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BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY
RESOLUTION NO. 03-63

A RESOLUTION CORRECTING THE ATTACHMENT TO GUNNISON COUNTY RESOLUTION NO. 03-62, A RESOLUTION DESIGNATING THE NORTH FORK VALLEY COAL RESOURCE SPECIAL AREA AND ADOPTING THE COAL RESOURCE SPECIAL AREA COAL MINING REGULATIONS

WHEREAS, the Board of County Commissioners of Gunnison County, Colorado previously adopted Gunnison County Resolution No. 03-62, A Resolution Designating the North Fork Valley Coal Resource Special Area and Adopting the Coal Resource Special Area Coal Mining Regulations (hereinafter "Resolution 03-62"); and

WHEREAS, the Resolution 03-62 which was recorded in the records of the Clerk and Recorder of Gunnison County, Colorado at reception number 536918 inadvertently contained the wrong document as an attachment (a document identified as "Draft BOCC changes - November 18, 2003); and

WHEREAS, the Board desires to correct that error;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY that: Resolution 03-62 is corrected by the full deletion of the erroneous document (i.e. the document identified as "Draft BOCC Changes - November 18, 2003") with its Appendix and its replacement in full by the document attached hereto and incorporated herein (i.e. the document identified as "North Fork Valley Coal Resource Special Area Regulations - November 18, 2003" with its appendices A and B.)

Introduced by Commissioner Anderson, seconded by Commissioner Starr, and passed this 24th day of November, 2003.

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO

By _____
Fred Field, Chairperson

By _____
Jim Starr, Commissioner

By _____
Perry Anderson, Commissioner

GUNNISON COUNTY SEAL COLORADO

Attest:
Kelly Balch
Deputy County Clerk

NORTH FORK VALLEY COAL RESOURCE SPECIAL AREA

DIVISION 1: DESIGNATION

SECTION 1-101: SPECIAL GEOGRAPHIC AREA DESIGNATION.

The North Fork Valley Coal Resource Special Area (the "Coal Resource Special Area") has been designated by Gunnison County pursuant to Section 1-110 of the Gunnison County Land Use Resolution as a Special Geographic Area and is more fully described in Appendix A.

DIVISION 2: NORTH FORK VALLEY COAL RESOURCE SPECIAL AREA COAL MINING REGULATIONS.

SECTION 1-201: PURPOSE OF COAL RESOURCE SPECIAL AREA COAL MINING REGULATIONS.

The general purpose of the Coal Resource Special Area Coal Mining Regulations ("Regulations") is to recognize the unique importance of coal mining within the Coal Resource Special Area. Gunnison County recognizes that:

1. Coal is a resource valuable to the United States, Colorado and Gunnison County that deserves to extracted and put to use;

2. Extraction of that resource causes impacts;

3. Extraction of that resource is heavily regulated by the federal and state governments; and

4. Gunnison County has a legitimate role in reasonably regulating the extraction of that resource.

In addition, the purposes of these Regulations are as follows:

A. **ENHANCE ABILITY TO MEET ENERGY NEEDS.** To enhance the ability of existing Coal Mining Operations within the Coal Resource Special Area to meet the energy needs of our region, state and country.

B. **SIMPLIFY THE REGULATORY REVIEW PROCESS.** To exempt existing Coal Mining Operations from permit requirements and to provide a simplified and expedited regulatory review process that does not duplicate state or federal processes for the responsible expansion and enlargement of Coal Mining Operations within the Coal Resource Special Area.

C. **PROTECT THE ENVIRONMENT; PUBLIC HEALTH, SAFETY AND WELFARE; PUBLIC SERVICES, FACILITIES AND PROPERTY.** To avoid or mitigate potential impacts to the environment, public services and facilities, property and public safety that are not addressed by other state or federal regulatory agencies with jurisdiction over Coal Mining Operations within the Coal Resource Special Area.

SECTION 1-202: ENFORCEMENT OF STATE AND FEDERAL PERMIT PROVISIONS.

Nothing in these Regulations shall be construed as authorizing Gunnison County to enforce compliance with state and federal environmental or land use law or regulation or permit requirement or conditions. However, Gunnison County reserves the right to seek enforcement of same.

SECTION 1-203: APPLICABILITY OF THESE REGULATIONS.

A. **APPLICABLE TO COAL MINING OPERATIONS IN COAL RESOURCE SPECIAL AREA.** These Regulations shall apply to Coal Mining Operations within the North Fork Valley Coal Resource Special Area described in Appendix A.

B. **RELATIONSHIP TO GUNNISON COUNTY LAND USE RESOLUTION.**

1. **COAL MINING WITHIN COAL RESOURCE SPECIAL AREA.** No provision of the Gunnison County Land Use Resolution shall apply to Coal Mining Operations within the Coal Resource Special Area unless otherwise specified herein.

2. **COAL MINING OUTSIDE COAL RESOURCE SPECIAL AREA.** All provisions of the Gunnison County Land Use Resolution shall apply to Coal Mining Operations outside the Coal Resource Special Area.

