ORDINANCE NO. 2005-5

TOWN OF OPHIR

WHEREAS, the General Assembly has the authority to adopt regulations concerning the use and development of land in the Ophir boundary and certain land uses affecting the municipal water shed areas outside the Town boundaries; and,

WHEREAS, the Ophir Planning Commission recommended adoption of the Ophir Land Use Code – Public Hearing Draft – August 29th, 2005; and,

WHEREAS, the General Assembly finds that adoption of the revised Ophir Land Use Code will promote the Health, Safety and General Welfare of the Ophir Land Use Code;

NOW, THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR the following;

Section 1. Adoption of Ophir Land Use Code. The existing Ophir Land Use Code is hereby repealed in its entirety and the attached Ophir Land Use Code entitled Public Hearing Draft - August 29th, 2005 is hereby adopted.

Section 2. Public Hearing. This Ordinance shall be referred to a public hearing on the 16th day of May, 2000.

Section 3. Effective Date. This Ordinance shall be in full force and effect upon publication of notice of final adoption.

First reading introduced, read and approved by the General Assembly on the 20th day of September, 2005.

Second and final reading approved and adopted by the General Assembly of the Town of Ophir on the 18th day of October, 2005.

By: Monica Carey
Monica Carey, Mayor

Attest: Randy Barnes
Randy Barnes, Town Clerk

Eric James Heil
Approved as to Form: Eric James Heil, Town Attorney

TOWN OF OPHIR
LAND USE CODE

Adopted October 18, 2005 by Ordinance 2005-5

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ARTICLE I. PRELIMINARY PROVISIONS

§101. TITLE. This land use code shall be referred to as the 'Town of Ophir Land Use Code' or the 'LUC.'

§102. CONTENT. This LUC contains the language of the Land Use Code, the standards for the Planning and Zoning Commission, a map designated as the Official Zoning Map of Town of Ophir, Colorado, maps designated as the Official Overlay Maps of the Town of Ophir, Colorado. The Official Zoning Map and Official Overlay Map, and all notations, references and other information shown on it are part of this LUC and have the same effect as if fully set forth.

§103. FILING. The Ordinance adopting this LUC, is recorded with the Office of the San Miguel County Clerk and Recorder. The LUC together with the Official Zoning Map, Official Hazards Overlay Maps, Source Water Areas Protection map are on file with the Ophir Town Clerk.

§104. LEGISLATIVE INTENT. The Town of Ophir declares that in the interest of protecting our most priceless resource, the natural environment, while at the same time allowing for the use of the land, this LUC shall be adopted. This LUC implements in part the Town of Ophir Master Plan adopted on September 21st, 1993, as may be amended from time to time. It is the intent of this LUC to lessen congestion in the streets, to prevent the overcrowding of population, to promote the health, safety, and general welfare, to provide adequate light, air and solar access, and to provide a safe environment in which residents can live. It is the intent of the Town of Ophir to maintain the historic flavor of the town, while allowing for harmonious new construction.

§105. AUTHORITY. The Ophir Land Use Code is authorized by the following statutes in addition to the Town's general police powers, Town's Home Rule Charter authority, and other applicable state authority: C.R.S. §31-23-201 *et. seq*. PLANNING COMMISSION; C.R.S. §29-20-101 *et. seq*. Local Government Land Use Control Enabling Act; C.R.S. §24-65.1-101 *et. seq*. Areas and Activities of State Interest; and, C.R.S. §24-68-101 *et. seq*. Vested Property Rights.

§106. INTERPRETATION AND APPLICATION. In the interpretation and application of these LUC, the following regulations shall apply:

§106.1 Minimum Requirements**.** In the interpretation and application of the LUC, the provisions hereunder shall be regarded as the minimum requirements for the protection of the public health, safety, and general welfare of the Ophir community. The provisions and requirements in the LUC shall be liberally construed to further the general purposes stated in this LUC, and as is stated in each specific code section. Where a term or phrase is not otherwise defined in this LUC, such term or phrase shall

be defined by the latest edition of Webster's dictionary.

§106.2 Conflict of Laws**.** Whenever a provision in the LUC contains any restrictions which covers the same subject matter as another provision herein, or in any law of the Town of Ophir, State of Colorado, or United States of America, the provision, regulation, or law which imposes the greater restriction shall govern. The LUC shall not supercede any private land use regulation in a deed or covenant which is more restrictive than this code.

§106.3 Existing Permits and Agreements**.** The adoption of the LUC is not intended to abrogate or annul any permits or approvals of Subdivision Plats, improvements agreements, or any conditions related to subdivisions, issued by the Town of Ophir before the effective date of the LUC.

§107. ADOPTION OF UNIFORM BUILDING CODE. The Town of Ophir has adopted the Uniform Building Code, and each of its subsequent revisions, and the Uniform Building Code shall apply and take effect except where it conflicts with the provisions of this LUC.

§108. The Town of Ophir is subject to all state and federal health and building codes and can not vote to override state or federal codes.

§109. Requests to the General Assembly to override any process defined in this LUC are not allowed.

[END of ARTICLE I]

ARTICLE II. DEFINITIONS

§ 201. RULES OF CONSTRUCTION

§201.1 Meaning and intent. All provisions, terms, phrases and expressions contained in this Code shall be construed in order to accomplish the purposes stated in **§104**.

§201.2 Text. In case of any difference of meaning or implication between the text of this Zoning Code and any illustration or figure, the text shall control.

§201.3 Computation of time. For all application submittals, appeals of administrative or Planning Commission decisions or other requirements not including public hearing notices, if the last day is a Saturday, Sunday or legal holiday declared by the Town, then the next day that is not a Saturday, Sunday or legal holiday shall be the last day. In the computation of time for public hearing notice, the first day (day of the posting, mailing or publishing) shall be included and the last day (day of the hearing) shall be excluded. If the first day for Public Hearing notice is a Saturday, Sunday or legal holiday declared by the Town, then the first preceding day that is not a Saturday, Sunday or legal holiday shall be the first day The following time-related words shall have the following meaning:

"Day" means a calendar day unless working day is specified.

"Week" means seven (7) calendar days.

"Month" means a calendar month.

"Year" means a calendar year, unless a fiscal year is indicated.

§210. The words and phrases in this section shall have the following meaning throughout the LUC:

Accessory Building: Also referred to as a shed or cabin or detached garage. A detached subordinate building, the use of which is customarily incidental to that of the main building or to the main use of the land and which is located on the same lot or parcel with the main building or use. Accessory buildings shall not be provided with kitchen or bath facilities sufficient for rendering them suitable for permanent residential occupancy and accessory buildings shall not be used for sleeping accommodations.

Alley: A public right of way permanently reserved for utilities and potential emergency vehicle access.

Attached: A physical connection of the foundation wall or roof of two (2) buildings. If the method by which the buildings are attached includes an above grade wall, or an above grade wall with roof, or has a common above grade wall, then the attached buildings shall be considered a single structure for the purpose of determining site coverage and floor area. If the attachment does not enclose area and does not include an above grade wall, then the area of the attachment shall not be counted for the purposes of determining site coverage.

Avalanche: A mass of snow or ice and other material that may become incorporated therein as such mass moves down a mountain slope.

Basement: A portion of a building located partially or wholly underground having no more four feet of the floor to ceiling height extending above the preconstruction grade.

Buffer Zone: All areas where development could impact wetland areas, extending at least 100 feet around wetland areas.

Building: Any permanent structure built for the shelter or enclosure of persons, animals or property of any kind, not including fences.

Building Height: The building height is the maximum vertical distance from the average of the four corners of a structure from the existing pre-construction grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mid-point of a gable or hip roof measured from the eave to the ridge, provided that in no event shall the height of any point of a structure above the pre-construction grade exceed the building height by more than five (5) feet. For structures with multiple roof elements the four corners of a structure shall be measured individually for each segment of a building. For structures with an irregular foot print the Enforcement Official shall determine the reference points which meet the purpose of this Code. The Enforcement Official may require a survey of the lot(s) with one foot contour lines prepared by a surveyor licensed in Colorado in order to determine the existing pre-construction grade.

(1) Antennas, chimneys, flues, vents or similar structures may extend up to five feet above the specified maximum height limit so long as the footprint or cross-section of such structure is not more than ten (10) square feet.

Building Inspector: The Building Inspector of the Town of Ophir contracted or hired by the Town of Ophir to perform the duties described in the UBC.

Condominium: A building, or buildings, consisting of separate fee simple estates to individual units of a multi-unit property together with an undivided fee simple interest in common elements.

Dwelling: A permanent building or portion thereof which contains kitchen and bath facilities rendering the structure suitable for residential use, but not including structures used primarily for commercial purposes or portable structures. Also referred to as a main building or residence or principal building or residential building.

Dwelling, Single Family: A detached building containing only one dwelling.

Dwelling, Multi-Family: A detached building containing more than one dwelling.

Enforcement Official: The official hired or contracted by the Town of Ophir to enforce the code described in the LUC. The provisions of this LUC shall be enforced and administered by the Building Inspector of the Town of Ophir, his authorized representative, the Enforcement Official, the Planning and Zoning Commission of the Town of Ophir, or such other authority as appointed by the General Assembly of the Town of Ophir. May also be the Plan Reviewer.

Family: Any individual, or two or more persons related by blood or by marriage or between whom there is a legally recognized relationship, or a group of not more than five unrelated persons, occupying the same building.

Floor Area: The floor area shall be calculated by measuring the gross square footage from the exterior side of exterior walls of all structures. The floor area for stairways and basements shall be calculated at 50% of the area per floor. Decks, roof overhangs, open porches, and areas where the floor to ceiling height is less than 5 ½ feet shall not be included in the maximum floor area calculations.

Garage, Private: A building used for the housing of motor vehicles and other customary uses incident to residential use.

Home Occupation: A business occupation or trade conducted in the residential district for gain or support by a resident or residents of the dwelling, and no other, which:

(1) Is clearly incidental and secondary to the residential use of the building;

(2) Does not change the essential residential character of the use;

(3) Operates pursuant to a valid occupational license for the use held by the resident of the dwelling unit, if required;

(4) Is confined to no more than fifty percent of the total floor area of the dwelling;

(5) Does not advertise, display, or otherwise indicate the presence of the home occupation on the premises;

(6) Does not sell any stock in trade, supplies or products on the premises other than those goods produced or manufactured on the premises;

(7) Does not store any equipment or materials used for the home occupation outside of the dwelling;

(8) Does not create any noise, odor, vibration, dust, smoke, haze or other nuisance greater than customary residential uses outside any building on the premises or outside the boundary of the premises;

(9) Provides off-street parking to accommodate the parking demand generated by the home occupation; and,

(10) Does not include retail shops, lodging or restaurants.

(11) Is not in conflict with UBC

(12) Is not in conflict with state or federal health codes.

Lot: A parcel of real property as shown with a separate and distinct number or letter on a plat recorded in the Office of the San Miguel County Clerk and Recorder.

Lot Line, Front: The property line dividing the lot from the street.

Lot Line, Rear: The line opposite the front lot line.

Lot Area: The total horizontal area within the lots lines of a lot.

Mitigation Plan: A plan approved by the Town of Ophir describing the restoration of wetland areas destroyed or otherwise negatively impacted by an activity.

Mobile Home: Any portable structure originally intended to have no foundation other than wheels, jacks or posts, and so designed to permit residential use.

Natural Materials: Natural stone, cement cast stone, brick, stucco, synthetic stucco, adobe, plaster, natural wood or stained wood, but not to include plywood, press board, or other highly processed wood products. Non-Conforming Building: A building or structure or portion thereof conflicting with the provision of this LUC applicable to the zone district in which it is situated.

Non-Conforming Use: The use of a structure or premises or any portion thereof conflicting with the provisions of this LUC.

Non-natural materials: Any material not described as natural.

Non-reflective metal: Metal that has a reflective quality of any type is not allowed in Ophir. Metals must be rusted.

Occupied: The word "occupied" includes arranged, designed, built, altered, converted, rented or leased, or intended to be occupied.

Open-Use Recreation Site: Land devoted to the public use for recreation, including such facilities as playgrounds and play-fields, golf, tennis or similar court installation.

