

## CHAPTER 4

### Community Development

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## ARTICLE VIII

### Environmental Guidelines

#### *Division 1*

#### *Air Quality*

#### **Sec. 4-8-1. Engine idling.**

(a) It shall be unlawful for any person to idle or permit the idling of the motor of any stationary diesel fuel burning bus or motor vehicle or idle or permit the idling of the motor of any stationary motor vehicle of any kind whatsoever for a period in excess of fifteen (15) consecutive minutes in any hour, within the Town limits at any time of the day or night. It is the intent of this Section that an owner or operator may not circumvent the provisions of this Section by the repeated turning on and off of a diesel engine at any time that the outside temperature is twenty-two degrees Fahrenheit (22°F) or above; provided, however, that unattended vehicles operated by diesel powered engines shall not be allowed to idle at any time.

(b) This Section shall not apply when an engine must be operated in the idle mode for safety reasons including, but not limited to, cranes and forklifts used in the construction industry, ambulances or other public safety vehicles. (Ord. 2003-20 §2)

#### **Sec. 4-8-2. Solid fuel-burning devices.**

(a) Definitions.

*Solid fuel-burning device* means a device which is designated to burn any form of solid fuel, and includes fireplaces, wood stoves, pellet stoves and masonry heaters.

*Masonry heater* means an appliance designed for or capable of burning wood, capable of and intended for domestic space heating which meets all of the following criteria:

a. A factory-built or site-built wood-burning appliance whose core is constructed primarily of manufacturer-built -supplied or -specified masonry materials (i.e. stone, cemented aggregate, clay, tile or other noncombustible nonmetallic solid materials) which weighs at least eight hundred (800) kilograms.

b. The firebox effluent of the masonry heater travels horizontally and/or downward through one (1) or more heat-absorbing masonry ducts for a distance at least the length of the largest single internal firebox dimension before leaving the masonry heater. For the purposes of this Subparagraph:

1. *Horizontal or downward travel distance* is defined as the net horizontal and/or downward internal duct length, measured from the top of the uppermost firebox door opening(s) to the exit of the masonry heater as traveled by any effluent on a single pathway through duct channels within the heater (or average of net internal duct lengths for multiple pathways of different lengths, if applicable). Net internal duct length is measured from center of the internal side or top surface of a duct, horizontally or vertically to the center of the opposite side or the bottom surface of the same duct, and summed for multiple ducts or

directions on a single pathway, if applicable. For duct channels traversing horizontal angles of less than ninety (90) degrees from vertical, only the net actual horizontal distance traveled is included in the total duct length.

2. The *largest single internal firebox dimension* is defined as the longest of either the length or the width of the firebox, measured from the hearth to the top of the uppermost firebox door opening.

c. The appliance has one (1) or more air-controlling doors for fuel-loading, which are designed to be closed during the combustion of fuel loads, and which control the entry of combustion air (beyond simple spare arresting screens) to one (1) or more inlets as prescribed by the masonry heater manufacturer.

d. The appliance is assembled in conformance with the Underwriters Laboratories listed and/or manufacturer's specifications for its assembly and, if the core is constructed with a substantial proportion of materials not supplied by the manufacturer, is certified by a representative of the manufacturer to be substantially in conformance with those specifications.

e. The appliance has a label permanently affixed to the appliance identifying its manufacturer and model.

(b) With the sole exception of masonry heaters, no solid fuel-burning device shall be permitted in any new residential construction with the Town, nor shall any such device be permitted in any new commercial or industrial construction with the Town (other than for use in a commercial or industrial process and for which the required permits have been obtained from the State Air Quality Control Division). Masonry heaters, approved and certified by the State, and meeting all the requirements of the Air Quality Control Commission Regulation No. 4, as amended from time to time, may be installed in new construction. No mobile or modular home shall be moved into place in the Town and be connected to utility service which has installed, within such mobile or modular home, a solid fuel-burning device.

(c) There is hereby granted a waiver of one hundred dollars (\$100.00) or the entirety of the building permit fee, whichever is less, for each remodeling activity which results in the elimination of an existing solid fuel-burning device, or the replacement of such device with an electric or gas-fueled fixture. Such rebate shall be granted upon approval of the building permit for the construction resulting in the elimination or replacement of the solid fuel-burning device.

(d) All gas-log fireplaces shall be constructed in such a manner that access to the firebox is prohibited except for the purposes of repair and maintenance.

(e) The burning of coal within the Town is prohibited. (Ord. 2003-20 §2; Ord. 2008-15 §1)

*Division 2*  
*Waterbody, Wetland and Riparian Protection Regulations*

**Sec. 4-8-11. Intent.**

These Waterbody, Wetland and Riparian Protection Regulations are enacted to protect the vital, beneficial functions and values of wetlands and water areas within Silverthorne. This is to be accomplished by requiring that a permit be obtained for development activities in wetlands and water areas, and associated buffer areas, and that, as a part of this permitting process, the Town will review disturbance permits and mitigation plans. A critical element of this process is the determination of the buffer area boundary which will vary from a minimum twenty-five (25) feet and a maximum of one hundred twenty-five (125) feet depending upon the presence of site-specific features and the use of best management practices. It is intended that the buffer width will equal what is necessary to protect the wetlands and water areas from significant adverse impact arising from activities within the buffer and that applicants will be encouraged to reduce the width of the buffer through appropriate best management practices. It is anticipated that where an applicant includes best management practices, the width of this buffer will be decreased below the maximum, and that where these practices will fully mitigate the impact of development within the maximum buffer upon the wetlands or water area, the buffer will be reduced to the minimum of twenty-five (25) feet. (Ord. 2003-20 §2)