C. **EXEMPTION FROM COAL RESOURCE SPECIAL AREA PERMIT REQUIREMENTS AND STANDARDS.**

1. **EXISTING COAL MINING OPERATIONS.** Existing Coal Mining Operations within the Coal Resource Special Area that register with the County under Section 1-205 of these Regulations are exempt from the requirement to obtain a Coal Mining Permit under Section 1-207, the Standards

under Section 1-208 and the Financial Security under Section 1-209.

2. **METHANE VENTING INTEGRAL AND ESSENTIAL TO COAL RESOURCE SPECIAL AREA COAL MINING OPERATION.** Coal mine methane venting and all infrastructure associated therewith from a mine that is in compliance with these Regulations and that is an integral and essential component of the coal mining operation shall not be subject to these Regulations or any other County regulations otherwise applicable to oil and gas drilling and production.

3. **EXPLORATION.** Coal exploration and all infrastructure associated therewith conducted under the grant of a federal coal lease or federal exploration permit, license or notice of intent to explore or written approval to explore, to confirm or establish coal reserves within the Coal Resources Special Area associated with Coal Mining Operations described in Section 1-203 C. 1. is exempt from the requirement to obtain a Coal Mining Permit under Section 1-207, the Standards under Section 1-208 and the Financial Security under Section 1-209.

4. **DECLARATORY RULING REGARDING EXEMPTIONS.**

   a. **DECLARATION REQUEST**. Any coal operator may submit a written request to the Board of County Commissioners for a declaratory ruling as to whether proposed Coal Mining Operations of that Coal Operator fall within an exemption from these Regulations. A copy of the request shall also be submitted to the Planning Director.

   b. **CONTENT OF REQUEST.** The request for declaratory ruling shall include a brief explanation of the proposed activity and the reasons why the proposed activity falls within an exemption under these Regulations.

   c. **BOARD CONSIDERATION.** The Board shall consider the request for a declaratory ruling within 30 days of the date of the next regularly scheduled meeting of the Board. The person requesting the exemption may present information at the meeting.

d. **DECLARATION OF EXEMPTION**. If the Board determines that the proposed Coal Mining Operations are exempt from these Regulations, it shall issue a declaration of exemption and no further review or approvals shall be required from the County for the extent of Coal Mining Operations described in the declaration of exemption.

SECTION 1-204: COMPLIANCE WITH SPECIAL AREA COAL MINING REGULATIONS.

No person shall engage in Coal Mining Operations within the Coal Resource Special Area except in compliance with these Regulations.

SECTION 1-205: REGISTRATION OF EXISTING COAL MINING OPERATIONS.

A. **REGISTRATION.** Within sixty (60) days of the effective date of these Regulations, each coal operator within the Coal Resource Special Area shall submit a *Registration of Existing Coal Mining Operations* to the Planning Director. The *Registration of Existing Coal Mining Operations* shall include the following information:

1. **NAME AND ADDRESS OF OPERATOR.** The name and address of the operator.

2. **NARRATIVE.** A written description, together with a map describing the nature, extent and location of all current, authorized and approved Coal Mining Operations, including the location of facilities, the number of employees, lease boundaries and permit boundaries approved pursuant to the Coal Rules and the State Coal Permit.

3. **PERMITS AND APPROVALS.** A list of all principal operating permits, including the State Coal Permit.

B. **FINDING OF REGISTRATION COMPLETENESS.** Within thirty (30) days of receipt of the *Registration of Existing Coal Mining Operations*, the Planning Director shall either issue a written Finding of Registration Completeness for the existing coal mining operation, or issue a deficiency letter identifying the additional information needed to complete the registration.

C. **FAILURE TO REGISTER.** Any Coal Mining Operations within the Coal Resource Special Area that do not register with the County shall be subject to Section 1-208, *Standards for Expansion of Coal*

Mining Operations Within the North Fork Valley Coal Resource Special Area.

SECTION 1-206: NOTIFICATION OF COAL MINING OPERATIONS.

A. **NOTIFICATION REQUIRED.** Prior to February 15 of each year, each coal operator with active Coal Mining Operations within the Coal Resource Special Area shall submit a *Notification of Coal Mining Operations* form to the Planning Department that shall contain the information in Section 1-206 B. of these Regulations for that coal operator's operations in the Coal Resource Special Area for the previous calendar year.

B. **NOTIFICATION OF COAL MINING.** The Planning Department shall provide, and the coal operator shall complete and submit the *Notification of Coal Mining Operations* attached as Appendix B that shall include the following:

1. **NAME AND ADDRESS**. Name and address of the reporting coal operator and the mine(s) operated by that operator within the Coal Resource Special Area.

2. **NOTIFICATION.** A brief written description together with a map describing the nature, extent and location of all Coal Mining Operations conducted by that coal operator during the preceding calendar year within the Coal Resource Special Area which shall include the following:

   a. **EXISTING OPERATIONS.** The quantity of coal that was mined, the number of employees within the Coal Resource Special Area, any new or expanded operations, and the extent and location of significant surface disturbance and underground operations that occurred within the Coal Resource Special Area.

   b. **PROPOSED OPERATIONS.** A brief written description, together with a map, of all Coal Mining Operations proposed to be undertaken in the next calendar year including the maximum quantity of coal anticipated to be mined, the number of employees anticipated to be employed, the projected extent and location of significant surface disturbance and underground operations likely to occur within the Coal Resource Special Area.

c. **VIOLATIONS.** For the preceding calendar year, a description of any violations of a local, state or federal environmental or land use law or regulation or permit requirement or condition of which the operator received notice and the status of any enforcement actions and compliance requirements.