Plan Reviewer: Contracted by the Town Manager to review Plans. May also be the Enforcement Official or the Building Inspector.

Principal Building: Principal building means that main structure or building on a building site or lot in which the primary use by right occurs. Also referred to as a main building or residence or dwelling or residential building.

Recreation Club: A building devoted to public use including such facilities as golf club house, swimming pool club house, tennis club house, playground and play-field activity centers, or club houses, and may include kitchen facilities, assembly halls, meeting rooms, locker facilities, etc.

Restoration: A human activity that returns wetland areas from a disturbed or altered condition with lesser wetland area acreage and/or function values to a enhanced or improved condition with greater wetland area acreage and/or functional values.

Scenic Views: Views of mountain ridges and slopes, natural landscapes, rivers, waterfalls, forests and the sky.

Setbacks. The setback is the minimum distance of a structure from the edge of a lot or parcel. Setbacks are measured from the edge of a lot or parcel to the exterior of a structure. Roof overhangs are permitted to encroach 2 feet into a front and side setback area. Structures

include decks and patios over 30 inches in height.

Sign: Any device fixed to, painted on or incorporated in the building surface, or displayed from or with a building or structure, or free standing upon the site and which is visible from a public right-of-way, designed to convey or direct a message to the public concerning the identification of the premises or to advertise or promote the interests of any private or public firm, person or organization.

Site Coverage: Site coverage means that portion of a building site or lot that is covered by buildings and structures, excluding open decks, porches, roof eaves and stoops.

Street: A public way other than an alley, which affords the principal means of access to abutting property.

Structure: Anything constructed or erected, which requires location on the ground or attached to something having a location on the ground, but not including fences or walls used as fences less than six feet (6) in height.

Use: The purpose for which land or a building is designated, arranged, or intended, or for which it either is or may be occupied, maintained, or used.

Waters of the Town of Ophir: All waters, including without limitation, lakes, rivers, streams, intermittent streams, natural sloughs, wet meadows, natural ponds, impoundments and tributaries. Waste treatment systems presently in use, including treatment ponds and lagoons designed to meet the requirements of the Clean Water Act (33 U.S.C. sec. 1341), and treated water distribution and storage facilities or treated water that otherwise meets the criteria of this definition, are not waters of the Town of Ophir.

Wetland: An area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances support, vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. Wetland areas include all waters of the Town of Ophir, all riparian areas in the Town, and are presumed to include all areas identified on official wetland area maps of the Town of Ophir available through the Town Clerk.

Yard: A space on the same lot with a principal building that is open, unoccupied, and unobstructed by buildings or structures from the ground upward, except as otherwise provided herein.

Yard, Front: A yard extending the full width of the lot or parcel, the depth of which is measured in the least horizontal distance between the front lot line and the nearest wall of the principal building; such distance being referred to as the front yard setback.

Yard, Rear: A yard extending the full width of the lot or parcel, the depth of which is measured in the least horizontal distance between the rear lot line and the nearest wall of the principal building; such depth being referred to as the rear yard setback.

Yard, Side: A yard extending from the front yard to the rear yard, the width of which is measured in the least horizontal distance between the side lot line and the nearest wall of the

principal building.

Yard, Service: Any yard area used for storage of materials accessory to or used in conjunction with the principal building, or used for garbage or trash containers, or for the location of mechanical equipment accessory to the principal building or use.

Utilities: All poles, lines, cables and other transmission or distribution facilities of public utilities.

ARTICLE III. GENERAL REGULATIONS

§301. ZONE DISTRICTS. For the purposes of this LUC, the Town of Ophir is divided into four Zone Districts and three overlay Zone Districts to be known as follows:

- Residential Zone District
- Forestry Zone District
- Public Facilities Zone District
- Open Space Zone District
- Avalanche Hazard Overlay Zone District
- Wetland Areas Hazard Overlay Zone District
- Source Water Protection Overlay Zone District

§302. ZONING MAP. The boundaries of these districts are shown on the official Zoning Map and the Overlay Maps of the Town of Ophir which accompanies and is made a part of this LUC.

§303. GENERAL REQUIREMENTS

§303.1 Permitted Use. No building shall be erected, converted, enlarged or structurally altered, nor shall any building or premises be used for any purpose other than permitted in the district in which such building or premises is located. No building shall be erected, enlarged, moved or structurally altered except in conformity with the height, yard or other regulations prescribed herein for the district in which such lot is located; every part of a required yard shall be open to the sky, unobstructed, except as hereafter provided; the yard of any lot shall not be reduced so as to be smaller than the applicable district requirement.

§303.2 Location on Lot. Every building hereinafter erected or structurally altered shall be located on a lot as defined in **§210**, and in no case shall more than one residential building be located on a lot.

§303.3 Plans Required. No building shall be erected, converted, enlarged or structurally altered unless, prior to applying for a building permit in the Town of Ophir, complete plans have been filed with the Ophir Town Clerk indicating all lands to be used and indicating all information required to determine compliance with the requirements of this LUC.

§303.4 Exterior Materials. All buildings and structures shall use designated materials according to the following table for exterior surfaces (excluding: doors, window areas, antennas and non-reflective solar energy collection devices, but including garage doors). The Planning Commission may approve additional materials to this list after conducting a public hearing and reviewing an actual sample of the proposed material.

A. Foundation. Natural stone, cement cast stone, brick, non-reflective metal, rusted metal, stucco, synthetic stucco, adobe, and plaster.

B. Siding. Natural stone, adobe, plaster, natural wood (stained or clear), and rusted metal.

C. Skirting. Skirting may be used above the foundation for protection from snow piling against the side of a house. Skirting may extend a maximum of five (5) above the finished construction grade and shall use non-reflective metal, rusted metal, or other siding material defined in **§303.4.B**. above.

D. Roof. Non-reflective metal, clay tile, pre-finished modular non-reflective metal panels, slate, cement tiles, non-reflective solar tiles, and sod or turf.

E. Garage Door. Natural wood (stained, clear or painted), insulated press-board wood veneer (stained, clear or painted), or rusted metal.

F. Decks. Natural wood (stained or clear) or recycled material with a natural wood appearance (stained or clear).

§303.5 Fences. Fences shall be constructed out of natural wood (stained or clear; milled, rough cut, or logs), stone, wrought iron or any combination of the foregoing. Fences shall not exceed six (6) feet in height from the finished construction grade.

§303.6 Exterior Lighting. All exterior lighting shall be shielded. The direct source of all exterior lighting shall be shielded and shall not be visible off the property. The maximum allowable lighting power is 550 (five hundred fifty) lumens. The use motion sensor devices for lighting devices shall not be triggered off the property.

§303.7 Minimum Roof Pitch. The minimum roof pitch for all structures is one (1) vertical unit to three (3) horizontal units (4/12 roof pitch).

§303.8 Building Height - The building height is the maximum vertical distance from the average of the four corners of a structure from the existing pre-construction grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mid-point of a gable or hip roof measured from the eave to the ridge, provided that in no event shall the height of any point of a structure above the pre-construction grade exceed the building height by more than five (5) feet. For structures with multiple roof elements the four corners of a structure shall be measured individually for each segment of a building. For structures with an irregular foot print the Enforcement Official shall determine the reference points which meet the purpose of this Code. The Enforcement Official may require a survey of the lot(s) with one foot contour lines prepared by a surveyor licensed in Colorado in order to determine the existing pre-construction grade.

(1) Antennas, chimneys, flues, vents or similar structures may extend up to five feet above the specified maximum height limit so long as the footprint or cross-section of such structure is not more than ten (10) square feet.

§304. WOOD BURNING DEVICES. Only one wood burning device per residence shall be allowed. Wood burning devices shall be allowed in the Principle Building, i.e. residential structure, and shall not be allowed in any accessory building. Wood burning devices and their exhaust piping shall be properly installed, shall meet minimum clearances to combustible materials, and shall meet or exceed an EPA efficiency rating of 70%.

§305. OFF-STREET PARKING. The minimum off-street parking requirements is two vehicles for lot area equal to or less than 5,000 sq.ft. and is three vehicles for a lot area greater than 5,000 sq.ft.

Off-street parking requirements are established as follows:

§305.1 Location. Required off-street parking shall be provided on the same lots as the principal use or on a contiguous lot. Any off-site parking area shall be under the same ownership as the principal use to which it is accessory.

§305.2 Dimensions**.** Each off-street parking space shall consist of an open area measuring nine (9) feet wide by eighteen (18) feet long and seven (7) feet high and shall have vehicular access to a public street except for parallel spaces.

§305.3 Design**.** Off-street parking shall be properly drained and shall be maintained in a usable condition at all times. The off-street parking area shall have access to a public road via a driveway that does not exceed a 12% grade. Off-street parking areas shall not be located in any area where a structure or building sheds snow.

§305.4 Restricted Use of Parking Areas**.** No automobile trailers, boats, detached campers or any other object shall be parked or stored in off-street parking areas if it renders the parking space unusable.

§305.5 Configuration. Off-Street parking spaces shall be configured so that vehicles can drive into such space. Parking spaces that are perpendicular to the lot line shall be allowed. Tandem configuration of parking spaces shall be allowed. Parallel configurations must include a suitable drive path from the abutting improved road way and must be a minimum of 10 feet wide and 24 feet in length.

§305.6 Drainage – Downsloping driveway drainage must be contained on the property and properly directed to properly installed and maintained culverts.

§306. UTILITIES. All electric, telephone, cable, and other utility mains, transmission and distribution lines must be installed below the surface of the ground. Residential propane storage tanks are allowed above ground. Nothing in this LUC shall be construed to prevent the construction of a public utility structure necessary for the transmission of commodities or services of a utility company including mains, transmission and distribution lines. All construction and improvements of utility lines and structures that are not primarily for the purpose of providing service to an individual lot or are primarily for the purpose of increasing capacity or extending service to new area shall be subject to the Special Use Permit process in Article XII.

§307. GRANDFATHER CLAUSE FOR NON-CONFORMING USE OR BUILDING. The definitions,

restrictions, and rights regarding non-conforming uses and structures are established as follows:

§307.1 Non-Conforming Status of Uses and Structures. The use of land, use of a structure, or a structure itself shall be a legal non-conforming use or structure when each of the following conditions exist:

A. The use or structure does not conform to the regulations prescribed in the district in which such use or structure is located and was in existence and lawfully constructed, located and operating prior to, and at the time of, the event that made such use or structure non-conforming; and,

B. the event that made such use or structure non-conforming was one of the following: annexation into the Town of Ophir, adoption of this LUC or a previous zoning ordinance, or amendment of this LUC or a previous zoning ordinance; and,

C. the non-conforming use or the use occupying the non-conforming structure has been operating since the time that the use or structure first became non-conforming without abandonment, as abandonment is defined in §307.4 below.

§307.2 Expansion. Non-conforming uses or buildings shall not be allowed to increase the non-conforming use or expand the non-conforming building without approval by the General Assembly through the Variance or SUP process.

§307.3 Ordinary Repair and Maintenance. Normal maintenance and incidental repair may be performed on a conforming structure which contains a non-conforming use or on a non-conforming structure. This section shall not be construed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of the Enforcement Official who declares a structure to be unsafe and orders its restoration to a safe condition. Any new foundation must comply with applicable setback requirements.

§307.4 Abandonment. Whenever a non-conforming use is abandoned then all non-conforming rights shall cease and the use of the premises shall henceforth conform to this LUC. Abandonment shall involve the actual act of discontinuance, regardless of the intent of the user or owner to discontinue a non-conforming operation. Any non-conforming use that is discontinued for a period of twelve (12) months, shall be deemed abandoned. Any non-conforming structure that is moved from the premises shall be considered to have been abandoned.

§307.5 Destruction. If a non-conforming structure or a structure occupied by a non-conforming use is destroyed by fire, the elements or other cause, it may not be rebuilt except to conform to the provisions of this LUC. In the case of partial destruction of a structure occupied by a non-conforming use not exceeding sixty percent (60%) of its replacement value, reconstruction may be permitted, subject to the following standards:

A. The size and function of the non-conforming use shall not be expanded; and

B. Work on the restoration of the use must begin within nine (9) months and be completed within eighteen (18) months of the time of the calamity.