**Sec. 4-8-12. Application.**

The requirements of this Division shall apply to all site development within a water area, wetlands or buffer zone, including site clearing, grading, excavation and the placement of material, including without limitation any soil, sand, gravel, mineral, aggregate, organic material or the storage of plowed snow. A Disturbance Permit is required for any site development in wetland areas, rivers, streams, ponds, lakes or other water areas in the Town, or within the buffer zone associated with such wetland or water areas. (Ord. 2003-20 §2)

**Sec. 4-8-13. Enforcement.**

In addition to other fines and penalties established herein for violations of this Code, the Town may seek an injunction requiring complete restoration of any area disturbed in violation of this Division, or payment in lieu of restoration or mitigation at the rate established in this Division, and may issue stop work orders, withhold any further permits for site development and cease the processing of any site development applications related to the property, project or owner that violates the provisions of this Division. (Ord. 2003-20 §2)

**Sec. 4-8-14. Compliance with Disturbance Permit.**

Any site development which is subject to a Disturbance Permit shall at all times comply with the requirements of the Disturbance Permit, including the provisions of a Disturbance Plan and Mitigation Plan. Failure to comply with a Disturbance Permit shall be deemed a violation of this Division. (Ord. 2003-20 §2)

**Sec. 4-8-15. Definitions.**

The following definitions shall be used for the application of this Division.

*Best Management Practices (BMPs)*. Economically feasible conservation practices and land and water management measures that minimize adverse impacts to the chemical, physical and biological characteristics of water areas and wetlands. *BMPs* may include a wide range of structural and nonstructural practices to be implemented in association with land disturbance, development and construction activities.

*Buffer zone* means an area adjacent to a water area or wetlands.

*Disturbance Permit* means a permit which authorizes site development activity in a wetland area, water area or associated buffer zone, and includes a Disturbance Plan and Mitigation Plan for site development which results in the fill of wetland areas.

*Disturbance Plan* means the plan for disturbance of wetlands water areas, and any associated buffer zone, as required by this Division.

*Fen* means wetlands dominated by herbaceous hydrophytes receiving water that has passed through mineral soils. Water table levels are high and have pH values greater than 5.0; and have sixteen (16) inches, or more, of organic material in the upper thirty-two (32) inches of surface soil horizon. Organic soils are classified as Histosols by the USDA.

*Mitigation Plan* means the plan for mitigation of impacted wetland or water areas as required by this Division.

*Riparian area* means that transition area between aquatic and terrestrial (upland) environments influenced by the high water table associated with a stream or river. Plant types typically associated with riparian areas include hydrophytes (obligate, facultative wet and facultative species) and phreatophytes (typical plants include, but are not limited to, cottonwoods, willows, alders, aspens and chokecherry). *Riparian areas* are commonly recognized by the combination of high species diversity, high species densities and high productivity.

*Silverthorne SAMP* means a Special Area Management Plan for the Silverthorne area for wetlands protection and management approved by the Army Corps of Engineers.

*Water area* means a wetlands perennial or intermittent river, stream, lake, reservoir or pond, whether natural or artificial. The following water features are excluded: irrigation and roadway drainage ditches; artificial lakes and ponds which are not tributary to state waters or are created and used for the primary purposes of agricultural activities or stormwater treatment; and development water features less than one half (½) acre in surface area. A "perennial" river, stream, reservoir or pond is one that normally holds water or flows continuously during all the calendar year as a result of groundwater discharge or surface run-off. An "intermittent" river, stream, reservoir or pond is one that is defined as such by the U.S. Geological Survey and may be shown as intermittent water features on the U.S. Geological Survey 7.5 Minute Series Topographical maps.

*Waterbody, Wetland and Riparian Protection Plan* or *Protection Plan* means a plan to be created and adopted by the Town, to be incorporated into the Town's Comprehensive Plan, which designates wetland areas of intermediate and exceptional resource and appropriate variable outer buffer zones on a site specific basis, which is adopted after providing written notice to affected property owners and conducting a public hearing thereon.

*Wetland* means an area delineated as a wetland by the Army Corps of Engineers or defined as a wetland by the Army Corps of Engineers delineation manual; however, *wetlands* do not include areas which are saturated solely due to required storm water detention or irrigation water. (Army Corps defines *wetlands areas* as areas which are inundated or saturated by surface water or groundwater at a minimum frequency and duration, that contain hydric soils and vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation, including but not limited to: willows, rushes, sedges, cattails and cottonwoods.) (Ord. 2003-20 §2)

**Sec. 4-8-16. Purpose.**

(a) Wetland and water areas. Preservation of wetland and water areas serves to prevent water quality degradation of the Blue River and its tributaries (a state designated gold medal trout river), and the several ponds and lakes in Town; to protect ecosystems, aquatic habitats and wildlife habitats, especially habitats for state or federally designated endangered and threatened species; to preserve ground water recharge functions; and to preserve existing natural flood plain control.