C. **ADDITIONAL INFORMATION.** The Planning Director may request additional follow-up information that may be necessary for a complete description of the operations.

SECTION 1-207: COAL MINING PERMIT FOR EXPANSION OF COAL MINING OPERATIONS WITHIN THE COAL RESOURCE SPECIAL AREA

A. **PERMIT REQUIRED FOR EXPANSION.** No person shall engage in the expansion of Coal Mining Operations within the Coal Resource Special Area after the effective date of these Regulations without first obtaining a Coal Mining Permit.

B. **COAL MINING PERMIT APPLICATION SUBMITTAL REQUIREMENTS.**

1. **WRITTEN DESCRIPTION.** The applicant shall submit a written description of the new or expanded mining operation together with a map showing the area within which the new mining operation or the expansion will occur.

2. **CONCURRENT APPLICATIONS.** An applicant may apply concurrently to the County, and to state or federal permit agencies.

a. **INFORMATION SUBMITTED TO OTHER PERMITTING AGENCIES ACCEPTED AS SUBMITTAL.** To the maximum extent feasible, Gunnison County will accept information submitted within an application to the Colorado Division of Mineral and Geology and any other state or federal agency as part of related permit processes to satisfy the submittal requirements of these Regulations.

b. **CONCURRENT PROCESSING.** Gunnison County seeks to avoid duplicative regulatory controls or unnecessary delays. Therefore, processing of an application for a permit normally will proceed concurrently with the processing of other required

federal or state applications. However, final action of the application may not occur until a permit is issued by each other federal or state entity with applicable regulatory authority so that Gunnison County will have the benefit of the analysis and determinations by the other entity(s) in reaching its own decision. In order to facilitate the processes of each other federal or state entity with applicable regulatory authority, when an application for permit under these Regulations is received by Gunnison County, the Planning Director shall review the application and inform each other entity with regulatory authority and the applicant of the preliminary and known primary issues of concern to Gunnison County.

c. **CONSIDERATION OF STATE OR FEDERAL CONDITIONS.** Gunnison County shall consider the conditions of any related federal or state permit when processing an application for permit under these Regulations.

3. **IMPACT REPORT.** The applicant shall submit an impact report that describes how the new or expanded mining operation will comply with Section 1-208, *Standards for Expansion of Coal Mining Operations Within the North Fork Valley Coal Resource Special Area.*

4. **DOCUMENTATION OF TECHNICAL INFEASIBILITY WAIVER**. Documentation of the basis for any Technical Infeasibility Waiver from *Standards for Expansion of Coal Mining Operations Within North Fork Valley Coal Resource Special Area* that may be requested pursuant to Section 1-208 B. shall be submitted by the applicant.

C. **PLANNING DIRECTOR REVIEW OF COAL MINING PERMIT APPLICATION.**

1. **RECEIPT OF APPLICATION BY PLANNING DIRECTOR.** Within thirty (30) days of receipt of the Coal Mining Permit Application, the Planning Director shall determine whether the application is complete and ready for review based upon the provisions of these Regulations. If the Planning Director determines the application is not complete, the Planning Director, within said thirty (30) day period, shall send written notice to the applicant specifying the deficiencies. No further

action shall be taken on the application until the deficiencies have been remedied.

2. **PUBLIC NOTICE AND COMMENT.** Within fourteen (14) days of the Planning Director's completeness determination, the Planning Director shall publish a notice of the application in a newspaper of general circulation in Gunnison County and a newspaper of general circulation in Delta County. The period for public comment shall be fourteen (14) days from the date of first publication of the notices.

3. **COORDINATION WITH STATE AND FEDERAL AGENCIES.** In reviewing the application, the Planning Director shall consider permit and approval conditions imposed on the proposed Coal Mining Operations by state and federal regulatory agencies. Where an applicant has chosen to submit concurrent applications to the County and to state or federal agencies, the Planning Director shall discuss preliminary issues of concern with those agencies.

4. **REQUEST FOR REVIEW BY CONSULTANTS**. The Planning Director may obtain the professional analysis and recommendations of technical and legal consultants the Director deems appropriate and necessary to complete the review. The applicant shall be responsible for the reasonable cost of consultant reviews.

5. **DECISION.** The Planning Director shall review the application for a Coal Mining Permit and approve, approve with conditions or deny the application based upon compliance with Section 1-208, *Standards for Expansion of Coal Mining Operations Within the North Fork Valley Coal Resource Special Area*. Unless the Planning Director determines and so advises the applicant that significant issues exist and additional time will be necessary to complete the appropriate review, a decision on the application for a Coal Mining Permit shall be issued within fourteen (14) days after the close of the period for public comment.