§308. APPLICATION TO THE TOWN OF OPHIR. All provisions of the LUC shall apply equally to any improvement, construction or development activity of the Town of Ophir.

[END of ARTICLE III]

ARTICLE IV RESIDENTIAL ZONE DISTRICT

§401. USE REGULATIONS. The Residential Zone District allows the utilization of land for residential purposes and customary accessory uses incidental to residential use.

§402. USES PERMITTED BY RIGHT. Single family dwellings, 2 accessory buildings per single family dwelling, accessory uses, and home occupations.

§403. USES BY REVIEW. Any use other than a Use Permitted by Right under **§402** must be approved by the Town of Ophir through the Special Use Permit (SUP) process.

§404. MINIMUM LOT AREA PER SINGLE FAMILY DWELLING. The minimum lot area for each single family dwelling in the Residential Zone District is five thousand (5,000) square feet.

§405. FRONT AND REAR YARD SETBACKS. All structures shall be setback at least ten (10) feet from the front and rear lot lines. Raised decks, but not covered porches, shall be set back at least five (5) feet from the front and rear lot lines. Off-street parking shall be allowed in the front and rear yard setbacks. Propane tanks shall be allowed in any setback area.

§406. MINIMUM SIDE YARD SETBACK

§406.1 The minimum side yard setback for all structures in the Residential Zone District shall be as follows:

A. Principal and Accessory Buildings

Lot size 0-5,000 sq.ft.---------- 7.5 ft.

Lot size >5,000 & < or = 7,500 sq.ft.---------- 10 ft.

Lot size >7,500 & < 10,000 sq.ft.---------- 15 ft.

B. For the purposes of determining side yard for corner lots, the area between the building site and the street which runs north/south shall be considered side yard.

C. For corner lots, side yard setbacks to the street may be decreased to 7.5 feet provided the total sideyards are equal to or greater than total sideyard setback required for the lot.

§ 406.2 Off-street parking, propane tanks, ground level patios, and walkways are permitted in the Minimum Side Yard Setback areas.

§407. MAXIMUM BUILDING HEIGHTS. The maximum mean building heights are as follows:

§ 407.1 Residential Building---------- 22 ft.

§ 407.2 Accessory Building---------- 12 ft.

§408. MAXIMUM FLOOR AREA

§408.1 The cumulative maximum floor area for the combined square footage of all buildings shall be determined by the following formulas:

Lot Area	***Maximum Floor Area Formula***
0 - 5,000 sq.ft.	2,100 sq.ft.
5,001 - 7,500 sq.ft.	2,100 + .24 x (lot area - 5,000 sq.ft.)
7,501 - 10,000 sq.ft.	2,750 + .16 x (lot area - 7,500 sq.ft.)
> 10,000 sq.ft.	3,150

§408.2 The Maximum Floor Area of accessory buildings shall be determined by the following equation:

Maximum Floor Area of accessory buildings = Lot Area x .05

§408.3 In no case shall the combined floor area of all buildings exceed 3,150 sq.ft.

§409. MAXIMUM SITE COVERAGE

§ 409.1 The maximum site coverage for each lot in the residential district shall be determined according to the following equation:

Site coverage in sq.ft. = 2,500 + [(Lot Size - 5,000) x .1]

§ 409.2 In no case shall site coverage for a dwelling unit exceed 3,000 square feet.

[END of ARTICLE IV]

ARTICLE V FORESTRY ZONE DISTRICT

§501. INTENT AND PURPOSE. The Forestry Zone District is intended to preserve large, relatively remote areas of the Town of Ophir for resource, agricultural, openspace, and recreational purposes.

§502. USES PERMITTED BY RIGHT.

§502.1 Single Family Dwellings, accessory buildings and uses.

§502.2 Caretaker Unit with the following restrictions:

A. The Caretaker Unit shall not be leased for a period of less than (thirty) 30 days or more than five (5) years;

B. Occupancy of the Caretaker Unit shall be subject to the requirements of the County R-1 Housing Deed Restriction;

C. A Caretaker Unit shall not be conveyed or sold separately from the remainder of the parcel and shall remain under the same ownership as the primary residence; and,

D. A Caretaker Unit shall not exceed one half of the floor area of the primary residence.

§502.3 Normal and customary agricultural, ranching, and equestrian activities.

§502.4 Home Occupations

§503. MINIMUM LOT AREA PER SINGLE FAMILY DWELLING. The minimum lot area for a single family dwelling, caretaker unit, and accessory buildings and uses permitted by right is 15 acres.

§504. SETBACKS. All structures shall be setback at least thirty (30) feet from the front lot line and twenty (20) feet from the rear and side lot lines.

§505. MAXIMUM BUILDING HEIGHT. The maximum building height is 30 feet.

§506. MAXIMUM FLOOR AREA. The Maximum Floor Area for all residential structures, inclusive of principal, secondary, accessory buildings, and caretaker units, shall be 7,000 sq.ft.

§507. OFF-STREET PARKING. The minimum off-street parking requirement is two vehicles per dwelling unit.

[END of ARTICLE V]

ARTICLE VI PUBLIC FACILITIES ZONE DISTRICT

§601. INTENT AND PURPOSE. The Public Facilities Zone is intended to allow the construction of public facilities desired by the Town of Ophir and to insure that the public facility development is compatible with the Town of Ophir and the Ophir Master Plan.

§602. MASS AND SCALE. The Height, Bulk, Site-Coverage and Floor Area maximum limits for any principal building and accessory structure in the Public Facilities Zone shall be the same as the maximum limits in **Article IV Residential Zone** unless expressly stated in the Ophir Master Plan.

§603. USES PERMITTED BY RIGHT. Public buildings, structures, and facilities, including but not limited to Town Hall, club facilities open to the public, playground, play field, tennis and basketball courts, off-street parking, water system facilities, utility structures and buildings, storage buildings for public equipment, and public trash storage, and uses expressly described in the Ophir Master Plan, as such uses are described and as the location of such uses are designated in the Ophir Master Plan.

§604. OTHER USES. All uses not permitted by **§603.** are prohibited unless the Ophir Master Plan is amended to expressly incorporate such use in the Master Plan.

[END of ARTICLE VII]

ARTICLE VII. OPEN SPACE ZONE DISTRICT

§701. INTENT AND PURPOSE. The Open Space Zone is intended to preserve the natural values of undeveloped land for the benefit and enjoyment of the residents of the Town of Ophir. Uses are restricted to non-motorized, minimal impact recreation activities.

§702. USE PERMITTED BY RIGHT. Nature trails for walking, hiking, and biking with natural surfaces and not more than twenty-four (24) inches in width. Should be stroller-sized

§703. PROHIBITED USES. Developed recreational uses, including but not limited to playfields, campgrounds, courts, permanent buildings or other similar uses are not allowed in the Open Space Zone District.

§704. OTHER USES. All uses not permitted by right in **§702.** must be approved through the Special Use Permit Process.

[END of ARTICLE VII]

ARTICLE VIII AVALANCHE HAZARD ZONE DISTRICT

§801. INTENTION AND PURPOSE. The Avalanche Hazard Zone is intended to define areas where avalanche hazard threatens the health, safety and welfare of persons and property, and to restrict development in those areas. The Avalanche Hazard Zone boundaries are established on the official hazard zoning map of the Town of Ophir.

§802. USE PERMITTED BY RIGHT. Open Space uses as defined in **§702.** .

§803. USES PERMITTED BY REVIEW. Any construction and development activity in the Avalanche Hazard Zone must be approved by the Special Use Permit process and must meet the following criteria in addition to the general criteria of Special Use Permit review:

§803.1 The Applicant and property owner must indemnify the Town of Ophir from any liability associated with granting a SUP for construction or development in the Avalanche Hazard Zone with a signed agreement approved by the Town Attorney;

§803.2 The Applicant and property owner must submit a written report analyzing the potential avalanche hazards and the potential physical forces created thereby upon the proposed improvements or structure. The report must by prepared and signed by an avalanche expert recognized by the Building Inspector of the Town of Ophir. The report shall be recorded on the plat map for the property;

§803.3 Certification from an engineer licensed in the State of Colorado stating that the proposed improvement or structure is designed to withstand the potential avalanche force as determined by the site-specific avalanche hazard report in **§803.2**; and,

§803.4 No dwelling structures shall be permitted in areas designated High Avalanche Hazard.

§804. AVALANCHE HAZARD ZONE ADOPTED. The Town of Ophir has adopted a Hazards Overlay Map which designates areas of High Avalanche Hazard and Moderate Avalanche Hazard.

[END of ARTICLE VIII]

ARTICLE IX WETLAND AREAS

§901. INTENT AND PURPOSE. This section establishes regulations for development in wetland areas of the Town of Ophir to protect wetland areas and to protect the health, safety and welfare of the residents of the Town of Ophir. These regulations recognize the importance of wetland areas to both the human and natural environment. All waters and wetlands in the Town of Ophir will receive maximum protection by prohibiting development activity in and adjacent to waterways and wetlands whenever possible. All development activity shall be required to minimize any adverse impact on wetlands to the greatest extent technically feasible.

§902. APPLICATION. This section applies to all wetland areas and wetland buffer zones, and to all waters of the Town of Ophir. This section does not repeal, abrogate, or impair any existing federal, state, and/or local laws, easements, covenants, or deed restrictions. However, where this section imposes more restrictive regulations than those otherwise imposed, the provisions of this section shall prevail.

§903. WATER WAYS AND WETLAND AREAS MAPPING.

§903.1 Official Wetland Areas Map of the Town of Ophir**.** The boundaries of the Waterways and Wetland areas of the Town of Ophir, and the 100 foot buffer zone extending from these areas, shall be set forth on the official Hazards Overlay Map of the Town of Ophir.

§903.2 Modification of Official Wetland Areas Map of the Town of Ophir**.** A potential developer shall have the burden of showing that any area delineated on the Official Wetland Areas Map of the Town of Ophir and/or on accompanying reference material should not be classified as a wetland. Wetland boundaries may be modified at the potential developer's expense through the performance of a wetland boundary determination by a qualified expert wetland consultant and established on a plat executed by a Colorado licensed surveyor using the wetland definition in §201.

§903.3 Boundary Modification Application Review**.** A potential developer desiring to modify a wetland and/or buffer zone boundary must submit an application for such modification to the Town of Ophir Planning and Zoning Commission for review under Article XIV. of this LUC.

§904. DEVELOPMENT IN WETLAND AREAS. A potential developer desiring to develop within a wetland or within 100 feet of a wetland must submit an application for approval of such activity to the Town of Ophir for review under the Special Use Permit process. No development activity shall be allowed within any wetland or buffer zone without a Wetland Special Use Permit issued in compliance with the terms of this section. All activities that are not permitted by Special Use Permit shall be prohibited.

§905. ISSUANCE OF WETLAND SPECIAL USE PERMITS. A Wetland Special Use Permit may be issued only if the Applicant has shown at least one of the following:

§905.1 The proposed activity is water-dependent;

§905.2 The proposed activity is necessary to achieve access to property, and no other access route avoiding wetland and buffer zone areas is technically feasible;

§905.3 Denial of the permit sought would result in denying the landowner all practical, reasonable and/or economically viable use of the subject property;

§905.4 The proposed activity is primarily for the promotion of the safety, health and general welfare of the residents of the Town of Ophir, the public benefit is greater than the impact to wetlands, and there is no financially feasible alternative; or,

§905.5 In the case of development proposed in a buffer zone, the proposed land use would not adversely affect the adjacent wetland area.

§906. CRITERIA FOR REVIEW OF WETLAND SPECIAL USE PERMIT. In review applications for Wetland Special Use Permits, the Town of Ophir Planning and Zoning Commission and the General Assembly shall apply the following criteria:

§906.1 Avoidance. Development activity within a designated wetland areas should be avoided whenever technically possible; and,

§906.2 Minimization of Impact. The impacts of unavoidable development activity should be minimized by including appropriate project design modifications, control techniques or other conditions deemed appropriate by the Town of Ophir.