(b) Buffer zone. The buffer zone serves as an ecological transition zone from uplands to wetlands and water areas which is an integral portion of the wetland and water area ecosystems. Specifically, buffer zones can provide:

- (1) A temporary refuge for wetland fauna during high water episodes;
- (2) A habitat area for activities such as breeding, spawning, nesting and wintering for migrating, endangered, commercially and recreationally important wildlife;
- (3) An area to accommodate slight variations in wetland and water area boundaries over time due to hydrologic and climatologic effects;
- (4) A remediation and filtration area to remove and store nutrients, sediments, petrochemicals, pesticides, debris and other pollutants as they move from the upland towards the wetlands and water areas;
- (5) A buffer area to keep disturbances at a distance from wetland and water areas, thus reducing the impact of noise, traffic and other direct and indirect human impacts on wetland species;
- (6) A corridor area which facilitates the movement of wildlife to and from wetland and water areas and from and to uplands, streams and other waterways; and
- (7) A sediment and storm water control area to reduce the adverse effects of development or disturbance upon wetland and water areas. (Ord. 2003-20 §2)

**Sec. 4-8-17. Review procedure.**

Disturbance Permits for site development in wetland areas, water areas and buffer zone areas shall be reviewed and decided by the reviewing entity and by the process for the site development application as designated in Section 4-1-22, and such review may be consolidated with other development applications and procedures as appropriate. The notice and public hearing requirements shall follow the requirements for the site development application. Comments regarding compliance

with the review standards in this Division shall be considered at any public hearings required by the site development application. In the case of site development applications which are reviewed and approved by the Community Development Department, the applicant for a permit under this Division may appeal the decision of the Community Development Department to Council in accordance with the procedures in Section 4-8-23. (Ord. 2003-20 §2)

**Sec. 4-8-18. Disturbance Permit application submittal requirements.**

In addition to other submittal requirements for site development applications, an applicant shall submit the information identified below for any site development that requires a Disturbance Permit pursuant to this Division. Upon request, the Community Development Department may perform a site inspection, verify that no wetland, water areas or associated buffer zone exist on the site and waive this submittal requirement.

(1) Boundary map. A map or diagram separately depicting the boundary of water areas, wetlands and riparian areas, depicting the boundary of the restrictive inner buffer zone from water areas and wetlands, depicting any site specific triggers for a variable outer buffer zone listed in Section 4-8-19(3) and depicting the boundary of the proposed disturbance in wetland areas, water areas and buffer zone areas.

(2) Proposed disturbance. A description of the proposed activity causing disturbance, including the amount, location and acreage of water area or wetland fill, removal or other alteration proposed, and location and extent of proposed disturbance in the buffer zone.

(3) Grading plan. A grading and erosion control plan, utilizing soil stabilization measures and practices to minimize the impacts of the proposed disturbance described in Section 4-8-21, including a time frame for installation of erosion control measures.

(4) Revegetation plan. Plan showing quantity and type of plant material to be used for revegetation, time frame for revegetation and proposed soil stabilization measures.

(5) Mitigation plan. A plan to mitigate the impacts of proposed fill of water areas or wetlands showing the proposed on-site restoration improvements, including information of those wetland areas to be restored and/or created, in accordance with Section 4-8-22.

(6) Alternative analysis. A statement and analysis of any practicable on-site development configuration alternatives to the proposed development activity causing disturbance which reduce or avoid such disturbances, including reduction in the scale of the proposed development.

(7) Army Corps. For activities that involve the fill of wetland areas, evidence of compliance with the Silverthorne SAMP or acceptance of the Plan by the U.S. Army Corp of Engineers. (Ord. 2003-20 §2)

**Sec. 4-8-19. Buffer zone.**

The buffer zone shall be measured outward from a wetland or water area boundary line on a horizontal scale perpendicular to such boundary line. The buffer zone from wetland areas and water areas is established as follows:

(1) Grandfather clause. Ten (10) feet/twenty-five (25) feet: The total buffer zone from wetland and water areas shall be ten (10) feet for single-family and duplex residential subdivisions that have received final subdivision approval from the Town, and have had a final subdivision plat recorded in the County Clerk and Recorder's office, on or prior to the first day of September, 1998. The total buffer zone from wetland areas shall be ten (10) feet for any property zoned Commercial 1, Commercial 2 or River Front Mixed Use by the Town as of January 13, 1999, and for the River Center PUD project located on Lots 1 through 14, Buffalo Subdivision. The total buffer zone from water areas shall be twenty-five (25) feet for subdivisions and planned unit developments with preliminary approval that are active and pending as of January 13, 1999. The total buffer zone from wetland areas shall be twenty-five (25) feet for single-family and duplex residential subdivisions and planned unit developments with preliminary approval that are active and pending as of January 13, 1999. This Division shall not be construed to extend the expiration date or expand any rights of a preliminary subdivision or planned unit development approval.

(2) Restrictive inner buffer. Twenty-five (25) feet: The buffer zone from water areas and wetlands for any site development application that is not subject to the grandfather clause in Subsection (1) above shall be twenty-five (25) feet.