6. **NOTICE OF DECISION.** Within one working day of the decision on the application for a Coal Mining Permit, the Planning Director shall notify in writing the applicant, the County Manager, the Board, the County Attorney, and the Delta County Planning Director of the decision to approve, approve with conditions or deny the application. Upon request, other interested parties may submit their name to

the Planning Director to be placed on a list of persons who will be notified of any decision on the application for a Coal Mining Permit.

D. **RECONSIDERATION OF PLANNING DIRECTOR DECISION BY BOARD OF COUNTY COMMISSIONERS.**

1. **CALL-UP BY THE BOARD**. Within fourteen (14) calendar days after receipt of the Notice of Decision, the Board may, at its discretion, decide to reconsider the Planning Director's Coal Mining Permit decision at the next regularly scheduled meeting of the Board for which proper notice can be accomplished.

2. **REQUEST FOR RECONSIDERATION**. Within seven (7) calendar days of the Notice of Decision the applicant or any aggrieved party may request that the Board reconsider the Planning Director's Coal Mining Permit decision at a public hearing scheduled no later than forty-five (45) days after receipt of the Notice of Decision.

3. **HEARING NOTICE.** No less than thirty (30) days prior to the date of the public hearing, written notice of the hearing shall be provided to the applicant, persons on the mailing list and property owners within 500 feet of the boundary of the Coal Resource Special Area, and shall be published one time in a newspaper of general circulation within Gunnison County and in Delta County.

4. **DECISION BY THE BOARD.** At the hearing, the Board may determine not to hear or if it does hear, may affirm, reverse and/or amend the Planning Director's Coal Mining Permit decision. The Board may consider the evidence that was before the Planning Director, and any additional evidence that may be presented to the Board regarding compliance with Section 1-208, *Standards for Expansion of Coal Mining Operations Within the North Fork Valley Coal Resource Special Area*.

E. **EFFECT OF PERMIT DECISION.** Once a Coal Mining Permit has been issued pursuant to these Regulations, the County shall not impose additional regulatory requirements on the Coal Mining Operations unless there is a material change in the Coal Mining Operation from what was approved by the County or the additional regulatory requirement is necessary for the immediate preservation of the public health and safety.

SECTION 1-208: STANDARDS FOR EXPANSION OF COAL MINING OPERATIONS WITHIN THE NORTH FORK VALLEY COAL RESOURCE SPECIAL AREA.

A. **COMPLIANCE WITH STANDARDS REQUIRED.** Expansion of Coal Mining Operations within the Coal Resource Special Area shall comply with the following standards unless Gunnison County waives the standard in writing pursuant to Section 1-208 D., *Technical Infeasibility Waiver,* prior to initiation of the expansion.

B. **EXISTING FACILITIES AND STRUCTURES EXEMPT FROM THESE STANDARDS**. Surface structures, infrastructure and features existing or permitted or approved as of the date of the adoption of these Regulations constituting or relating to Coal Mining Operations are exempt from these standards.

C. **GENERAL STANDARDS APPLICABLE TO SURFACE STRUCTURES OR FEATURES OF EXPANDED COAL MINING OPERATIONS WITHIN THE COAL RESOURCE SPECIAL AREA.**

1. **SETBACKS.** Surface area disturbed by the expansion shall fall within the following setbacks:

   a. **FEDERALLY, STATE, OR LOCALLY DEDICATED OPEN SPACE OR CONSERVATION AREAS.** No surface area disturbance caused by the expansion of the Coal Mining Operations shall occur in whole or in part closer than 1000 feet from a permanently dedicated federal, state, or local open space or conservation area unless a smaller setback has been approved by the federal, state or local entity with jurisdiction over the open space or conservation area.

   b. **ADJACENT PROPERTY, IRRIGATION DITCH OR ROAD RIGHT OF WAY.** No excavation, deposit of overburden, nor stockpiling or other coal mining activities associated with expansions of Coal Mining Operations shall be permitted within 100 feet of the boundary of adjacent property, irrigation ditch or private right of way.

2. **PUBLIC ROADS**. Roads affected by expansions of Coal Mining Operations shall comply with the following requirements:

a. **IMPACT MITIGATION**. The applicant shall bear the proportionate cost of all public road and bridge improvements, repairs, and maintenance necessitated by the proposed coal mining operation.

b. **VEHICLE WEIGHT**. The weight of trucks shall not exceed federal, state or local government imposed road or bridge weight capacity on approved haulage routes.

c. **SEASONAL TRAFFIC LIMITATION.** As a condition of approval, the County may limit the number of trucks that may access the mine to avoid damage to roads caused by heavy vehicle use, weather conditions or water saturation.

3. **ROUTING**. Designation of construction and haul routes within the County for expansions of Coal Mining Operations shall comply with the following:

a. **TIMING OF HAUL TRAFFIC**. Timing of truck traffic may be controlled to prevent congestion or adverse noise impacts or safety risks.

b. **LOAD CONTROL**. Applicant shall prevent loss of loads and fugitive dust emissions during transit, and shall be responsible to ensure that haul routes are maintained in accordance with dust-suppressant methods required by applicable state or federal agency.