§907. IMPACT MITIGATION FOR WETLAND USES AND ACTIVITIES. As a condition of Wetland Special Use Permit approval, or in the event of a violation of any terms in this section, the Town of Ophir may require a mitigation plan. The plan shall require the Applicant, developer, or owner of the property causing the impact, to engage in the restoration of wetland areas in order to offset, in whole or in part, the wetland losses resulting from an Applicant's proposed or violator's historic actions. Approval of such plan by the Town of Ophir Planning and Zoning Commission shall not constitute an alternative to compliance with the standards set forth in this ordinance.

§908. SUBMISSION REQUIREMENTS. An Applicant for a Wetland Special Use Permit must submit an application in accordance with the special use permit process in **Article XII**. In addition to other requirements, an application must include site specific mapping showing wetland areas and the 100 foot buffer zone, two foot contour lines, a statement that the application complies with the criteria for review, detailed explanations of any proposed mitigation plans, and any other information the Planning and Zoning Commission determines is necessary for adequate review.

§909. ENFORCEMENT AND INSPECTION OF WETLAND AREAS. For the purpose of carrying out the provisions of this section, the Town of Ophir or its designee may enter upon private land in a reasonable and lawful manner during daylight hours for the purpose of inspection of any wetland area or buffer zone area proposed for development by an Applicant for a Wetland Special Use Permit. If denied access for these purposes, the Town of Ophir may inspect the subject property after following an appropriate legal process.

ARTICLE X SOURCE WATER PROTECTION

§1001. CREATION OF A SOURCE WATER PROTECTION AREA. Pursuant to the authority granted in §31-15-707(1)(b), Colorado Revised Statues, as amended, the Town hereby creates a Sourcewater Protection Area hereinafter referred to as "the SPA".

§1002. PURPOSE AND INTENT OF THE SPA. The SPA is established to exercise fully the powers of the Town in maintaining and protecting the source of water for use by the inhabitants of the Town from injury or pollution and from activities that may create a hazard to health or water quality or a danger of pollution to the water supply of the Town.

§1003. JURISDICTION AND MAP. The Town adopts as boundaries for the SPA those SPAs delineated on the maps created by the EPA in December of 1998, which maps are on file with the Town Clerk of Ophir and at the San Miguel County Planning Department. Said maps are intended for general reference only. Further, the jurisdiction shall extend beyond said delineated area to include all of the stream or source from which the water is taken for use by the Town for five (5) miles. The Town may at any time update the maps referenced herein or cause an official map of all or a part of the boundaries of the SPA to be prepared, and thereafter the most recent map shall be conclusive as to the boundaries of the SPA.

§1004. REGULATED ACTIVITIES

§1004.1 Activities Requiring Prior Review: It shall be unlawful for any person or agency to engage in any of the following activities within the SPA, unless such person shall, prior to undertaking such activity, obtain permission from the Town as set forth in **§1005** below:

A. Sewage Disposal. Construction or installation of a sewage disposal system, which relies on absorption.

B. Excavating. For purposes of this Ordinance, "excavating" means the digging out or removal of earth and/or other materials leaving any cutbank more than three (3) feet in vertical height or movement of more than ten (10) cubic yards of material.

C. Grading. For purposes of this Ordinance, "grading" means the leveling off of a horizontal or sloping surface involving movement of more than five (5) cubic yards of materials, or affecting or creating a drainage channel.

D. Filling. For purposes of this ordinance, "filling" means the raising of the level of earth leaving a fill earth bank more than two (2) feet in vertical height or filled earth more than two (2) feet deep, or, artificial addition of earth above the line sloping up at a grade of one (1) vertical to five (5) horizontal from the ground.

E. Surfacing. For purposes of this ordinance, "surfacing" means any action resulting in the hardening or covering of the pre-existing ground in an area greater than five

hundred (500) square feet such that rain striking the area will accumulate or runoff the surface to a greater extent than prior to the hardening or covering of said pre-existing ground. Surfacing includes, but is not limited to, such things as compacting the surface of the earth, placing gravel, concrete or like substances on the surface of the earth, or the placement of structures upon the ground.

F. Removal of more than 100 square feet of live vegetation.

G. Timber harvesting, excluding the removal of dead trees for non-commercial firewood.

H. Drilling operations.

I. Commercial recreation activities.

J. Altering water drainage courses or ground water infiltration.

K. Surface and subsurface mining operations.

L. Spraying or using herbicides or insecticides.

M. Using, handling, releasing or storing toxic, hazardous, flammable or explosive materials and substances.

N. Residential or commercial construction within 1,000 feet of any water drainage.

O. Occupation of any temporary structure, including but not limited to tents, trailers or similar encampments, except that camping shall be allowed in Waterfall Canyon above 10,000 feet in elevation above sea level.

P. Trespass, interference or alteration of Town water works improvements.

Q. Livestock grazing, herding or corralling.

§1004.2 Activities Requiring Notification: Activities within the SPA which are allowed under this Ordinance but which require written notification to the Town prior to undertaking such activity are:

A. Road maintenance by governmental entities.

B. U.S. Forest Service shall provide notification to the Town of management activities on National forest lands that may have an impact on the Town's waterworks and/or water supplies. Notification will be in the form of environmental assessments or project work plans prepared by or available to the Forest Service. This will provide the Town with the opportunity to review Forest Service water quality considerations, including best management practices and make recommendations prior to its undertaking.

C. Written notice shall include the name and address of the person undertaking the activity, a description of the proposed activity, its location and such additional

information as the Town may require before or after receiving the initial notice. The purpose of this notice requirement is to allow the Town an opportunity to protect the waters of the District by suggesting a best management practice for such activity prior to its undertaking.

§1004.3 Violation of this Article XIII shall be punishable in accordance with **§1502** of this Ophir Land Use Code.

§1004.4 In the event that any activity not set forth in subsection **§1004.1** above is being conducted in such a manner that the Town finds that a foreseeable risk of pollution to the SPA, the person or agency responsible shall be notified by the Town of such finding and the Town may require that such activity cease and desist.

§1005. PROCEDURE FOR SOURCE-WATER PROTECTION AREA PERMIT

§1005.1 The Applicant may request a pre-application work session to the Planning Commission to present the concept of the application and determine information that is desired for review of the application. A request for a pre-application conference shall be submitted in writing to the Planning Commission Chairperson.

§1005.2 A complete application for a SPA shall be submitted to the Planning Commission Chairperson. Applications should be submitted no later than twenty-five (25) days prior to the date of a Planning Commission meeting. The Planning Commission Chairperson, or planning staff designee, shall review the application for completeness within fourteen (14) days of receipt of the application. The Town shall provide a written response indicating that the application is complete or incomplete, and if incomplete, shall specifically identify the additional information needed for a complete application.

§1005.3 Once a complete application is received, the Planning Commission Chairperson shall schedule a review of a SPA application on the next available Planning Commission meeting agenda. Review may also include a site walk and inspection of the site if reasonably necessary. Scheduling of a site walk and site inspection shall be dependent upon the weather conditions and may be delayed until late spring when the site is free of snow cover.

§1005.4 The Ophir Planning and Zoning Commission shall conduct a public hearing prior to making a recommendation on the SPA application. The Planning Commission may take action to recommend approval, approval with conditions, or denial of a SPA Permit application or may continue review of the application to obtain additional information. The Ophir Planning and Zoning Commission shall adopt Findings of Fact that document factual circumstances associated with the nature of the application, the subject property, testimony and evidence provided regarding the effect of the SPA Permit on the Town's water supply, and other information deemed relevant.

§1005.5 After the Ophir Planning and Zoning Commission renders a recommendation, the General Assembly shall conduct a public hearing. The General Assembly may take action to recommend approval, approval with conditions or denial of a SPA Permit application or may continue review of the application to obtain additional information. The General Assembly shall approve a SPA by majority vote. The Ophir General Assembly shall adopt Findings of Fact that document factual circumstances associated with the nature of the application, the subject property, testimony and evidence provided regarding the effect of the SPA Permit on the Town's water source.

§1006. APPLICATION SUBMITTAL REQUIREMENTS

§1006.1 A complete SPA Permit application as set forth in ***Appendix A. Forms: Source-water Protection Area Permit Application.***

§1006.2 An application fee in the amount of $500.00. SPA Permits shall be processed using a pass-through account system whereby the Applicant shall be responsible for all costs borne by the Town of Ophir to review the application. In the event that the costs to review the application are less than $500.00, the Town shall return the balance along with an invoice itemizing the costs incurred by the Town for review. In the event that the cost of review is more than $500.00, the Town shall provide a written notice of additional costs along with an estimate for additional fees. The Town may choose to withhold further processing of the application until additional fees are submitted to pay for the cost of review. Review costs shall be related to review of the application and shall be reasonable. Costs may include, but are not limited to: contract attorney or planner's time, expert consultants cost to review application or review technical reports submitted with the application, copies, and costs to prepare or amend maps.

§1006.3 The application materials shall be prepared by qualified professionals and shall include the following information:

A. Name, address, telephone number and fax number of the Applicant and any representative authorized to act on behalf of the Applicant.

B. A full and complete description of the proposed activity for which a permit is sought, including, if applicable, a discussion of any future activity anticipated by the Applicant with respect to the subject property for which a permit may be required hereunder.

C. Plans and specifications which contain the following information.

(1) A vicinity sketch or other data indicating the site location and legal description of the subject property.

(2) Boundary lines of the property for which the Permit is sought, if applicable.

(3) Location of any buildings or structures within fifty (50) feet of the proposed activity.

(4) Accurate contours establishing the topography of the existing ground prepared by a surveyor licensed in Colorado.

(5) Elevations, dimensions, locations, extent and the slopes of all proposed excavating, grading, filling, or surfacing shown by contours and/or other means prepared by an engineer licensed in Colorado.

(6) Details of all drainage devices in connection with the proposed activity.

(7) A statement of the amount and location of any matter proposed to be deposited in areas other than that shown on the plans.

(8) Nature and location of existing vegetation and a statement as to the effect of the proposed activity on such vegetation.

D. Identification of any activity that may present or create a foreseeable risk of pollution to the Town's water supply along with a specific description of the measures, including best management practices, that will be employed by Applicant to obviate or mitigate such risks.

E. Any and all additional information that may be specifically requested by the Town, including, but not limited to, the following:

(1) A map showing the drainage pattern and estimated runoff of the area of the proposed activity.

(2) Revegetation and reclamation plans and specifications with time frame.

(3) A soils analysis, including the nature, distribution and strength of existing soils, and recommendations for earth moving procedures and other design criteria.

(4) A geologic analysis of the site and adjacent areas and the impact of the proposed activity.

(5) An operational and maintenance analysis of the proposed activity.

(6) Water use analysis, including legal basis, source, quality, amount of consumptive use, impact on ground water and discharge characteristics.

§1006.4 Other information which may be determined necessary by the reviewing entity to understand the application and the compliance of the application with the review standards.

§1007. NOTICING

§1007.1 Notice shall be provided for the public hearing conducted by the Ophir Planning and Zoning Commission and for the date of the public hearing conducted by the Ophir

General Assembly.

§1007.2 Notice of a public hearing shall be posted at the Ophir Town Hall and Ophir Post Office, published in the Telluride Daily Planet (or other newspaper designated by the Town of Ophir as the official paper of record) at least fifteen (15) days prior to the date of the public hearing, and mailed to all members of the General Assembly according to a list provided by the Town Clerk.

§1007.3 The Notice form shall be approved by the Town of Ophir (Town Attorney). In addition to the notice form, the Applicant shall provide a brief narrative describing the nature of the SPA Permit request, the Applicant's rationale for requesting approval, and any proposed mitigation of negative impacts of the application. The Applicant may also include maps, diagrams or graphics that help notice recipients understand the nature of the SUP request.

§1008. STANDARDS FOR REVIEW.

§1008.1 Factors Considered. In undertaking the analysis of any proposed activity, the following factors, among any others that the Planning Commission may deem relevant, shall be considered:

(1) Nature and extent of the proposed activity.

(2) Proximity to existing water courses.

(3) Drainage patterns and control measures.

(4) Soil characteristics.

(5) Slope steepness and stability.

(6) Extent and effects of denudation.

(7) Geologic hazards, including, but not limited to, avalanche paths, flood plains, high water tables, fault zones and similar factors.

(8) Point source effluent and emissions into water or air.

(9) Ambient and non-point source discharge or emissions into, or effect upon, water or air.

(10) Vehicular and other motorized activity.

