near the proposed development or land use activity on the applicant's property; and

(5). An executed permission form authorizing appropriate staff to access the applicant's property for purposes of the review required under these Regulations.

(6) Any other information reasonably required by the Planning and Development Department, the CPW or the County's Wildlife Consultant in order to determine the nature and extent of the potential impact(s) to Gunnison Sage Grouse.

A. The Wildlife Consultant contracted by the county as stipulated by these regulations shall have training and experience in the field of wildlife biology to an extent deemed suitable by the County.

10. Procedure/Review of Application for a Development Permit:

a. When an application is received for one of the actions listed in Section 6, Paragraph (c), above, the County shall schedule an on-site pre-referral meeting with the applicant, CPW and the Wildlife Consultant. Subsequent to this meeting, the County Planning Director shall provide written recommendations on Development Permit conditions based on the meeting. These recommendations shall be submitted to the applicant, CPW and the Wildlife Consultant for review. If the County, CPW, Wildlife Consultant and the applicant agree to the written Development Permit conditions, the Planning Director or their designee may issue the Development Permit without formal referral to CPW and the Wildlife Consultant.

b. In the event that no agreement on Development Permit conditions is reached pursuant to section 10.a, the application shall be formally referred to CPW and the Wildlife Consultant. This referral shall request CPW to provide recommendations for site specific mitigation measures designed to protect the Gunnison Sage Grouse. It will be requested that CPW provide a response within 30 days of

receiving the referral from the County. In the event that CPW does not provide a written recommendation or a request for extension of the time period to submit a comment within 30 days of the referral, the County is not obligated to consider any subsequent CPW response.

c. In the event that no agreement on Development Permit conditions is reached pursuant to section 10.a, the application shall also be formally referred to the Wildlife Consultant. This referral shall request the Wildlife Consultant to provide recommendations for site specific mitigation measures designed to protect the Gunnison Sage Grouse. The Wildlife Consultant shall provide written mitigation recommendations within 30 days of receiving the referral from the County.

d. The Planning and Development Director, or his or her designee, shall review all application materials as well as the written recommendations of CPW and the Wildlife Consultant. If the recommendations of CPW and the Wildlife Consultant are in conflict in some manner, in consultation with CPW and the County's Wildlife Consultant, the Planning and Development Department will consider how to harmonize the two differing recommendations and prepare a written statement of harmonized recommendations. The written recommendations of the County's Wildlife Consultant and the CPW, as well as any harmonized statement of recommendations, prepared by the Planning and Development Department, will be provided to the applicant when completed.

e. Subsequent to this review and based on the recommendations of CPW and the County's Wildlife Consultant, the County Planning and Development Director, or his or her designee, shall make a final written determination and provide same to the applicant. Such final determination shall advise the applicant, as appropriate based on the recommendations of the CPW and the Wildlife Consultant: (1) that the proposed development or land use activity will have no significant impact on Gunnison Sage Grouse if such determination is appropriate as defined under these Regulations, or (2) that, if there is some potential adverse impact, a written statement of mitigation measures recommended by CPW and the County's Wildlife Consultant and determined to be necessary to mitigate such potential impacts, or (3) that, if it is the conclusion of both the CPW and the Wildlife Consultant that there is no mitigation measure that can reasonably protect the Gunnison Sage Grouse from the proposed development or land use activity, such determination may recommend final denial of a Development Permit. If necessary, such final determination shall harmonize any conflicting recommendations of CPW and the County's Wildlife Consultant as provided in this Section 10, Paragraph (d). The Planning and Development Director, or his or her designee, shall issue such final written determination within a reasonable period of time from the date of receipt of the recommendations from CPW and the Wildlife Consultant, taking into consideration any need to harmonize the recommendations from CPW and the County's Wildlife consultant.

f. In preparing his final written determination, the Planning and Development Director, or his or her designee, shall adhere to the recommendations of the CPW and the County's Wildlife Consultant, as harmonized as necessary under Section 10, Paragraph (d), above.