(3) Variable outer buffer zone. Zero (0) to one hundred (100) feet: The variable outer buffer zone for any site is an additional buffer zone beyond the restrictive inner buffer; however, the variable outer buffer zone shall not apply to man-made and artificial ponds. The width of the variable outer buffer zone may be undulating across a piece of property in order to provide protection to site specific features. The width of the variable outer buffer zone shall be determined by the Waterbody, Wetland and Riparian Area Protection Plan; or, if not yet completed and adopted, the variable outer buffer zone shall be determined on a site specific basis with the property owner during the site development application review process subject to the following standards and process. Site-specific features within one hundred twenty-five (125) feet of the water area or wetland boundary, or adjacent land uses that trigger the need for an outer buffer zone are listed below. After the initial determination of the presence of site-specific features that trigger the need for an outer buffer zone, the use of Best Management Practices shall be considered under Subsection (4) below to reduce the width of the variable outer buffer zone.

a. Riparian areas. The outer buffer zone shall be coincident with the outermost extent of riparian areas.

b. Threatened and endangered species. The presence of occupied, functional habitat for plant and animal species listed by the State of Colorado or United States as threatened or endangered shall result in an outer buffer zone of twenty-five (25) feet to one hundred (100) feet from such habitat.

c. Wildlife migration corridor. The presence of a demonstrated wildlife migration corridor as determined by the Colorado Division of Wildlife shall result in an outer buffer zone of twenty-five (25) feet to one hundred (100) feet.

d. Fens. The outer buffer zone from fens is one hundred (100) feet.

e. Steep slopes. Where a slope of twenty percent (20%) grade or more draining into water areas or wetlands measured one hundred twenty-five (125) feet outward from the water area or wetland exists, the outer buffer shall be one hundred (100) feet; where a slope of thirty percent

(30%) grade or more that is ten (10) feet or more in vertical height exists, the outer buffer zone shall be coincident with the area of such slope within one hundred twenty-five (125) feet of such water area or wetlands.

f. Erodable soils. Where soils adjacent to water areas or wetlands with an erosion "K" factor of 0.25 or greater, as determined by the Natural Resources Conservation Services ("NRCS") or other qualified expert, exists the outer buffer zone shall be coincident with the area of such soils within one hundred twenty-five (125) feet of such water area or wetland.

g. Unstable streambank conditions. Where horizontal or vertical degradation beyond natural levels of river and stream banks exists, the outer buffer zone shall be twenty-five (25) feet.

h. Hazardous materials. Where the proposed use of property presents a special hazard to water quality due to storage, handling or use of hazardous or toxic materials, chemical fertilizers or pesticides, not including residential uses, the outer buffer zone shall be one hundred (100) feet.

i. Stormwater permit. Where the proposed land use involves commercial or industrial uses that require a CDPS stormwater permit (SIC-based), the outer buffer zone shall be one hundred (100) feet.

j. Impervious area. Where the proposed site development would create forty percent (40%) or more impervious surfaces for any one (1) acre area within the potential buffer zone area (including restrictive inner and potential variable outer buffer zone), the outer buffer zones shall be one hundred (100) feet.

k. Poor vegetative cover. Where vegetative cover of less than thirty percent (30%) for any one-half (½) acre exists within one hundred twenty-five (125) feet of a water area or wetland, the outer buffer zone shall be fifty (50) feet.

(4) Reduction of variable outer buffer zone. When Best Management Practices for a proposed site development can be used to prevent, or at a minimum mitigate, degradation of the water quality of water areas, the function of wetlands or the function of the buffer zone, the variable outer buffer zone width will be reduced accordingly. The specific use and development of property shall be considered when considering the appropriateness of reducing the variable outer buffer zone. The function of buffer zones can include:

- a. Reduction of sediment inflows to water areas or wetlands.
- b. Regulation of nutrient and organic matter input into water areas and wetlands.
- c. Reduction of hazardous or toxic material inflows into water areas or wetlands.
- d. Attenuation of stormwater/ snowmelt flows into water areas and wetland (including changing concentrated flows into sheet flows).
- e. Habitat for water area or wetland organisms or organisms that use water areas and wetland.

- f. Groundwater recharge area which helps support a water area or wetland. (Ord. 2003-20 §2)

**Sec. 4-8-20. Review standards for Disturbance Permit.**

The reviewing entity shall use the standards in this Section for review of Disturbance Permits for site development in wetlands, water areas and buffer zones. The reviewing entity must find that the application meets at least one (1) of the following standards in order to issue a Disturbance Permit. In all cases where an application for a Disturbance Permit meets one (1) of the standards below, an acceptable Disturbance Plan that meets the standards in Section 4-8-21 and, if required, an acceptable Mitigation Plan that meets the standards of Section 4-8-22 are required as a condition to issuance of a Disturbance Permit. Unless otherwise approved by the Town, the requirements set out in the Disturbance Permit shall be completed prior to any issuance of a Certificate of Occupancy for the development involving wetland disturbance.