4. **TRUCK NOISE.** Mine haul trucks associated with expansions of Coal Mining Operations shall comply with Section 5-505 F.6. of the Gunnison County Land Use Resolution.

5. **WATER QUALITY.** The operations shall not cause significant net adverse effect/impact in the water quality or water pressure of any public or private water wells.

6. **WILDLIFE.** Surface disturbance caused by the expansion of the Coal Mining Operations shall not result in significant net

adverse effect/impact to sensitive wildlife habitat areas as defined by the Colorado Division of Wildlife.

7. **IMPACT MITIGATION.** The applicant shall bear the proportionate cost to mitigate impacts to County caused by Coal Mining Operations under the standards in these Regulations.

8. **ACCESS TO RECORDS.** All coal operators shall make and keep appropriate books and records covering their operations in the Coal Resource Special Area, from which they shall be able to make and substantiate the reports required by these Regulations. Such books and records shall be kept on file and available for inspection by the County for a period of at least three (3) years.

9. **INSPECTION.** The County may enter and inspect any property subject to these Regulations at reasonable hours for the purpose of determining whether a Coal Mining Operation is in violation of the provisions of these *Regulations*.

10. **EMERGENCY RESPONSE.** New or expanded Coal Mining Operations shall provide a written emergency response plan for the potential emergencies that may be associated with the operation of the facilities. The plan shall include a provision for the Operator to reimburse the appropriate emergency response service provider for costs incurred in connection with the emergency.

11. **WILDFIRE HAZARD.** The expansion of Coal Mining Operations shall not cause a significant risk of wildfire hazard.

D. **TECHNICAL INFEASIBILITY WAIVER.** The Planning Director may waive one or more of the *Standards for Expansion of Coal Mining Operations Within the North Fork Valley Coal Resource Special Area* if the applicant demonstrates to the satisfaction of the County that it is technically impracticable to comply with the standard(s). To be granted a waiver from a standard for technical impracticability, the burden is on the applicant to demonstrate the following with clear and convincing evidence:

1. **NO TECHNOLOGY AVAILABLE.** There is no reasonable technology generally available to conduct the coal mining operation in compliance with the County standard, and the

applicant will implement the best available technology to conduct the coal mining operation in compliance with the County standards to the maximum extent feasible; or

2. **CONFLICT WITH STATE OR FEDERAL REGULATION.** Conduct of the coal mining operation in compliance with the County standard would result in an irreconcilable conflict with a state or federal mining regulation, condition or other requirement, and:

   a. The state or federal requirement cannot be waived; and

   b. Compliance with both the state or federal requirement and the County standard is not technically possible; and

   c. The applicant will design, construct and operate the coal mining operation in compliance with County standards to the maximum extent feasible.

SECTION 1-209: FINANCIAL SECURITY FOR EXPANSIONS OF COAL MINING OPERATIONS.

Applicants for a Coal Mining Permit issued under these Regulations shall be required to provide financial security, to the extent not otherwise covered by the performance bond requirement of Rule 3 of the Coal Rules, in a form and amount identified by Gunnison County, to ensure timely and complete performance of all conditions of approval of a Coal Mining Permit.

SECTION 1-210: APPLICATION REVIEW AND ENFORCEMENT FEES.

The Board may establish from time to time by separate resolution fees for application review and enforcement for this Coal Resource Special Area.

<u>DIVISION 3</u> NORTH FORK VALLEY COAL RESOURCE SPECIAL AREA OIL AND GAS OPERATIONS.

SECTION 1-301: OIL AND GAS DRILLING AND PRODUCTION.

The Temporary Regulations for Oil and Gas Operations or other regulations that may be adopted by the County applicable to oil and gas drilling and production shall apply to oil and gas drilling and production within the North Fork Coal Resource Special Area.

SECTION 1-302: MINE METHANE VENTING AND USE.

A. **METHANE VENTING INTEGRAL AND ESSENTIAL TO COAL RESOURCE SPECIAL AREA COAL MINING OPERATION.** Coal mine methane venting from a mine that is in compliance with these Regulations and that is an integral and essential component of the coal mining operation shall not be subject to these Regulations or any other County regulations otherwise applicable to oil and gas drilling and production and such methane can be used by the Operator on-site.

B. **METHANE GAS PRODUCTION NOT INTEGRAL AND ESSENTIAL TO COAL RESOURCE SPECIAL AREA COAL MINING OPERATION**. The production and distribution of methane gas subject to the approval of the Colorado Oil and Gas Conservation Commission shall be subject to all County regulations applicable to oil and gas production, drilling and distribution, and these Regulations shall not apply to such production, drilling and distribution.

DIVISION 4 GENERAL PROVISIONS

SECTION 1-401: CONSTRUCTION.

A. **LIBERAL CONSTRUCTION.** These Regulations and the terms herein are to be liberally construed to effect the purposes of these Regulations.

B. **MORE VERSUS LESS RESTRICTIVE REQUIREMENTS.** Where there exists a conflict or overlap between different requirements in these Regulations or between these Regulations, the Gunnison County Land Use Resolution and any other resolution, regulation or ordinance adopted by Gunnison County, or any other applicable state or federal requirement or statute, the requirement that is the more restrictive or particular shall prevail over that which is less restrictive or is more general.