g. If the Planning and Development Director or his or her designee, reasonably determines, based on the recommendations of the County's Wildlife Consultant and CPW, that the proposed development or land use activity will not have a significant adverse net effect on Gunnison Sage Grouse within the area of the proposed development or land use action or on Gunnison Sage Grouse located at or near the proposed development area the Planning and Development Director, or his or her designee, may issue a Development Permit for the proposed development or land use activity with a finding that the proposed development or land use activity will have no significant impact on Gunnison Sage Grouse. Assessment of the net effect on Gunnison Sage Grouse shall take into consideration:

(1). Whether the proposed development or land use activity will disturb or harass individual Gunnison Sage Grouse or groups of Gunnison Sage Grouse; and

(2). Whether the proposed development or land use activity will disrupt necessary life-cycle function resulting in stress to the extent that physiological damage is done to an individual Gunnison Sage Grouse or group of Gunnison Sage Grouse. In determining stress and physiological damage examples matters to be considered include, but are not limited to, the placement of structures in close proximity to CPW-mapped or otherwise documented lek habitat or non-lek breeding habitat and summer-fall habitat, impact of domestic animals, and excessive or intrusive exterior lighting.

h. The applicant shall provide the Planning and Development Department with a written response to the recommended mitigation measures. This response shall include the following:

(1). An itemized response to each of the recommended mitigation actions which includes a statement of whether the applicant will comply with the recommendation.

(2). Revised application materials (site plans, drawings, forms, narratives, etc.) as necessary to show any changes made to the original application by reason of required mitigation measures.

i. If a Development Permit with a finding of no significant impact is issued or if the applicant accepts and agrees to implement the recommendations of CPW and the Wildlife Consultant, as harmonized by the Planning and Development

Department as necessary, the Planning and Development Director, or his or her designee, may issue a Development Permit under these Regulations for the particular requested action with any mitigation measures being incorporated as conditions of approval of such permit and the applicant may proceed with the action subject to such other permits, approvals and conditions as may be required under applicable County regulation.

j. If the applicant objects to and desires to contest the Planning and Development Director's, or his or her designee's, final written determination referenced in this Section 10, Paragraph (e), above, including any recommended denial, finding of significant impact, or any of the mitigation measures required for the Development Permit, the applicant may request a hearing before the Montrose County Board of County Commissioners, which hearing will be conducted as a quasi-judicial proceeding, and at which the applicant may present evidence relevant to the finding of significant impact or to the need and effectiveness of the required mitigation measures or as to the effectiveness of alternative mitigation measures offered by the applicant. An applicant must make a written request for hearing within ten (10) days of the date of the Planning and Development Department's issuance of the statement of recommended mitigation measures referenced above in this Section 10, Paragraph (e). Such hearing shall be conducted within a reasonable time of applicant's request for the hearing, such time not to exceed forty-five (45) days, unless that time is extended for good cause.

(1). It is the intent of these Regulations that only the applicant shall have standing to appeal any decision of the Planning and Development Director or the Board of County Commissioners under these Regulations.

k. In such hearing, in order to contest that a proposed development or land use activity will have any significant impact on Gunnison Sage Grouse, the applicant shall have the burden of proving that the proposed development or land use activity will not have a significant adverse net effect on Gunnison Sage Grouse within the area of the proposed development or land use action or on Gunnison Sage Grouse located at or near the proposed development area. Assessment of the net effect on Gunnison Sage Grouse shall take into consideration:

(1). Whether the proposed development or land use activity will disturb or harass individual Gunnison Sage Grouse or groups of Gunnison Sage Grouse; and

(2). Whether the proposed development or land use activity will disrupt necessary life-cycle function resulting in stress to the extent that physiological damage is done to an individual Gunnison Sage Grouse or group of Gunnison Sage Grouse. In determining stress and physiological damage example matters to be considered include, but are not limited to, the placement of structures in close proximity to CPW-mapped or otherwise

documented lek habitat or non-lek breeding habitat and summer-fall habitat, impact of domestic animals, and excessive or intrusive exterior lighting.