- (1) The proposed activity is water-dependent;
- (2) The proposed activity is necessary to achieve access to property or provide utility service to property, and no other access route avoiding wetland and buffer zone areas is practical or the proposed access route results in better overall design of the site development;
- (3) The proposed activity in a buffer zone is a temporary disturbance for customary construction and development of a property;
- (4) Denial of the Disturbance Permit would result in unconstitutional taking of property pursuant to the Colorado and United States Constitutions;
- (5) The proposed activity is (a) primarily for the promotion of the safety, health and general welfare of the Silverthorne community, (b) the public benefit is greater than the impact to wetlands, and (c) there is no financially feasible alternative or other alternatives conflict with other provisions of the Comprehensive Plan;
- (6) The proposed activity is in compliance with the Waterbody, Wetland and Riparian Protection Plan;
- (7) The primary purpose of the proposed disturbance activity is to restore a wildlife habitat, create additional wetlands, improve existing wetland areas or restore or improve existing water areas and associated riparian areas;
- (8) The proposed disturbance in a buffer zone would enhance the benefits of such buffer zone or involves residential landscaping that would not degrade the benefits of such buffer zone, or the proposed disturbance in a buffer zone is for construction of a storm water treatment area or equipment; or
- (9) The proposed activity (a) is reviewed as a planned unit development application, (b) would not result in significant degradation to wetlands or natural water areas, and (c) results in a better overall design of the project that could not otherwise be achieved by the strict application of the standards in Subsections (1) through (6) above. (Ord. 2003-20 §2)

**Sec. 4-8-21. Disturbance Plan practice standards.**

A Disturbance Permit for site development in a wetland area, water area or associated buffer zone shall include a Disturbance Plan that meets the following standards for development practices to the extent practicable:

- (1) Disturbed wetland soils shall be retained for on-site revegetation, on-site mitigation or off-site mitigation, as set forth in the Disturbance Permit;
- (2) Site development in wetland, water areas and buffer zones shall be confined to the designated boundaries of the Disturbance Permit;
- (3) Appropriate erosion and siltation controls must be utilized. Areas not meant for development shall be protected with silt fence, snow fence or other such barriers, and all exposed soil and other fill shall be permanently stabilized at the earliest practicable date;
- (4) Grading and construction shall be timed to minimize soil exposure to heavy run-off and rainy periods;
- (5) Runoff from impervious surfaces such as walkways, parking areas and driveways shall be detained and infiltrated;
- (6) The grade of exposed slopes shall be minimized and erosion shall be controlled by utilizing mulching, erosion control blankets, barriers, such as straw bale dikes and silt fencing, and other appropriate means;
- (7) Runoff velocities shall be maintained to prevent high erosion by using flow barriers (i.e., vegetation, rip-rap, etc);
- (8) Drainage ways and outlets shall be protected from increased flows;
- (9) On-site sediment shall be trapped by using check dams, temporary diversions, detention basins, straw bales, silt fences or other appropriate means;
- (10) Disturbed areas shall be revegetated with native vegetation or other appropriate vegetation acceptable to Town;
- (11) Existing hydrologic flow shall be maintained through the site through the use of culverts, French drains or other devices;
- (12) Cut and fill shall be minimized;
- (13) Heavy equipment working within a wetland area shall use measures to minimize soil disturbance;
- (14) Security in the amount of one hundred twenty-five percent (125%) of the written estimated cost of the disturbance plan measures shall be provided;

(15) Any other appropriate measure as deemed necessary by the reviewing entity shall be followed;

(16) The project's runoff shall not violate other applicable regulations and laws (e.g., state water quality regulations, Endangered Species Act, National Environmental Policy Act), or significantly degrade wetland or water areas.

The Public Works Department shall have the authority to promulgate written standards and guidance for Best Management Practices for Disturbance Permits. (Ord. 2003-20 §2)

**Sec. 4-8-22. Mitigation Plan.**

(a) Mitigation Plan. A Mitigation Plan for proposed fill of, or impact to, wetland areas shall include the following information:

(1) The amount, location and acreage of wetland fill, removal or other alteration proposed on the proposed development site. In the case of encroachment in the buffer zone the extent of that encroachment must be shown.

(2) Detailed plans showing the proposed wetland areas to be restored or created, the hydrology supporting the wetland areas and maintenance of such hydrology, the location of those improvements including information on the timing of the proposed mitigation.

(3) Authority to conduct mitigation measures at the proposed site.

(4) A grading and erosion control plan, utilizing the soil stabilization measures and practices described in Section 4-8-21(6).

(5) A revegetation plan, planting schedule and monitoring scheduling prepared by an engineer or scientist trained in wetlands mitigation.

(6) Security in the amount of one hundred twenty-five percent (125%) of the estimated cost of the mitigation in accordance with the requirements for required landscape improvements.

(b) Standards for Mitigation Plan. A proposed Mitigation Plan shall be reviewed in accordance with the following standards:

(1) Wetland restoration, enhancement or creation should be considered on-site first, then in the close proximity to the impacted wetland area, or may be permitted at a wetland mitigation bank acceptable to the Town. The location of wetland mitigation should be able to provide an equivalent function and purpose as the degraded wetlands.

(2) The wetland mitigation plan should provide the functional equivalent of the impacted wetland area in relationship to the purposes stated in Section 4-8-21 above to the extent that such functions and values can be practically replicated. Restored or created wetlands in a Mitigation Plan are preferred to be in close proximity to the impacted wetlands and of similar type and function as the impacted wetlands. In the case where wetlands creation and establishment for mitigation will occur after degrading wetlands, the required ratio of new wetlands to degraded wetlands may be two to one (2:1), or greater as determined by the Town.