(11) Fire hazard.

§1008.2 Standards for Issuance of Permit. A Permit shall be issued when the General Assembly finds that the Applicant has sustained its burden of proof that the proposed activity including best management practices, if any, does not present or create a foreseeable risk to the SPA. A Permit shall be denied when the General Assembly

finds that the Applicant has not sustained such burden of proof. The following standards shall be applied when reviewing a SPA:

(1) The SPA presents no measurable risk to water supplies or natural systems that support and protect such water supplies;

(2) The SPA presents no foreseeable risk to water supplies or natural systems that support and protect such water supplies, when considered with the cumulative impacts of other use;

(3) The SPA does not violate any state or federal laws;

(4) The existing conditions of the subject property of the SPA application are not in violation of any state or federal laws; and,

(5) The SPA would not result in any measurable impact or degradation to water supplies or natural systems that support and protect such water supplies.

§1008.3 Permit Conditions. The General Assembly, when issuing any Permit, may prescribe any conditions they may deem reasonably necessary to effect the purpose and intent of this ordinance. Except when contrary to state or federal law, the General Assembly may require any Applicant to post a surety bond or cash in an amount sufficient to ensure compliance with the Permit, including, but not limited to, the cost of mitigation, best management practices, maintenance, operation revegetation, reclamation, and other requirements of proposed activities. The General Assembly may release to the Applicant portions of any such bond or cash from time to time when no longer necessary to ensure compliance with the Permit.

§1008.4 Duration of Permit. If any proposed activity for which a Permit is issued is not commenced within nine (9) months from the date of issuance of such permit, the permit shall expire and become void. The General Assembly may provide in any permit that it shall expire for all purposes upon a date certain, or a certain time after commencement of the proposed activity. Unless otherwise specified in a permit, no permit be valid after December 31 of the first full calendar year it is in effect; provided, however, that within ninety (90) days prior to the expiration of the permit, the Applicant may submit to the Town a sworn statement that the proposed activity, has been and will continue to be substantially the same as set forth and considered in the original application and its approval. Upon receipt of such statement, the General Assembly may, in its sole discretion, renew the Permit for an additional calendar year without requiring further application, information, review or hearing.

§1008.5 Additional Information; Extension of Time. The General Assembly may require the Applicant to provide any additional information which reasonably may assist them in fulfilling their duties pursuant to this ordinance. Any applicable time limitation within

which either is required to act shall be tolled from the time the request for such additional information is made until the Applicant provides the information.

§1009. **APPEALS**. The decision of the General Assembly is final and may be appealed to the Ophir Municipal Court within thirty (30) days of the final decision.

[END of ARTICLE X]

ARTICLE XI VARIANCES

§1101. VARIANCE APPLICATIONS. The General Assembly is authorized to approve such Variance or modifications of the building height, setbacks, yard area, site coverage, required off-street parking, and maximum floor area regulations it deems necessary to permit and promote appropriate development of a parcel of land that differs from other parcels in a Zone District by area, shape, slope, or pre-existing improvements that the subject parcel cannot be appropriately developed without such modification.

§1102. APPLICATION SUBMITTAL REQUIREMENTS. The Applicant shall file ten (10) copies of an application requesting a Variance. The application shall be accompanied by or show the following:

§1102.1 The street address and legal description of the property affected;

§1102.2 A site plan and any and all other information necessary to clearly demonstrate eligibility for the requested Variance based upon the required findings in **§1104**; and,

§1102.3 An application fee in the amount of $500.00. Variances shall be processed using a pass-through account system whereby the Applicant shall be responsible for all costs borne by the Town of Ophir to review the application. In the event that the costs to review the application are less than $500.00, the Town shall return the balance along with an invoice itemizing the costs incurred by the Town for review. In the event that the cost of review is more than $500.00, the Town shall provide a written notice of the additional costs along with an estimate for additional fees. The Town may choose to withhold further processing of the application until additional fees are submitted to the pay for the cost of review. Review costs shall be related to review of the application and shall be reasonable. Costs may include, but are not limited to: contract attorney's or planner's time, expert consultants cost to review application or review technical reports submitted with the application, copies and costs to prepare or amend maps.

§1103. REVIEW PROCEDURES.

§1103.1 Reviewing Board. The General Assembly shall review and render decisions on all Variance applications. Variance applications shall be approved only by passage of an ordinance with a minimum of two readings.

§1103.2 Public Hearing Required. The Planning and Zoning Commission shall first review a Variance application and provide a recommendation to the General Assembly. General Assembly shall conduct a public hearing on any application for a Variance prior to rendering its decision.

§1103.3 Notice. Public hearings for Variance applications shall be posted at the Town Hall and Post Office and shall be published in the designated official paper of record at least ten (10) days prior to the hearing. Written mailed notice shall be provided to the all property owners within 200 feet of the subject property, and all members of the General Assembly according to a list provided by the Town Clerk, such notice shall be mailed at least twenty (20) days prior to the hearing. Notice shall also be posted on the subject property. Notice shall include the present Zone District classification, the proposed Variance; the time, date, and place of the hearing; and the name, address, and phone number of the Applicant and a statement that the application is available for public inspection in the Town Hall.

§1103.4 Conditions. The General Assembly has the authority to recommend approval of a Variance with conditions, including but not limited to: required improvements, required additional off-street parking, covenants restricting further development, requirement to bring non-conformities into compliance with this LUC.

§1103.5 Appeal. The decision of the General Assembly shall be the final decision of the Town and may be appealed to municipal court within thirty (30) days of the date of the meeting where the decision was rendered.

§1103.6 Records. A file containing all documents relevant to the application and disposition of such Variances shall be maintained by the Town Clerk.

§1104. STANDARDS FOR REVIEW. The following standards shall apply to review of Variance applications by the General Assembly. In exercising its power to grant a Variance in accordance with this LUC, the General Assembly shall make finding and show in its minutes that each of the following standards are met:

§1104.1 There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions, access, and location that do not apply generally to other property in the same area and Zone District; and,

§1104.2 the Variance will not unduly impact such things as: snow removal, drainage, streetscapes, separation of buildings for fire protection, and opportunity for off-street parking, which are provided by minimum setbacks; solar access, and protection of neighbors views to the surrounding mountains, which are provided by maximum building heights; continuity of design, minimization of visual impact, and provision of minimal yard area, which is provided by maximum floor areas (particular attention shall be given to the impacts of the Variance on neighbors); and,

§1104.3 the Variance, if granted, will not constitute a material detriment to the public welfare

or injury to the use, of property in the vicinity; and,

§1104.4 the Variance is not sought to relieve a hardship to development of the property which has been created by the Applicant; and,

§1104.5 that the proposed use is a permitted use in the underlying Zone District.

[END of ARTICLE XI]

ARTICLE XII SPECIAL USE PERMIT PROCESS

§1201. INTENT AND PURPOSE. Article XII sets forth the procedures and general criteria for review of all Special Use Permit ('SUP') applications. Additional application submission requirements and review criteria may be found under other sections in this LUC.

§1202. APPLICATION OF SPECIAL USE PERMIT PROCESS. Any use not permitted by right in other sections of this LUC shall only be allowed upon approval of a Special Use Permit by the Town of Ophir.

§1203. PROCEDURE FOR SPECIAL USE PERMITS

§1203.1 The Applicant may request a pre-application work session to the Planning Commission to present the concept of the application and determine information that is desired for review of the application. A request for a pre-application conference shall be submitted in writing to the Planning Commission Chairperson.

§1203.2 A complete application for a SUP shall be submitted to the Planning Commission Chairperson. Applications shall be submitted no later than twenty-five (25) days prior to the date of a Planning Commission meeting. The Planning Commission Chairperson, or planning staff designee, shall review the application for completeness within fourteen (14) days of receipt of the application. The Town shall provide a written response indicating that the application is complete or incomplete, and if incomplete, shall specifically identify the additional information needed for a complete application.

§1203.3 Once a complete application is received, the Planning Commission Chairperson shall schedule a review of a SUP application on the next available Planning Commission meeting agenda.

§1203.4 The Ophir Planning and Zoning Commission shall conduct a public hearing prior to making a recommendation on the SUP application. The Planning Commission may take action to recommend approval, approval with conditions, or denial of a SUP application or may continue review of the application to obtain additional information. The Ophir Planning and Zoning Commission shall adopt Findings of Fact that document factual circumstances associated with the nature of the application, the subject property, testimony and evidence provided regarding the effect of the SUP on surrounding properties, and other information deemed relevant.

§1203.5 After the Ophir Planning and Zoning Commission renders a recommendation, the General Assembly shall conduct a public hearing. The General Assembly may take action to recommend approval, approval with conditions or denial of a SUP application or may continue review of the application to obtain additional information. The General Assembly shall only approve a SUP by ordinance and shall conduct a public hearing concurrently with consideration of both first and final reading of such

ordinance. The Ophir General Assembly shall adopt Findings of Fact that document factual circumstances associated with the nature of the application, the subject property, testimony and evidence provided regarding the effect of the SUP on surrounding properties, and other information deemed relevant.

§1204. APPLICATION SUBMITTAL REQUIREMENTS

§1204.1 Ten (10) copies of a complete Special Use Permit application as set forth in Appendix A. Forms: Special Use Permit Application.

§1204.2 An application fee in the amount of $500.00. Special Use Permits shall be processed using a pass-through account system whereby the Applicant shall be responsible for all costs borne by the Town of Ophir to review the application. In the event that the costs to review the application are less than $500.00, the Town shall return the balance along with an invoice itemizing the costs incurred by the Town for review. In the event that the cost of review is more than $500.00, the Town shall provide a written notice of additional costs along with an estimate for additional fees. The Town may choose to withhold further processing of a Special Use Permit application until additional fees are submitted to pay for the cost of review. Review costs shall be related to review of the application and shall be reasonable. Costs may include, but are not limited to: contract attorney or planner's time, expert consultants cost to review application or review technical reports submitted with the application, copies, and costs to prepare or amend maps.

§1204.3 Other information which may be determined necessary by the reviewing entity to understand the application and the compliance of the application with the review standards.

§1205. NOTICING

§1205.1 Notice shall be provided for the public hearing conducted by the Ophir Planning and Zoning Commission and for the date of the first reading of an ordinance approving the SUP application by the Ophir General Assembly.

§1205.2 Notice of a public hearing shall be mailed by first class mail to all property owners within 200' of the subject property and to all members of the General Assembly according to a list provided by the Town Clerk, at least 20 days prior to the date of the public hearing and posted at the Ophir Town Hall and Ophir Post Office and published in the Telluride Daily Planet (or other newspaper designated by the Town of Ophir as the official paper of record) at least ten (10) days prior to the date of the public hearing. Public rights-of-way shall be included for the purpose of measuring the 200' distance for mailed notice. The Applicant shall prepare a list of all property owners within 200' from the County Assessors records and shall provide a Certificate of Mailing to the Town of Ophir attesting that the notice was mailed to the list of such

property owners.

§1205.3 The Notice form shall be approved by the Town of Ophir (Town Clerk or Town Attorney). In addition to the notice form, the Applicant shall provide a brief narrative describing the nature of the SUP request, the Applicant's rationale for requesting approval, and any proposed mitigation of negative impacts of the application. The Applicant may also include maps, diagrams or graphics that help notice recipients understand the nature of the SUP request.

§1206. STANDARDS FOR REVIEW OF SUP APPLICATIONS. The general criteria in this section shall be used by the Ophir Planning and Zoning Commission and the General Assembly, in addition to any other criteria in this OLUC for certain SUP applications. The Ophir Planning and Zoning Commission and the General Assembly must find that each of the following criteria is satisfied before approval of a Special Use Permit.

§1206.1 The SUP complies with the Town of Ophir Master Plan.

§1206.2 The SUP is compatible with uses on adjacent properties.

§1206.3 The SUP will not negatively affect the values of adjacent or nearby properties nor shall negatively affect the quality of life of adjacent or nearby properties.

§1206.4 The SUP will not create additional impacts greater than uses allowed by right in the zone district, including but not limited to the following impacts: parking, visual, odors, vibrations, noise, increased traffic, increased congestion, adverse impacts to wildlife, the natural environment and wetland areas, adverse impacts to existing and potential scenic view corridors of adjacent properties, and adverse impacts to the rural and alpine wilderness character of the Town of Ophir.