l. In such hearing, in order to contest any or all of the proposed mitigation measures recommended by the CPW and/or the County's Wildlife Consultant, as harmonized by the Planning and Development Department as necessary, or to contest a determination that no mitigation measure can reasonably protect the Gunnison Sage Grouse from the proposed development or land use activity, the applicant shall have the burden of proving that mitigation measures can be effectively achieved by alternate or some means without creating or increasing the risk that the development or land use activity will have a significant adverse net effect on Gunnison Sage Grouse within the area of the proposed development or land use activity or on Gunnison Sage Grouse located at or near the proposed development area. Assessment of the effectiveness of the mitigation measure(s) on mitigating the net effect on Gunnison Sage Grouse shall take into consideration:

(1). Whether the proposed development or land use activity as mitigated by the proposed mitigation measures will disturb or harass individual Gunnison Sage Grouse or groups of Gunnison Sage Grouse; and

(2). Whether the proposed development or land use activity as mitigated by the proposed mitigation measures will disrupt necessary life-cycle function resulting in stress to the extent that physiological damage is done to an individual Gunnison Sage Grouse or group of Gunnison Sage Grouse. In determining stress and physiological damage examples matters to be considered include, but are not limited to, the placement of structures in close proximity to CPW-mapped or otherwise documented lek habitat or non-lek breeding habitat and summer-fall habitat, impact of domestic animals, and excessive or intrusive exterior lighting.

m. Following such hearing as authorized under this Section 10, the Board may deny applicant's request, approve applicant's request, or approve applicant's request conditionally or partially. In conditionally approving applicant's request, the Board may impose additional or different mitigation measures reasonably determined by the Board to be appropriate to protect Gunnison Sage Grouse survival or vitality.

11. Final Decision:

a. Approvals of a Development Permit for any of the actions identified in Section 6, Paragraph (c), above, shall require a finding that impacts to the Gunnison Sage Grouse and occupied habitat will be satisfactorily mitigated by the recommended or applicant offered mitigation measures or that there are no significant adverse net effects to Gunnison Sage Grouse as defined herein by reason of the proposed development or land use activity.

b. Any decision issued under these Regulations on an application for a Development Permit shall be issued in writing, stating the reasons for such decision, and the findings and conclusions on such permit application. A record of such proceedings shall be kept by the County.

c. The denial of a Development Permit may be considered as a finding of fact for denial of an application, permit, or approval for the proposed development or land use activity.

d. Further appeal from a determination of the Board of County Commissioners under these Regulations shall only be made in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

12. Concurrent Review of Permit Applications

a. An application for a Development Permit under these regulations may be processed prior to or concurrently with the application for the land use permit or authority otherwise required under the applicable County land use code, except that approval of the Development Permit, if required under these regulations, is a pre-requisite to final action by the approval or recommending authority under the applicable County Code. As such, an application for County approval for any proposed development or land use activity to which these Regulations apply and described in Section 6, Paragraph (c), above, may be processed prior to or concurrently with the application for a Development Permit for such proposed development or land use activity under these Regulations. Final action on such permit or approval, however, cannot occur until the Development Permit, if required under these Regulations, is approved. As used in this Paragraph, "Final action," in the case of approvals required to be taken before the Montrose County Planning Commission is intended to include final action by the said Planning Commission in making its recommendation on a proposed development or land use activity.

13. Enforcement

a. The Board of County Commissioners for Montrose County may petition any court of appropriate jurisdiction for an injunction or other appropriate remedy to prohibit any violation of these Wildlife Habitat Impact Mitigation Regulations -- Gunnison Sage Grouse and to compel compliance therewith in any development or land use activity to which these Regulations apply.

14. Fees

a. The Board of County Commissioners for Montrose County may set fees in an amount determined by the Board, from time to time, to be necessary to pay for the reasonable costs of administering these Regulations.