(3) Wetland restoration, enhancement or creation should use transplanted wetland vegetation and topsoil from the impacted wetland area, if feasible and appropriate, or must use nursery stock approved by the Town.

(4) The location of wetland mitigation should be contiguous to existing wetland or water areas or identified wildlife habitats or corridors where possible.

(5) The proposed wetland mitigation area should provide a protected buffer zone area that meets the purposes in Section 4-8-19 and setbacks in Section 4-8-21.

(6) The location and quality of wetland mitigation should be in compliance with the Town's Comprehensive Plan, especially the Blue River Amenities Plan and the Waterbody, Wetland and Riparian Protection Plan.

(7) Payment in lieu of mitigation may be acceptable for wetland mitigation banking programs which are approved by the Town. Payment in lieu of mitigation is considered more appropriate for minor degradation of wetland areas, such as driveway, street and utility construction.

(8) The Mitigation Plan shall comply with the Silverthorne SAMP or shall otherwise be approved by the Army Corps of Engineers. (Ord. 2003-20 §2)

**Sec. 4-8-23. Decision, appeal.**

The reviewing entity shall provide a written decision regarding the issuance of a Disturbance Permit and shall mail by U.S. first class mail such written decision to the applicant at the address given on the application. The written decision shall include findings of fact, shall state the reason for approval or denial and shall identify the disturbance plan and mitigation plan which are incorporated into any approved Disturbance Permit. Additional conditions and requirements that are deemed necessary to meet the standards identified herein may be set forth in the written approval for a Disturbance Permit. In the case of the written decision to deny a Disturbance Permit application or approve a Disturbance Permit application with conditions by the Community Development Department, the applicant may appeal such decision to the Board of Adjustments by providing a written notice and request to appeal such decision to the Town Clerk within fifteen (15) days after the date the written decision is deposited in the U.S. mail. The decision of the Board of Adjustments and the decision of Council at final review shall be the final decision and may be appealed to the District Court within thirty (30) days of such decision. (Ord. 2003-20 §2)

*Division 3*

*Tree Conservation and Replacement*

**Sec. 4-8-31. Purpose.**

The purpose of this Section is to facilitate the preservation of existing trees and the replenishment of tree stock to the maximum extent possible throughout the Town. These actions are intended to contribute to the health, safety and welfare of the Town by decreasing flooding, soil erosion, air pollution and noise, improving aesthetics and increasing property values. Tree preservation and replenishment will contribute to establishing and reinforcing a positive identity for the Town. (Ord. 2003-20 §2)

**Sec. 4-8-32. Applicability.**

(a) This Section shall apply to all new subdivisions, site plans, and new single-family construction within Town.

(b) This Section shall also apply outside of the platted setbacks and building envelopes of single-family lots contained within a final plat for single-family lots that has been approved. (Ord. 2003-20 §2)

**Sec. 4-8-33. Tree removal.**

(a) No person shall remove, damage or destroy any deciduous tree which is six (6) inches or greater in caliper, measured one (1) foot above ground level, or any coniferous tree greater than ten (10) feet in height. Removal of any tree without the approval of a tree conservation plan or an approved tree removal application, as provided in Section 4-8-42, shall be unlawful and punishable as prescribed in the Section below.

(b) If no reasonable alternatives to removal are available, the person desiring to remove a tree shall submit a tree conservation plan for approval by the Town.

(c) Tree conservation plan.

(1) Any land proposed for subdivision or site plan application not intending to preserve all trees within the site or any tree or group of trees at or above the size specified in the Section above shall be required to submit a tree conservation plan. This plan shall contain the following information:

a. The location, caliper and species of all deciduous trees, and the location, height and species of all coniferous trees on the site which are equal to or greater in size than the trees specified in Subsection (a) above.

b. The location, size and species of all trees to be preserved and those to be removed must be shown.

c. Specifications for the methods for protection of trees to be implemented during construction.

d. Proposed grade changes or other potentially injurious work adjacent to trees designated for preservation with specifications for maintaining ground drainage and aeration around such trees.

e. The location, size and species of all trees to be planted, including replacement trees.

(2) The information provided in the tree conservation plan may be combined with a required landscape plan.

(3) Approval of tree conservation plan. Tree removal or relocation shall be allowed only after approval by the Town in accordance with the following criteria:

- a. The intended use of the property and feasible alternatives which would preserve existing trees.
- b. The existing topography, proposed changes in the topography and proposed landscaping.
- c. The extreme hardship imposed or the reasonable use denied to the applicant as a result of plan denial.
- d. The effect of the proposed tree removal upon the stabilization of soil, ponds, streams and gulches.
- e. The effect of the proposed tree removal on the deadening and absorption of sound.
- f. The likelihood that the proposed action will adversely affect the control of flooding or soil erosion.
- g. The impact of such action on surrounding property or persons, including views, shade, wind, noise and wildlife habitat.
- h. The consistency of the proposed action with the purpose of this Section.
- i. The effect of the proposed removal on the surrounding trees and overall forest health.

(4) Review and approval of the tree conservation plan shall be by the Town Council when submitted in conjunction with the subdivision final plat, minor development plat or site plan. The Community Development Director may approve a tree conservation plan consistent with the requirements of this Section for single-family residences.