§1206.5 The SUP application is complete and the information is legible and understandable.

§1206.6 The Applicant shall pay for all costs associated with review of the SUP application.

§1207. CONDITIONS. The Planning and Zoning Commission may recommend, and the General Assembly may adopt, conditions with any approval that are related to insuring performance of the representations of the Applicant, mitigating negative impacts of the SUP use, providing a defined timeframe for the SUP use, or otherwise insuring compliance with the standards of review for an SUP. Conditions may include, but are not limited to: Defined timeframe for allowance of the SUP, periodic review and potential renewal of the SUP, limited hours of operation, additional parking, additional landscaping, restrictions on transference of the SUP to subsequent property owners, and off-site public improvements necessitated by the SUP.

§1208. REVOCATION OF SPECIAL USE PERMIT APPROVALS.

§1208.1 Violation of SUP. Any violation of the terms or conditions of a SUP approval shall be deemed to be grounds for revoking the SUP. The Town Manager or the Enforcement

Official, as designated by the General Assembly, shall have the authority to issue a written Notice of Violation or Notice of Revocation to the property owner that SUP is revoked. Such notice shall be deemed received five (5) days after mailing to the last known address of the property owner as set forth in the County Assessor's records or shall be deemed received immediately upon hand-delivery or faxing to a known number of the property owner. Such notice shall specifically state the nature of the violation.

§1208.2 Notice of Violation. In the case of a Notice of Violation, the Town Manager or the enforcement official has the authority to approve a plan for compliance proposed by the property owner if acceptable to the Town Manager or enforcement official; however, any such plan for compliance shall be implemented within a maximum of ninety (90) days of the Notice of Violation.

§1208.3 Notice of Revocation. In the case of a Notice of Revocation, the property owner must cease and desist the SUP use upon receipt of the Notice of Revocation, but in any event, must cease and desist within 5 days of mailing the Notice of Revocation to the last know address of the property owner as set forth in the County Assessor's records. Every day that the property owner allows the SUP use to continue after receipt of the Notice of Revocation, shall be deemed a separate violation of the OLUC and shall be punishable in municipal court in accordance with the penalties set forth in §1502. of the OLUC.

§1208.4 Appeal to General Assembly. The property owner may appeal a Notice of Violation or a Notice of Revocation to the General Assembly by submitting a written appeal to the Town Clerk, stating the reasons for the appeal and requesting review by the General Assembly. The General Assembly shall schedule a hearing within 75 days of receipt of a written request for an appeal.

§1208.5 Appeal to Municipal Court. The decision of the General Assembly may be appealed to the Ophir Municipal Court in accordance with **§1209**.

§1209. APPEALS TO MUNICIPAL COURT. The Applicant, any property owner within two hundred feet (200') of the subject property, and any qualified elector of the Town of Ophir may appeal the decision of the General Assembly to the Ophir Municipal Court within 30 days of the final decision of the General Assembly. The failure to appeal within 30 days of the final decision of the General Assembly shall be deemed a waiver of all rights of appeal and no further action may be taken to challenge the decision of the General Assembly.

[END of ARTICLE XII]

ARTICLE XIII SUBDIVISIONS

§1301. INTENT AND PURPOSE. This section establishes regulations and standards for subdivisions and sets forth the procedures to be followed in applying and administering these regulations and standards. This section is designed and enacted to promote the health, safety and welfare of the residents and property owners in the Town of Ophir and to ensure that the Town of Ophir can provide necessary and desired services to residents and property owners in the Town of Ophir at the least possible cost.

§1302. APPLICABILITY. All applications for the subdivision of land shall be reviewed under these procedures. Subdivision of land shall include the following:

§1302.1 The division of a lot into two or more lots;

§1302.2 The division of land subject to annexation by the Town of Ophir;

§1302.3 The replatting of recorded lots and the vacation of existing lot lines; and,

§1302.4 The division of any structure into two or more separate dwelling units.

§1303. SUBMISSION REQUIREMENTS

§1303.1 General submission requirements. The following submission requirements apply to all subdivision applications:

A. The Applicant shall submit ten (10) copies of a written request for the subdivision to following address:

Town of Ophir
Planning and Zoning Commission
P.O. Box 683
Town of Ophir, CO 81426

The written request shall contain the following information:

1. Name, address, telephone number, and fax number of the Applicant and any representatives authorized to act on behalf of the Applicant.

2. The legal description of the property to be subdivided.

3. Proof of ownership by the Applicant of the property to be subdivided and proof of agency for any representative of the Applicant.

4. A statement describing the subdivision requested, including the number of lots or units proposed, the area of each lot or floor area of each unit, the intent of the subdivision, and a statement of compliance with the masterplan and zoning.

5. An application fee in the amount of fifteen hundred dollars ($1,500.00).

The application shall be processed using a pass-through account system whereby the Applicant shall be responsible for all costs borne by the Town of Ophir to review the application. In the event that the cost to review the application is more than $1,500.00, the Town shall provide a written notice of additional costs along with an estimate for additional fees. The Town may choose to withhold further processing of an application until additional fees are submitted to pay for the cost of review. Review costs shall be related to review of the application and shall be reasonable. Costs may include, but are not limited to: contract attorney or planner's time, expert consultants cost to review application or review technical reports submitted with the application, copies, and costs to prepare or amend maps.

B. The following submission requirements shall apply to the division of lot into two or more lots, the division of land subject to annexation by the Town of Ophir, and the replatting of recorded lots.

1. The Applicant shall provide a list of all other property owned, solely or partially, by the Applicant in the Town of Ophir or in the Howard's Fork watershed east of Highway 145. Ten copies shall be provided.

2. The Applicant shall provide ten (10) copies of a minimum 8 & 1/2 inch by 11 inch map showing existing and proposed lot lines, streets, utility easements, open space, and any other information which may be reasonably included to aid the understanding of the site.

3. The Applicant shall provide a map indicating the location of the proposed subdivision and all structures within one hundred fifty (150) feet of the subject property. The map shall be at a scale of at least one inch equals one hundred feet or other scale authorized by P&Z. Three copies of all maps shall be provided. The map shall show the following:

a. Proposed lots and existing platted lots and lot lines,

b. Two foot contour lines,

c. Known hazards and natural constraints to development including the following:

1) Avalanche hazards,

2) Slopes greater than 30%,

3) Wetlands,

4) Geologic hazards,

5) River corridors and flood plains, and

6) Environmental and Health hazards.

d. Proposed utility routes.

e. Proposed access routes.

4. The Applicant shall provide three copies of terms, or drafts, of all required improvement agreements and performance guarantees; and any proposed agreements with the Town of Ophir.

5. The Applicant shall provide a septic plan approved by the San Miguel County Health Inspector.

C. The following submission requirements shall apply to the division of a single dwelling unit into two or more separate dwelling units.

1. The Applicant shall provide the square footage of each proposed dwelling unit.

2. The Applicant shall provide a septic plan approved by the San Miguel County Health Inspector.

§1304. PROCEDURES

§1304.3 Application**.** If the application is complete, the Town of Ophir Planning and Zoning Commission shall schedule the subdivision request for a public hearing on the next available agenda of a public Planning and Zoning Commission meeting. If the application is not complete, the application will be returned with a letter specifying the information missing from the application. The completed application may be scheduled for the next Planning and Zoning Commission agenda if returned to the Planning and Zoning Commission at least 21 days prior to a regularly scheduled meeting.

§1304.2 Notice**.** Notice of a public hearing shall be mailed by first class mail to all property owners within 200' of the subject property and to all members of the General Assembly according to a list provided by the Town Clerk, at least 20 days prior to the date of the public hearing and posted at the Ophir Town Hall and Ophir Post Office and published in the Telluride Planet (or other newspaper designated by the Town of Ophir as the official paper of record) at least ten (10) days prior to the date of the public hearing. Public rights-of-way shall be included for the purpose of measuring the 200' distance for mailed notice. The Applicant shall prepare a list of all property owners within 200' from the County Assessors records and shall provide a Certificate of Mailing to the Town of Ophir attesting that the notice was mailed to the list of such property owners.

§1304.3 Review by Other Agencies. A copy of the subdivision application shall be promptly

forwarded to other agencies as determine appropriate for their review and comment.

§1304.4 Recommendation by P&Z**.** After the public hearing, P&Z shall make a recommendation to the General Assembly to approve, approve with conditions, or deny the subdivision application or shall table the decision until additional information can be submitted. A request for additional information shall be reasonable. Additional information requested by P&Z shall be submitted to P&Z at least 10 days prior to the continued hearing date. P&Z's recommendation shall be based upon specific findings of compliance, or non-compliance, with the standards in Section 1205. of this LUC and shall take into account any comments or recommendations from a board, commission, or other public body of the Town of Ophir, or from any other local, state, or federal governmental body.

§1305. STANDARDS

§1305.1 The following standards shall apply to the review of the division of lot into two or more lots, the division of land subject to annexation by the Town of Ophir, and the replatting of recorded lots.

A. The proposed land use shall be consistent with zoning.

B. All lots shall have at least 50 feet frontage on a public street.

C. All lots shall have a building site that is at least 1000 square feet that is not in any areas that are known hazards or natural constraints to development.

D. Driveways and roads shall not exceed 10% grades. Roads shall otherwise be constructed to the adopted road standards in the Town of Ophir. Roads, and road rights of way, shall be presented for acceptance to the Town of Ophir no sooner than the month of July after one winter and spring season after completion. Road rights of way shall be at least fifty feet wide. Extension or continuation of the existing street pattern and right-of-way widths in the Town of Ophir shall be encouraged.

E. The proposed subdivision shall be consistent with the Town of Ophir's Master Plan.

F. The proposed subdivision must have an adequate septic plan to accommodate the proposed population. The septic plan must be approved by the San Miguel County Health Inspector.

§1305.2 The following standards shall apply to the review of the division of a single dwelling unit into two or more separate dwelling units.

A. Each unit shall comply the off-street vehicle parking requirement of **§305**.

B. The proposed subdivision must have an adequate septic plan to accommodate the

proposed population. The septic plan must be approved by the San Miguel County Health Inspector.

C. The proposed subdivision shall be consistent with the Town of Ophir's Master Plan and the **RESIDENTIAL ZONE DISTRICT**

§1306. IMPROVEMENT AGREEMENTS AND PERFORMANCE GUARANTEES

§1306.1 In order to insure installation of necessary public facilities planned to accommodate a subdivision, the Applicant shall provide a financial guarantee and enter into an improvements agreement prior to approval of a final plat of the subdivision by the General Assembly for no less than one hundred twenty-five percent (125%) of the current estimated cost of such public improvements as estimated by an engineer approved by the Town of Ophir. Acceptable forms of financial guarantees include: cash bonds, certificates of deposit, and letters of credit from a federally insured financial institution, or other such legal assurances as may be approved by the Town Manager and Town Attorney.

§1306.2 Upon written notification of completion of the improvements, the Town may release up to seventy-five percent (75%) of the total original required collateral following a resolution of preliminary acceptance. No sooner than 12 months after preliminary acceptance and as soon thereafter as the local climate and conditions permit, the Town shall inspect all public improvements for final acceptance. The Town will release all collateral upon adopting a resolution of final acceptance. Reasons for non-acceptance shall be stated and corrective measures shall be outlined.

§1306.3 If the Town Manager determines that reasonable grounds for insecurity exist with respect to the performance of the Applicant, the Manager shall notify the subdivider in writing, stating that the Town intends to withdraw funds from the collateral for the purpose of completing the improvements, giving the reasons therefor and informing the subdivider of his right to be heard before the General Assembly within 30 days from the date of notification. Following a hearing thereon or 30 days after notification, whichever is earlier, if the General Assembly determines that the subdivider will not or cannot construct the improvements in accordance with the subdivision improvement agreement, the Town may withdraw funds from the collateral and expend such funds as may be necessary to construct the agreed public improvements, to include such costs as are necessary for the Town to administer the construction.