C. **REQUIREMENTS ARE MINIMUM REQUIREMENTS.** The requirements of these Regulations shall be regarded as the minimum requirements necessary for the protection of the public health, safety, general welfare, and the environment.

D. **DELEGATION OF DUTIES BY DEPARTMENT HEAD.** Whenever a provision requires the Planning Director or the head of any other County department to perform an act or duty, it shall be construed to authorize the Planning Director, or the head of that other County department, to designate, delegate, and authorize subordinates to

perform the duty or act, unless the terms of the provision or section specify otherwise.

E. **COMPUTATION OF TIME.** The time in which an act is to be done shall be computed by excluding the first and including the last day. If a deadline falls on a weekend or County holiday, the deadline extends to the end of the next working day. Time shall be based on calendar days, not working days, unless otherwise specified.

1. **DAY.** The end of a day shall be at 5:00 P.M. Gunnison time.

2. **WEEK.** The word "week" shall mean seven days.

3. **MONTH.** The word "month" shall mean 30 days.

4. **YEAR.** The word "year" shall mean 365 days.

F. **MEANINGS OF CERTAIN WORDS.**

1. **SINGULAR / PLURAL.** A word used in the singular may also be applied to several persons and things as well as to one person or thing. The use of the plural number shall include any single person or thing, unless the context clearly indicates the contrary.

2. **SHALL / WILL / MUST / MAY / SHOULD.** "Shall", "will" and "must" all mean the provision is mandatory; "may" means it is permissive; "should" means it is preferred.

3. **MASCULINE / FEMININE.** The masculine gender shall include the feminine, and the feminine gender shall include the masculine.

4. **CONJUNCTIONS.** Unless the context clearly suggests otherwise, conjunctions shall be interpreted as follows:

   a. **"AND"** means that all connected items, conditions, requirements, or events apply.

   b. **"OR"** means that one or more of the connected items, conditions, requirements, or events apply.

5. **COMMON / TECHNICAL TERMS.** Words and phrases shall be construed according to the common usage of the term, but technical words and phrases that have acquired a

particular meaning shall be understood according to that particular meaning.

6. **LISTS AND EXAMPLES.** Unless otherwise specifically indicated, lists of items or examples that use terms including "for example" and "including" or similar language are intended to provide examples, not exhaustive lists of all possibilities.

SECTION 1-402: INTERPRETATION.

A. **AUTHORITY.** The Planning Director shall be authorized to make a written interpretation of the requirements of these Regulations.

B. **INITIATION.** A request for a written interpretation may be made by any person by submitting a written request to the Planning Director. The written request shall specify the provision of these Regulations for which an interpretation is requested. The written request shall also state the factual basis for the request.

C. **DETERMINATION OF COMPLETENESS FOR REVIEW.** Within fifteen (15) days of receipt of the request for an interpretation, the Planning Director shall determine whether the request is complete, specific, and ready for review based upon the provisions of these Regulations. If the Planning Director determines the request is not complete or specific, written notice shall be sent to the applicant specifying the deficiencies. No further action shall be taken on the request until the deficiencies have been remedied.

D. **RENDERING OF INTERPRETATION.** Within thirty (30) days of determining that the request for an interpretation is complete, the Planning Director shall evaluate the application, consult with the County Attorney and other staff as necessary, and render a written interpretation. When rendering the interpretation, the Planning Director shall consider the County's legislative intent in adopting the provision, as expressed in these Regulations, and as may be determined from the County's official records.

E. **OFFICIAL RECORD.** The Planning Department shall keep an official written record of all written interpretations that have been rendered. The record shall be available at the Planning Department for public inspection, on reasonable request, during normal business hours.

F. **APPEALS.** Interpretations or final decisions rendered by the Planning Director may be appealed to the Board of Commissioners.

The appeal shall be submitted and considered in compliance with the requirements of Section 4-603: *Appeals* of the Gunnison County Land Use Resolution.

SECTION 1-403: SEVERABILITY.

If any article, division, section, paragraph, clause, provision, or portion of these Regulations is determined to be unconstitutional or invalid by a court of competent jurisdiction, such determination shall not affect the validity of these Regulations as a whole or any part of these Regulations other than the part determined to be unconstitutional or invalid. If any application of these Regulations to a particular structure, parcel of land, or body of water is determined to be unconstitutional or invalid by a court of competent jurisdiction, such determination shall not be applicable to any other structure, land, or water not specifically included or referenced in that judgment.

SECTION 1-404: AMENDMENTS.

A. PURPOSE. The purpose of this Section is to provide a process by which the Board may, from time to time, amend, supplement or repeal these Regulations.

B. INITIATION. An amendment to these Regulations may be initiated by the Board, by the Planning Commission, the Planning Director, by any person who owns a legal interest in real property within the County, or by any person residing within the County.

C. PROCESS. The following process shall apply to an application for an amendment to these Regulations:

1. **BOARD MOTION.** The Board may initiate an amendment by motion directing the Planning Director to submit a proposed amendment and report to the Planning Commission for review and for further action pursuant to this Section.