(5) A forest management plan may be required as deemed necessary by the Community Development Department, dependent on the size and health of the forest on the property. (Ord. 2003-20 §2; Ord. 2007-3 §2)

**Sec. 4-8-34. Replacement of trees.**

The tree conservation plan shall include a plan for the replacement of all trees proposed for removal. The plan shall clearly identify the trees to be preserved, the trees to be removed and the replacement trees. Any trees to be relocated shall be reviewed on a case-by-case basis to effectively mitigate the trees to be removed.

(1) Minimum size for replacement trees shall be in accordance with the minimum sizes established in the Landscape code.

(2) Trees proposed for relocation shall be credited at fifty percent (50%) of the replacement tree requirement. Relocated trees shall be maintained by the landowner for a period of two (2) years, at which time the Town shall consider the tree survived. If the tree does not survive, it will be subject to the replacement. (Ord. 2003-20 §2)

**Sec. 4-8-35. Tree protection during development.**

(a) Prior to the start of construction, all trees on the site shall be clearly identified in the field as either "Preserve," "Relocate" or "Remove" by the property owner.

(b) During development, the landowner shall cause to be installed effective protection around all tree preservation areas, and shall further install mechanisms such as tree wells (dependent upon species), retaining walls or other structures necessary to protect individual trees designated for preservation as specified on the tree conservation plan, and subject to the approval of the Planning Commission and Town Council.

(c) Any replacement or relocated tree which dies within two (2) years of written compliance shall be replaced within one (1) year or the next growing season with the same approved size and species of the tree which died. (Ord. 2003-20 §2)

**Sec. 4-8-36. Acts harmful to trees.**

(a) No person shall abuse, mutilate or otherwise damage any tree located on public property, including those located in the public right-of-way. However, nothing in this Section shall be construed to prevent reasonable and proper trimming of trees located on public or private property by authorized persons in accordance with accepted horticultural practices.

(b) No person shall attach any sign, notice, placard, electrical wire or other injurious device to any tree located on public property or within public right-of-way, nor cause any substance harmful to trees to come in contact with them, or prevent water and oxygen from reaching their roots. (Ord. 2003-20 §2)

**Sec. 4-8-37. Violations.**

(a) Enforcement of any provision of this Section shall be in accordance of Appendix A of this Code.

(b) The removal or destruction of each tree in violation of the provisions of this Section for each day the violation has occurred in violation of an approved tree conservation plan by the Town shall be considered a separate offense.

(c) In addition to the remedies described in this Section, the Town may refuse to issue any building permits or certificates of occupancy until the violation is cured. (Ord. 2003-20 §2)

*Division 4  
Removal of Dead, Diseased and Beetle-Infested Trees*

**Sec. 4-8-41. Purpose.**

The purpose of this Section is to minimize the spread of disease and insects detrimental to forest health through the abatement of diseased and beetle-infested trees. These actions are intended to contribute to the health, safety and welfare of the Town by decreasing flooding, soil erosion, air pollution and noise through the overall protection of tree and forest health. (Ord. 2007-3 §3)

**Sec. 4-8-42. Mitigation regulations.**

(a) Landowners are required to remove all dead, diseased and/or beetle-infested trees located on their property.

(b) Any landowner, tenant or occupant (responsible party) of any lot who shall allow dead, diseased or beetle-infested trees to exist thereon is in violation of this Article.

(c) For landowners removing only dead, diseased and/or beetle-infested trees, an application must be approved by the Community Development Department prior to commencement of tree removal. The application shall contain a written narrative describing the type, size, quantity and general location of the trees on the property to be removed. The Town shall perform a site visit prior to action on the application. (Ord. 2007-3 §3)

**Sec. 4-8-43. Violation notification.**

The Town shall notify the owner and, if different, the responsible party, in violation of this Section by either certified mail or hand delivery. The notice shall:

(1) Inform of the violation;

(2) Advise of approved removal methods; and

(3) Advise that the terms of the notification must be complied with or an acceptable plan and schedule for removal must be submitted to the Community Development Department within ten (10) days. (Ord. 2007-3 §3)

**Sec. 4-8-44. Abatement order.**

In the event the owner or responsible party fails to comply with the notice by removing the dead, diseased or beetle-infested tree(s) or submitting an acceptable schedule for the same, within ten (10) days the Town shall have the authority to provide for and complete the removal by obtaining and acting on an abatement order.

(1) Abatement order: Upon the expiration of the period of notice or at any time thereafter if the required action has not taken place, the Town may apply to the Municipal Court for an abatement order, as follows:

a. The application shall be accompanied by an affidavit affirming that the Town has complied with the notice requirements of Section 4-8-43 and that the owner has failed to remove the tree(s) as required.

b. The Town shall give notice to the responsible party of its application for an abatement order in the same manner as provided above for service of the original notice.

c. The notice of application for an abatement order shall include a copy of the Town's application and its affidavit in support thereof, as well as the time, date and place at which the Town will appear before the Municipal Court to request entry of the abatement order.

d. At the stated time, date and place, the Municipal Court Judge shall review the application for abatement order, the affidavit and any statement of the Town in support thereof, as well as any statement and evidence presented by the owner or responsible party, if present.

e. Thereafter, the Municipal Court is authorized to enter an order permitting the Town to enter upon the property, remove the identified trees and recover its costs as provided by Paragraph (4).