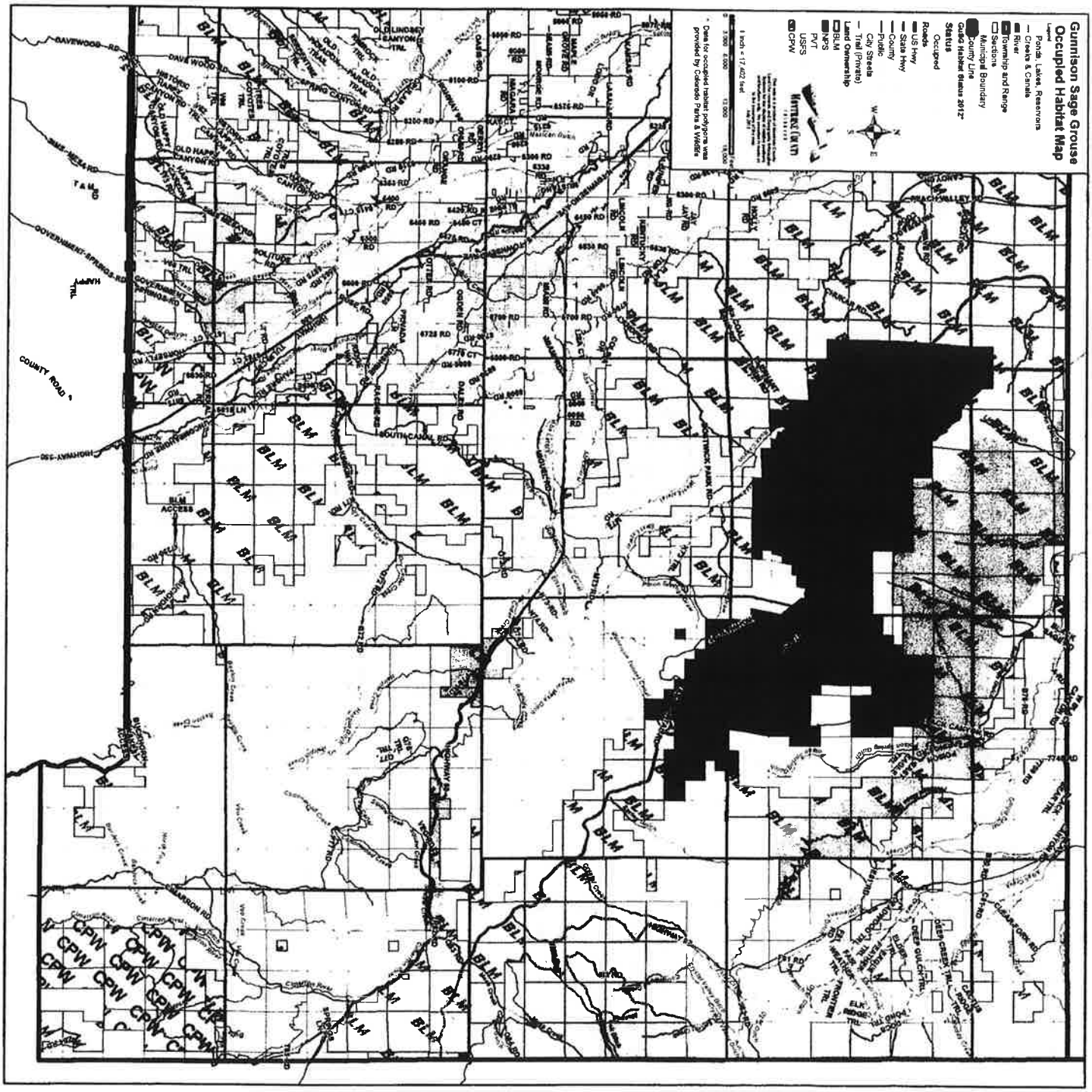
15. Interpretation

a. The Planning and Development Director is hereby given authority to interpret these Regulations as to any procedural matter or procedural question raised in the processing of an application for a Development Permit hereunder.

16. Severability

a. If any section, clause, provision, or portion of these Regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction by a final order or judgment, the remainder shall not be affected thereby and shall remain in full force and effect; the intent of these Regulations being that such unconstitutional or invalid section, clause, provision, or portion be severable from these Regulations.

ATTACHMENT B -- Gunnison Sage Grouse Occupied Habitat Map



ATTACHMENT B