2. **PLANNING COMMISSION INITIATIVE.** The Planning Commission may initiate an amendment by submitting a written recommendation for proposed amendment to the Board.

3. **PROPERTY OWNER OR OTHER RESIDENT INITIATIVE.** An amendment may be initiated by a person who owns a legal interest in real property within the County, or by any person living within the County, by the submittal of an application to the Planning Department.

4. **DRAFT OF PROPOSAL FOR AMENDMENT.** Any initiative or application for amendment shall include at a minimum the following:

   a. **IDENTIFICATION OF APPLICANT**. If the applicant is a resident or property owner, the applicant's name, address and telephone number. If the applicant is to be represented by an agent, a notarized letter signed by the applicant shall also be submitted, authorizing the agent to represent the applicant and stating the representative's name, address, and phone number.

   b. **PRECISE WORDING.** The precise wording of the proposed amendment, and the proposed section(s) that it will change, or to which it will be added.

   c. **RATIONALE FOR PROPOSED AMENDMENT.** A concise statement of the purpose and need for the proposed amendment.

5. **PLANNING DEPARTMENT'S REVIEW.** Review of the application for the proposed amendment shall be accomplished as specified in Section 4-110: *Planning Department's Review of Application* of the Gunnison County Land Use Resolution.

   a. **REQUEST FOR REVIEW BY OTHER AGENCIES, DEPARTMENTS AND CONSULTANTS.** The Planning Director may request that other agencies, departments and consultants review the proposed amendment.

6. **PLANNING COMMISSION REVIEW.** A complete copy of the application shall be forwarded to the Planning Commission, together with a copy of the Planning Department's report. The Planning Commission shall review the application and shall make a recommendation to the Board to approve, approve with modifications, table for further study, or deny the proposed amendment.

7. **BOARD PUBLIC HEARING.** The Planning Commission's recommendations shall be forwarded to the Board, together with a complete copy of the application and a copy of the Planning Department's review. The Board shall conduct a public hearing in compliance with Sections 4-112: *Notice of*

Public Hearing and 4-113: *Conduct of Public Hearing* of the Gunnison County Land Use Resolution.

8. **BOARD REVIEW AND ACTION.** The Board shall consider the application, any relevant support materials, the Planning Department's report, the Planning Commission's recommendation, the public testimony and evidence given at the public hearing. Following closure of the public hearing, the Board may, by written resolution, adopt the amendment, adopt the amendment with modifications, table for further study or deny the amendment.

9. **REVIEW STANDARDS**. The wisdom of amending the text of these Regulations is a matter committed to the legislative discretion of the Board of County Commissioners and is not controlled by any one factor. In determining whether to adopt the proposed amendment, adopt the amendment with modifications, table for further study or deny the amendment, the Board of County Commissioners shall consider among other factors the following:

   a. **CONSISTENCY WITH ANY COMPREHENSIVE PLAN ADOPTED BY GUNNISON COUNTY.** Consistency of the proposed amendment with any comprehensive plan that may be adopted by Gunnison County.

   b. **CHANGED CONDITIONS.** Changed conditions, including the economy of Gunnison County.

   c. **EFFECT ON THE NATURAL ENVIRONMENT.** Effect of the proposed amendment on the natural environment.

   d. **COMMUNITY NEEDS**. Community needs.

   e. **DEVELOPMENT PATTERN**. Development pattern.

   f. **CHANGES IN APPLICABLE LAW.** Changes in applicable law.

   g. **PUBLIC HEALTH, SAFETY AND WELFARE.** Public health, safety and welfare.

   h. **COMPLIANCE WITH ANY APPLICABLE INTERGOVERNMENTAL AGREEMENTS**

ADOPTED BY GUNNISON COUNTY. Compliance with any applicable intergovernmental agreements adopted by Gunnison County.

SECTION 1-405: INTENT TO NOT DUPLICATE OTHER PERMIT PROCESSES OR REQUIREMENTS.

Gunnison County intends to avoid duplicative regulatory submittals or processes. Processing of applications for permits generally proceeds concurrently with other required state or federal agency permitting processes.

SECTION 1-406: RUNS WITH THE LAND.

Any Coal Mining Permit issued under these Regulations shall run with the land that is the subject of the Coal Mining Permit.

SECTION 1-407: NO PRECEDENT.

Neither the designation nor these Regulations, procedures or approvals hereunder shall be construed as a precedent for any other action.

DIVISION 5 VIOLATIONS AND ENFORCEMENT PROVISIONS

SECTION 1-501: VIOLATIONS AND ENFORCEMENT.

Failure to comply with any provision of these Regulations shall be deemed a violation of the *Gunnison County Land Use Resolution* and shall be subject to enforcement under Chapter 7 of the *Gunnison County Land Use Resolution*.

DIVISION 6 DEFINITIONS

SECTION 1-601: RELATIONSHIP TO GUNNISON COUNTY LAND USE RESOLUTION.

Unless otherwise defined below, the definitions of the *Gunnison County Land Use Resolution* set forth in Section 2-102, *Definitions* shall apply to these Regulations.