(2) In case of endangerment of public or private land or public health or safety, the Town may authorize immediate removal without notice or abatement order.

(3) The Town may pursue the remedies set forth herein with or without also filing a complaint in the Municipal Court, at the Town's sole discretion.

(4) The owner shall be assessed two (2) times the whole cost of removal, including administrative fees. All costs and charges incurred by the Town, if not paid by the landowner upon assessment, shall be certified to the County Treasurer for collection in the same manner as real property taxes. (Ord. 2007-3 §3)

*Division 5*  
*Fire Hazard Mitigation*

**Sec. 4-8-51. Purpose.**

The purpose of this division is to establish permitted fire mitigation standards for the protection of life and property from wildfires by reducing the hazards from threat of wildland fires on structures. (Ord. 2003-20 §2)

**Sec. 4-8-52. Mitigation regulations.**

(a) Roof material required.

(1) All new construction of residential and commercial structures shall be required to install a Class A roof covering.

(2) All existing residential and commercial structures when re-roofing will require a Class A roof cover to be installed.

(b) Vegetation/natural materials.

(1) A property owner may remove all trees and shrubs within ten (10) feet of structures on site.

(2) Tree branches of large trees should be trimmed to a minimum of six (6) feet from the ground.

(3) Cut or piled combustible materials may be a minimum of ten (10) feet from the property line and/or ten (10) feet from any structure.

(4) Grass and/or other combustible materials on undeveloped parcels of any size which pose a fire hazard as determined by the Community Development Department or Lake Dillon Fire Department shall be removed.

(5) Dead, diseased and/or beetle-infested trees must be removed within ten (10) days of receipt of written notice to the property owner or responsible party pursuant to Section 4-8-42.

(c) Chimney spark arrestors. Upon remodeling, renovation, or repairs requiring a building permit, the owners of the residential property will retrofit all existing wood stoves/wood burning fireplace chimneys with approved spark arrestors as approved by the Building Official. (Ord. 2003-20 §2; Ord. 2007-3 §4)

**Sec. 4-8-53. Enforcement of fire hazards.**

The objective of this policy is to permit the reduction of wildfire hazards during periods of drought and/ or fire hazard conditions. If a violation is found, the property owner will be notified by mail of the violation. Action for violations is found in Appendix A. (Ord. 2003-20 §2)

*Division 6  
Noxious Weed Control*

**Sec. 4-8-61. Purpose.**

This Article is intended to encourage the control of grasses, weeds and noxious vegetation within the Town of Silverthorne to prevent any noxious weeds from spreading; reduce the amount of irritants and pollution in the air; and to improve the aesthetic quality of the Town. (Ord. 2003-20 §2)

**Sec. 4-8-62. Definitions.**

*Person, owner, tenant or occupant* means any individual, partnership, association, company, firm, trust, corporation, department, bureau, agency or other recognized by law as the subject of rights and duties.

*Noxious weed* means a plant that is determined to be injurious to public health, agricultural uses, livestock or other property. (Ord. 2003-20 §2)

**Sec. 4-8-63. Noxious weed list.**

The noxious weed control list for the Town is on file in the Community Development Office. It consists of selected species found on the Colorado Department of Agriculture's noxious weed list. (Ord. 2007-2 §§1,2)

**Sec. 4-8-64. Nuisance declared.**

(a) The growth, existence or presence of noxious weeds on any lot or any other public or private place within the Town is hereby declared a nuisance.

(b) Any owner, tenant or occupant (responsible party) of any lot or any other public or private place, who shall cause, suffer, allow or permit noxious weeds to grow or exist thereon, is in violation of this Article. (Ord. 2003-20 §2; Ord. 2007-2 §3)

**Sec. 4-8-65. Abatement of nuisance.**

(a) The Town shall notify the owner and if different, the responsible party in violation of Section 4-8-64, by certified mail or hand delivery. Such notice shall be dated and shall:

(1) Identify the presence of noxious weeds and eradication as the required management objective,

(2) Describe the prescribed eradication methods; and

(3) Advise the owner and responsible party to comply with the terms of the notification or submit within ten days (10) days an acceptable plan and schedule for completion.

(b) In the event that the responsible party fails to comply with the notice to eradicate the identified noxious weeds and implement an appropriate eradication program within ten (10) days of notification, the Town shall have the authority to provide for and complete the eradication and assess the owner two (2) times the whole cost of eradication, including administrative costs.

(c) In case of endangerment of public or private land or public health or safety, the Town may authorize immediate removal of the weeds without notice.

(d) The Town may pursue the remedies set forth herein with or without also filing a complaint in the Municipal Court, at the Town's sole discretion.

(e) All costs and charges incurred by the town, if not paid upon assessment, shall be certified to the County Treasurer for collection in the same manner as real property taxes. (Ord. 2003-20 §2; Ord. 2007-2§4)

**Sec. 4-8-66. Enforcement.**

(a) In cases of endangerment of public or private land, or health and welfare of citizens, the Community Development Department may authorize their immediate removal without notice at the expense of the owner of the premises.

(b) The objective of this policy is to permit the elimination of noxious weeds. If a violation is found, the property owner will be notified by mail of the violation. Action for violations is found in Appendix A. (Ord. 2003-20 §2)