§1307. APPLICANT BEARS COSTS

The Applicant shall bear all reasonable and necessary costs for review of a subdivision application by the Planning and Zoning Commission or any other public body of the Town of Ophir, and the Applicant shall bear all costs incurred by the Town of Ophir to prepare and review improvement agreements and performance guarantees. The Applicant shall

bear the costs for inspection of any improvements for preliminary and final acceptance by the Town of Ophir. The Applicant may request estimates of costs prior to being incurred. The Applicant shall pay all costs to the Town of Ophir under this section prior to approval of the final plat by the Town of Ophir.

[END of ARTICLE XIII]

ARTICLE XIV LAND USE CODE AMENDMENTS AND ZONING CHANGES

§1401. INTENT AND PURPOSE. This section shall govern amendments, supplements, additions, revisions, or repeals of this LUC or any Article thereof, or any changes to the Official Zoning Map, Hazards Map, or Source Water Protection Areas map of the Town of Ophir, or any zoning changes.

§1402. PROCEDURE.

§ 1402.1 An application for LUC amendments and zoning changes may be initiated by qualified electors of the Town of Ophir, any owner of property owner within the Town of Ophir, the Planning and Zoning Commission of the Town of Ophir, the Town Staff or any elected official.

§ 1402.2 Application for an amendment to this LUC shall be filed with the Town Clerk of Ophir, and shall contain the following information:

A. A legal description of the land to be rezoned, and requested new classification, along with a sketch to scale showing boundaries of the area requested to be rezoned, along with an indication of the existing zoning on all sides of the area.

B. A statement of justification for the rezoning, including one of the following conditions: Changed conditions in area, compliance with the Town of Ophir Master Plan for the area, or peculiar suitability of the site to a certain use.

C. Description and sketches, if available, of buildings or uses within 200 feet of the proposed area of change, in all directions.

D. Time schedule for any contemplated construction.

E. Justification for change of use.

F. Effect that zoning would have on adjacent uses.

§1403. APPLICATION SUBMITTAL REQUIREMENTS.

§1403.1 Ten (10) copies of a complete application as set forth in Appendix A. Forms: Land Use Code Amendment Application.

§1403.2 An application fee in the amount of $500.00. Land Use Code Amendment Applications shall be processed using a pass-through account system whereby the Applicant shall be responsible for all costs borne by the Town of Ophir to review the application. In the event that the costs to review the application are less than $500.00, the Town shall return the balance along with an invoice itemizing the costs incurred by the Town for review. In the event that the cost of review is more than $500.00, the Town shall provide a written notice of additional costs along with an estimate for additional fees. The Town may choose to withhold further processing of an

application until additional fees are submitted to pay for the cost of review. Review costs shall be related to review of the application and shall be reasonable. Costs may include, but are not limited to: contract attorney or planner's time, expert consultants cost to review application or review technical reports submitted with the application, copies, and costs to prepare or amend maps.

§1403.3 Other information which may be determined necessary by the reviewing entity to understand the application and the compliance of the application with the review standards.

§1404. RECOMMENDATION BY P&Z, ADOPTION BY ORDINANCE. All applications for changes to the LUC or Official Zone Map shall be referred by the Town Clerk to the Planning and Zoning Commission for recommendation, then to the General Assembly, who shall decide either for or against the change, unless it is determined that additional information is needed from the Applicant. Adoption of any changes shall be by ordinance.

§1405. PUBLIC HEARING. Notice of a public hearing shall be mailed by first class mail to all property owners within 200' of the subject property and to all members of the General Assembly according to a list provided by the Town Clerk, at least 20 days prior to the date of the public hearing and posted at the Ophir Town Hall and Ophir Post Office and published in the Telluride Daily Planet (or other newspaper designated by the Town of Ophir as the official paper of record) at least ten (10) days prior to the date of the public hearing. Public rights-of-way shall be included for the purpose of measuring the 200' distance for mailed notice. The Applicant shall prepare a list of all property owners within 200' from the County Assessors records and shall provide a Certificate of Mailing to the Town of Ophir attesting that the notice was mailed to the list of such property owners.

ARTICLE XV ADMINISTRATION AND ENFORCEMENT

§ 1501 ADMINISTRATION

§ 1501.1 Enforcement Official: The provisions of this LUC shall be enforced and administered by the Building Inspector of the Town of Ophir, his authorized representative, the Enforcement Official, the Planning and Zoning Commission of the Town of Ophir, or such other authority as appointed by the General Assembly of the Town of Ophir.

§ 1501.2 Right to Trespass: The Building Inspector, Enforcement Official, or any duly authorized person shall have the right to enter upon any premises at any reasonable time during daylight hours for the purpose of making inspections of buildings or premises necessary to carry out his duties for the enforcement of this LUC.

§ 1501.3 Liability: The Building Inspector, Enforcement Official, any member of the Planning and Zoning Commission, or any other public body of the Town of Ophir, acting in good faith and without malice for the town in the discharge of his duties, shall not thereby render himself or herself personally liable and is hereby relieved of all personal liability for any damage which may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of his duties. Any suit brought against the Building Inspector, Enforcement Official, his or her employee, or any member of a public body of the Town of Ophir when acting in his or her official capacity, shall be defended by the Town of Ophir.

§ 1501.4 Stop Work Orders: Whenever any building work is being done contrary to the provisions of this LUC or the authorized building permit, the Building Inspector, Enforcement Official, or Planning and Zoning Commission, may order the work stopped by providing notice in writing served on any such person engaged in doing or causing such work to be done or by posting a Stop Work Order of at least 8½" x 11" size in red. Any such person shall forthwith stop such work until authorized by the Building Inspector or the Planning and Zoning Commission to resume work.

§ 1501.5 Building Permit Required: It shall be unlawful to commence the excavation for, or the construction of, or movement of any building or any structure, including accessory structures until the Building Inspector and Enforcement Official of the Town of Ophir has each issued a building permit for such work.

§ 1501.6 Application for Permit: Application for a building permit shall be made to the Building Inspector and Enforcement Official of the Town on forms provided for that purpose.

§ 1501.7 Requirements for Permits: The Building Inspector and the Town shall require that every application for a building permit be accompanied by 4 copies of a plan drawn to scale and 4 elevation drawings drawn to scale showing specified information in sufficient detail to enable the Building Inspector and Plan Reviewer to ascertain

whether the proposed excavation, construction, reconstruction or conversion, moving or alteration is in compliance with this LUC. In addition, a benchmark elevation site shall be located on the lot for use as a reference to the natural undisturbed ground slope. The benchmark elevation site shall not be moved or disturbed until a certificate of occupancy is issued. All building permits expire after one year if the Building Inspector determines that sufficient progress has not been made.

Plans and drawings shall include the following:

A. *Lot dimensions and corners*: the actual shape, proportion and dimension of the lot to be built on, and satisfactory evidence that actual corners of the lot are known and established on the ground.

B. *Proposed Structures*: The shape, size and location of all buildings, fences, or other structures to be erected, altered or moved and of any buildings, fences or other structures already on the lot.

C. *Use of Structure*: The existing and intended uses of the building and other structures, including the number of units.

D. *Existing Yards*: The dimensions of all yards and such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of the LUC are being observed regarding yards, areas, site-coverage, and other such requirements or standards.

E. *Building Code*: Any other information as required by the Uniform Building Code.

F. Any planned roads, driveways, or access routes, and parking areas.

G. The location of the benchmark elevation site with descriptions of the elevation change to the highest and lowest point of the natural, undisturbed, pre-construction grade of each structure.

H. A description of all exterior materials and lighting to be used on all structures.

I. Certified approval of the plans by the Enforcement Official or Planning and Zoning Chairperson.

J. Evidence of payment of the water tap fee and any other applicable fees, issuance of a septic permit, and compliance with any other restrictive covenants and special assessments.

§ 1501.8 Issuance of Permit: If the proposed excavation, construction, moving or alteration as set forth in the application is in conformity with the provision of this LUC and all other ordinances of the Town, the Building Inspector, Plan Review or other Town Staff, shall issue a Building Permit.

§ 1501.9 Disapproval of Permit: If an application for a building permit is not approved, the Building Inspector, Plan Review or other town staff, shall state in writing his

reason for such a disapproval.

§ 1501.10 Null and Void Permits: Any permit issued in conflict with the provisions of this LUC shall be null and void and may not be construed as waiving any provision of this LUC.

§ 1501.11 Certificate of Occupancy Required: After the effective date of this LUC, no change in the use or occupancy of land, nor any change of use or occupancy in an existing building other than for single family residence shall be make, nor shall any new building be occupied for any purpose other than that allowed by existing zoning until a certificate of occupancy has been issued by the Building Inspector, Plan Review or other town staff of the Town of Ophir.

§ 1501.12 Record Kept by Building Inspector: A record of all certificates of occupancy shall be kept on file in the office of the Building Inspector and the Ophir Town Hall and Plan Review, and copies shall be furnished on request at the expense of any person having a proprietary interest in the land or building affected by such certificate of occupancy.

§ 1501.13 Appeal from Decisions: The Applicant may appeal to the General Assembly of the Town of Ophir in the following manner. The aggrieved Applicant must file notice of appeal with the Town Clerk of Ophir within thirty (30) days of the mailing of the written order of the Building Inspector or Enforcement Official. The Town Clerk shall place the appeal on the agenda of the next Town Meeting. The General Assembly shall consider the recommendations of the Building Inspector, Enforcement Official and Planning and Zoning Commission and the arguments of the aggrieved Applicant, and shall, within seventy-five (75) days of the filing of said appeal, either confirm or overrule the decision of the Building Inspector, Enforcement Official or Planning and Zoning Commission.

§ 1502. PENALTY

Violation of any provision of this LUC is hereby deemed to be a misdemeanor and any person found guilty hereunder shall be fined not less than $20.00 nor more than $1,000 or sentenced to jail for a term of not more than 90 days, or by both fine and sentence. Each separate provision of this LUC that is violated constitutes a separate offense. Every day the LUC is violated shall constitute a separate offense.

§ 1503. COMPLAINTS

Any person aggrieved by violation, or apparent violation, of this LUC shall file a written complaint with the Building Inspector or Enforcement Official, who shall immediately investigate such complaint and take legal action to have the violation penalized and removed if such a violation is found to exist.

ARTICLE XVI PLANNING AND ZONING COMMISSION STANDARDS

§ 1601. INTENT

The Planning and Zoning Commission for the Town, which shall be known as the Ophir Planning and Zoning Commission, or P&Z, is governed by the standards set forth in this section.

§ 1602. MEMBERSHIP

§ 1602.1 Composition P & Z shall consist of five (5) regular members and a first (1st) and second (2nd) alternate appointed by the General Assembly. Alternates shall be called upon to serve when members are not able to attend a regularly scheduled meeting or when a P & Z member has been disqualified to serve on a particular matter due to conflict of interest.

§ 1602.2 Terms All appointments, including vacancies, shall be made by the General Assembly. Members shall be appointed for one-year terms. Three seats shall be filled in July and two seats shall be filled in January. Vacancies occurring otherwise than through the expiration of terms shall be filled by appointments to fill unexpired terms. Upon resignation of a member, the General Assembly shall appoint a new member after advertising notice of the vacancy in accordance with State and Local legal notice publication laws.

§ 1602.3 Removal Members shall serve during good behavior and efficiency, and may be removed after public hearing before the General Assembly on grounds of insufficiency, neglect of duty, inability to properly perform required duties, or intentional disregard of duties. Three (3) unexcused absences of a member from properly-noticed meetings of P & Z shall constitute good cause for removal on the grounds of neglect of duty.

§ 1603. MEMBER QUALIFICATIONS

§ 1603.1 Qualifications Members of P & Z shall be qualified electors of the Town for at least one (1) year prior to the time of appointment. Members shall be selected without respect to party affiliations.

§ 1603.2 Compensation Members, not including the Planning Commission Chairperson, shall serve without compensation. The Planning Commission Chairperson shall be a Town Staff position with a monthly salary, compensation and job description as determined by the General Assembly. All members, including the Chairperson, may receive reimbursement of reasonable out-of-pocket expenses.

§ 1604. ORGANIZATION OF P&Z

§ 1604.1 Officers P&Z shall elect from its membership a chairperson and a vice-chairperson,

whose term shall correspond with their P&Z terms, with eligibility for re-election.