SECTION 1-602: DEFINITIONS

A. **Aggrieved Parties.** The applicant, the owner of the subject property, or any person, or member of the public.

B. **Coal Exploration.** This term has the same meaning as defined in Section 1.04(22) of the Coal Rules which is as follows: (a) the field gathering of surface or subsurface geologic, physical, or chemical

data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; (b) the disturbance of the natural land surface in the gathering of the environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of the Coal Rules; or (c) the gathering of any environmental data in an area designated unsuitable for surface Coal Mining Operations.

C. **Coal Mining Operations**. Coal exploration, development, extraction and reclamation and all activities incident to such operation, including without limitation coal mine methane venting and the use of vented coal mine methane for mining operations within the Coal Resource Special Area.

D. **Coal Mine Methane Venting**. The venting of methane from a Coal Resource Special Area coal mine necessary for worker safety, approved by the Division of Minerals and Geology, pursuant to a coal lease.

E. **Coal Operator.** Any person, firm, partnership, association, corporation or any department, division, or agency of any government engaged in coal mining.

F. **Coal Resource Special Area**. The North Fork Valley Coal Resource Special Area.

G. **Coal Rules.** The regulations of the Colorado Mined Land Reclamation Board for Coal Mining implemented pursuant to the Colorado surface Coal Mining Reclamation Act, Article 33 of Title 34, as amended of the Colorado Revised Statures, and found a 2 CCR 407-2.

H. **Existing Coal Mining Operations.**

1. Coal Mining Operations as of the effective date of these Regulations, allowed under a valid Gunnison County Land Use Change Permit and/or a valid Division of Minerals and Geology Permit, or

2. Coal Mining Operations that are contiguous or adjacent to those Coal Mining Operations described in 1-602G.1 and that do not result in significant net adverse effect/impacts from new surface area disturbance after the effective date of these regulations.

I. **Expansion.** Coal Mining Operations that are not Existing Coal Mining Operations or that are not exempted under Section 1- 203 C. of these Regulations.

J. **Non-Coal Resource Special Area Coal Mining Operation.** A new or existing coal mining operation located wholly or partially outside the boundaries of the North Fork Valley Coal Resource Special Area.

K. **North Fork Valley Coal Resource Special Area.** That area of the County designated by the Board of County Commissioners as a special geographic area.

L. **Oil and Gas Drilling, Production and Distribution.** Exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking or abandonment of an oil and gas well; production operations related to any such well including the installation of flowlines and gathering systems; the generation, transportation, storage, distribution, treatment or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations.

M. **Regulations**. The North Fork Valley Coal Resource Special Area Regulations.

N. **Significant Net Adverse Effect/Impact.** An impact of an action, after mitigation, that is considerable or substantial, and unfavorable or harmful; includes social, economic, physical, health, aesthetic and historical impacts, and biological impacts including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

O. **State Coal Permit.** The permit to conduct surface coal mining and reclamation operations issued by the Division of Minerals and Geology pursuant to the Coal Rules.

APPENDIX A

The North Fork Valley Coal Resource Special Area is that area, within Gunnison County, known as the Somerset Coal Field which consists of lands shown on the United States Geological Survey (USGS) 7.5 Minute Quadrangle Maps for the Bowie, Somerset, Paonia Reservoir, Minnesota Pass and West Beckwith quadrangles.

All private lands contained within T13S, R89W, Sections 8, 9, and 16 are excluded from the designated North Fork Valley Coal Resource Special Area.

APPENDIX B

Notification of Coal Mining Operations
(Pursuant to § 1-204 C)

The undersigned, an officer of _____, hereby certifies to the best of his or her knowledge as follows:

1. _____ is a _____ [corporation/partnership] with an address at _____, _____, _____.

2. _____ is a coal mining operator within the Gunnison County North Fork Valley Coal Resource Special Area (the "Special Area").

3. During the calendar year ending December 31, 20__ (the "Calendar Year") _____ mined and shipped _____ tons of coal from its _____ Mine in the Special Area from lands shown on a map attached hereto as Exhibit A. _____'s permits and approvals allow it to mine _____ tons of coal from the lands permitted to it from the _____ Mine.

4. During the Calendar Year, _____ employed a maximum of _____ and minimum of _____ employees at its _____ Mine.

5. During the Calendar Year the following significant changes in _____ coal mining operations occurred since the prior calendar year:

6. During the calendar year which commenced on January 1, 20__, _____:

(a) intends to conduct the following coal mining operations at its _____ Mine, which intended operations are depicted on the map attached hereto as Exhibit C:

(b) intends to employee a minimum of _____ employees and a maximum of _____ employees;

(c) anticipates it will mine and ship _____ tons of coal from its _____ Mine; and

(d) anticipates its underground mining operations shall be conducted on the lands depicted as such on Exhibit C.

7. A listing of all unremedied environmental and land use violations, notice of which was received by _____ during the Calendar Year relating to local, state or federal environmental or land use laws, regulations, permit requirements or conditions and the status of any enforcement action and compliance requirements related thereto is attached hereto as Exhibit D.

_____

By:_____
Vice-President