§ 1604.2 Subcommittees P&Z or General Assembly is authorized to appoint one (1) or more subcommittees to review planning or land use application agenda items and to make recommendations to the full Commission.

§ 1605. MEETINGS

§ 1605.1 Schedule Meetings shall be held as determined by the P&Z commission. The chairperson of P&Z may call a meeting provided all regular P&Z members have been personally notified.

§ 1605.2 Quorum A simple majority of the regular P&Z members (three (3) out of five (5) members) shall constitute a quorum. In the absence of any regular member, the alternates, in order of appointment, may sit in the member's place to constitute a quorum or full commission.

§ 1605.3 Record P&Z shall keep a public record of its proceedings.

§ 1605.4 Notice All P&Z meetings shall be noticed by posting a notice in the entrance way to the Ophir Town Hall at least 24 hours prior to the meeting date. Specific agenda items shall be include if possible. No action may be taken by P&Z to grant, deny, or otherwise review a special use permit or subdivision regulation, or make a recommendation to the General Assembly to amend this LUC or the Town of Ophir Master Plan, unless notice of the meeting with the proposed action item is published in an official newspaper of record in San Miguel County prior to the meeting. In the event that notice of a P&Z meeting and action item which is required to be published is published on the date of the meeting, the meeting shall not be held prior to 7:00 p.m. on that date. Notice of a public hearing held by P&Z shall be posted in the entrance way to the Ophir Town Hall and the Ophir Post Office at least 5 days prior to the hearing, and shall be published in an official newspaper of record in San Miguel County at least 3 days prior to the hearing, unless more stringent notice standards apply elsewhere in this LUC.

§ 1606. STAFF AND CONTRACT PROFESSIONALS

P&Z may contract with professional planners, consultants and employees provided that expenditures for these positions have been authorized by the General Assembly. The hiring of professional staff, consultants, or employees shall require the approval of four P & Z members or the approval of the General Assembly. P & Z shall advise the General Assembly of all such appointments. P & Z shall consult with the Town Manager prior to hiring anyone pursuant to this paragraph.

§ 1607. POWERS AND DUTIES, GENERALLY

P & Z shall have full power and authority to act on matters granted to it by statutes of the

State, and as they may be amended from time to time, and, to the extent not inconsistent therewith, this LUC and any ordinances of the Town. In general, P&Z shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning.

§ 1608. POWERS AND DUTIES, LAND DEVELOPMENT ACTIVITIES

P & Z shall have the following powers and duties with respect to review of land development activities:

§ 1608.1 Recommend approval to uses or activities permitted on review.

§ 1608.2 Make recommendations to the General Assembly to approve or deny applications for zoning variances or re-zoning.

§ 1608.3 Initiate amendments to the text of this LUC or to the Official Zone District map.

§ 1608.4 Make recommendations to the General Assembly to approve or deny amendments to the text of this LUC or to the Official Zone District Map.

§ 1608.5 To make recommendations to the General Assembly to approve, deny, or approve with conditions, preliminary and final annexations to Town.

§ 1608.6 To make recommendations to the General Assembly to approve, deny, or approve with conditions, subdivisions applications within the Town of Ophir.

§ 1608.7 To review building permits in the Town of Ophir in conjunction with the Building Inspector, Plan Reviewer and other town staff of the Town of Ophir.

§ 1609. POWERS AND DUTIES, MASTER PLAN

§ 1609.1 Purpose It is the function and duty of P & Z to make, adopt and then recommend to the General Assembly a master plan for the physical development of the Town, including other areas outside of its boundaries which, in P & Z's judgment, bear relation to the planning of the Town. Where the plan involves territory outside of the boundaries of Town, action will be taken with the concurrence of the County of other government body or agency.

§ 1609.2 Content The master plan shall show P & Z's recommendations and may include, among other things, the general location, character and extent of streets, parks, parkways, playgrounds, and public spaces; the general location and extent of utilities and terminals, whether publicly or privately owned; the acceptance, widening, removal, extension, relocations, narrowing, vacation, abandonment or change of use of any of the foregoing; and the general location, character, layout and extent of community centers.

§ 1609.3 Zoning Plan P&Z shall also make, adopt and recommend to the General Assembly a zoning plan which shall include zoning maps and all other matters pertaining to

zoning, including but not limited to the control of height, area, bulk, location and use of buildings and premises.

§ 1609.4 Public Hearing Before the adoption of the Plan or any such part, amendment, extension or addition, P & Z shall hold at least one (1) public hearing, notice of the time and place of which shall be given in the official newspaper of record in San Miguel County.

[End of Article XVI]

SOURCE WATER PROTECTION AREA APPLICATION - TOWN OF OPHIR

Applicant Name:_____ **Phone No**._____

Address:_____ **Fax No**._____

_____ **E-Mail**:_____

Street Address and Legal Description of Subject Property:

_____

Zone District of Subject Property:_____ **Application Fee**: $500.00, *see §1006.2*.

Applicants should include ten (10) copies of the following:

(1) Narrative

(2) Site Plan

(3) Proof of Notification

(4) Proof of Property Ownership by a title commitment or attorney opinion

(1) NARRATIVE: Description of proposed activity in the Source Water Protection Area request including Applicant's reasons why the SPA permit should be grant (Use separate letter) *See Ophir Land Use Code ARTICLE X – especially §1008. Standards for Review.*

(2) SITE PLAN: Attach a site plan showing existing and proposed improvements on the Applicant's property, the area of a proposed activity and any other information necessary to clearly demonstrate the nature of the SPA permit request (*Note*: Planning Commission may require more information to review the application). *See Ophir Land Use Code Article X §1006 Application Submittal Requirements.*

(3) PROOF OF NOTIFICATION: The Applicant must provide notice by posting notice at the Ophir Town Hall and Ophir Post Office, mailing notice to all members of the General Assembly, and publishing notice in the official paper of record for the Town of Ophir at least fifteen (15) days prior to a public hearing. The Notice form shall be approved by the Town of Ophir (Town Attorney) and shall include a brief description of the proposed activity. The Applicant may also include maps, diagrams or graphics that help notice recipients understand the nature of the SPA request. The Ophir Town Clerk shall provide a list of general assembly members with mailing addresses.

I swear that the information provided in this application is true and correct and that I am the owner of the property or otherwise authorized to act on behalf of the owner of the property.

Signature:_____ **Date**:_____

FOR TOWN USE ONLY:

Date Application Received:_____	Date of Hearing:_____
Application Fee Received:_____	Planning Commission Action: _____
Application Complete:_____	Approval Subject to Conditions:_____
Mailing Notice Complete:	Application Reviewed by:

VARIANCE APPLICATION - TOWN OF OPHIR

Applicant Name:_____ **Phone No**._____

Address:_____ **Fax No**._____

_____ **E-Mail**:_____

Street Address and Legal Description of Subject Property:

_____

Zone District of Subject Property:_____ **Application Fee**: $500.00, *see §1102.3*.

Applicants should include ten (10) copies of the following:

(1) Narrative

(2) Site Plan

(3) Proof of Notification

(4) Proof of Property Ownership by a title commitment or attorney opinion

(1) NARRATIVE: Description of Special Use Permit request including Applicant's reasons why the Variance should be grant (Use separate letter) *See Ophir Land Use Code ARTICLE XI – especially §1104. Standards for Review.*

(2) SITE PLAN: Attach a site plan showing existing and proposed improvements on the Applicant's property and any other information necessary to clearly demonstrate the nature of the Variance request. *See Ophir Land Use Code §1102. Note: the Planning Commission may require more information to review the application*.

(3) PROOF OF NOTIFICATION: The Applicant must provide notice in accordance with §1103.3 of the Ophir Land Use Code.

I swear that the information provided in this application is true and correct and that I am the owner of the property or otherwise authorized to act on behalf of the owner of the property.

Signature:_____ **Date**:_____

FOR TOWN USE ONLY:

Date Application Received:_____	Date of Hearing:_____
Application Fee Received:_____	Planning Commission Action: _____
Application Complete:_____	Approval Subject to Conditions:_____
Mailing Notice Complete:	Application Reviewed by:

SPECIAL USE PERMIT APPLICATION - TOWN OF OPHIR

Applicant Name:_____ **Phone No**._____

Address:_____ **Fax No**._____

_____ **E-Mail**:_____

Street Address and Legal Description of Subject Property:

_____

Zone District of Subject Property:_____ **Application Fee**: $500.00, *see §1204.2*.

Applicants should include ten (10) copies of the following:

(1) Narrative

(2) Site Plan

(3) Proof of Notification

(4) Proof of property ownership by a title commitment or attorney opinion

(1) NARRATIVE: Description of Special Use Permit request including Applicant's reasons why the Special Use Permit should be grant (Use separate letter) *See Ophir Land Use Code ARTICLE XII – especially §1206. Standards for Review of SUP Applications.*

(2) SITE PLAN: Attach a site plan showing existing and proposed improvements on the Applicant's property and any other information necessary to clearly demonstrate the nature of the Special Use Permit request (*Note*: Planning Commission may require more information to review the application).

(3) PROOF OF NOTIFICATION: The Applicant must provide notice in accordance with §1205 of the Ophir Land Use Code.

I swear that the information provided in this application is true and correct and that I am the owner of the property or otherwise authorized to act on behalf of the owner of the property.

Signature:_____ **Date**:_____

FOR TOWN USE ONLY:

Date Application Received:_____	Date of Hearing:_____
Application Fee Received:_____	Planning Commission Action: _____
Application Complete:_____	Approval Subject to Conditions:_____
Mailing Notice Complete:	Application Reviewed by:

SUBDIVISION APPLICATION - TOWN OF OPHIR

Applicant Name:_____ **Phone No**._____

Address:_____ **Fax No**._____

_____ **E-Mail**:_____

Street Address and Legal Description of Subject Property:

_____

Zone District of Subject Property:_____ **Application Fee:** $1,500.00, *see §1303.1.a.5 and §1307.*

Applicants should include the following:

(1) Narrative

(2) Site Plan

(3) Proof of Notification

(4) Proof of property ownership by title commitment or attorney opinion

(1) NARRATIVE: Description of the proposed subdivision describing the proposed quantity of lots, lot sizes, site characteristics, road and utility extensions or improvements, and any other considerations.

(2) SUBDIVISION PLAT: Include a subdivision plat and other information as required in §1303 of the Ophir Land Use Code.

(3) PROOF OF NOTIFICATION: The Applicant must provide notice in accordance with §1302.2 of the Ophir Land Use Code.

I swear that the information provided in this application is true and correct and that I am the owner of the property or otherwise authorized to act on behalf of the owner of the property.

Signature:_____ **Date**:_____

FOR TOWN USE ONLY:

Date Application Received:_____	Date of Hearing:_____
Application Fee Received:_____	Planning Commission Action: _____
Application Complete:_____	Approval Subject to Conditions:_____
Mailing Notice Complete:	Application Reviewed by:

LAND USE CODE AMENDMENTS APPLICATION - TOWN OF OPHIR

Applicant Name:_____ **Phone No**._____

Address:_____ **Fax No**._____

_____ **E-Mail**:_____

Street Address and Legal Description of Subject Property:

_____

Zone District of Subject Property:_____ **Application Fee**: $500.00, *see §1403.2.*

Applicants should include the following:

(1) Narrative

(2) Site Plan

(3) Proof of Notification

(4) Proof of Ownership by title commitment or attorney opinion

(1) NARRATIVE: Description of the proposed amendment to the Ophir Land Use Code

(2) MAPS: Attach a map showing properties affected by the proposed zoning changes or changes to zoning, hazard or source water protection area maps which clearly demonstrate the nature of the proposed request (*Note*: Planning Commission may require more information to review the application).

(3) PROOF OF NOTIFICATION: The Applicant must provide notice in accordance with §1405. of the Ophir Land Use Code

I swear that the information provided in this application is true and correct and that I am the owner of the property or otherwise authorized to act on behalf of the owner of the property.

Signature:_____ **Date**:_____

FOR TOWN USE ONLY:

Date Application Received:_____	Date of Hearing:_____
Application Fee Received:_____	Planning Commission Action: _____
Application Complete:_____	Approval Subject to Conditions:_____
Mailing Notice Complete:_____	Application Reviewed by:_____