

TOWN OF OPHIR, COLORADO

ORDINANCE NO. 2018-3

**UPDATING THE TOWN OF OPHIR SOURCE WATER PROTECTION PLAN
AND SOURCE WATER PROTECTION AREA MAPS AND AMENDING
ARTICLE X OF THE OPHIR LAND USE CODE IN CONNECTION
THEREWITH**

WHEREAS, pursuant to Colorado Revised Statutes § 31-15-401 and 31-23-301, as a Colorado municipality, the Town of Ophir has the power to enact regulations as necessary to provide for the public health, safety and welfare of the community; and

WHEREAS, C.R.S. 31-15-701(1)(b) authorizes municipalities “To construct or authorize the construction of such waterworks without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same and over the stream or source from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred in this paragraph (b) into effect”; and

WHEREAS, Ophir has completed a Town of Ophir Source Water Protection Plan dated January 20, 2018 (52 pages) together with Appendices A through J, a copy of which is on file with the Ophir Town Clerk and incorporated herein by this reference; and

WHEREAS, the Town of Ophir Planning and Zoning Commission has recommended adoption of the following Land Use Code amendments in order to update references to the Town’s Source Water Protection Plan and Source Water Protection Area maps; and

WHEREAS, the Ophir General Assembly finds that adoption of this ordinance is necessary to protect the public health, safety and welfare of the Town of Ophir.

NOW, THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR:

Section 1. Article X of the Ophir Land Use Code is hereby repealed in its entirety and re-enacted as follows:

ARTICLE X SOURCE WATER PROTECTION

§1001. Creation of a Source Water Protection Areas. Pursuant to the authority granted in §31-15-707(1)(b), Colorado Revised Statutes, as amended, the Town hereby creates Source Water Protection Areas hereinafter referred to as “the SPAs”.

§1002. Purpose and Intent of the SPAs. 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 SPAs those SPAs delineated on the SPA maps contained within the Source Water Protection Plan, which Plan and 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 Town of Ophir 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 SPAs to be prepared, and thereafter the most recent map shall be conclusive as to the boundaries of the SPAs.

§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 compaction of 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 X 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.

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.

§1005.3 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.

§1005.4 After the Ophir Planning and Zoning Commission render 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 affect 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]

The Source Water Protection Area Maps contained within the Source Water Protection Plan shall replace the Source Water Protection Area Maps currently in Appendix C of the Land Use Code.

Section 2. EFFECTIVE DATE.
This Ordinance shall take effect upon publication of notice of final adoption.

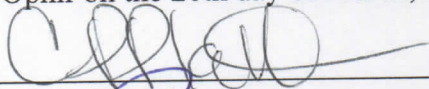
Section 3. SEVERABILITY.
If any one or more sections or parts of this Ordinance is adjudged unenforceable or invalid by a court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various provisions herein are severable.

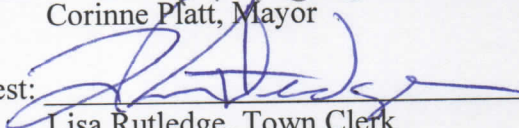
Section 3. REPEALER.
All ordinances, resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be

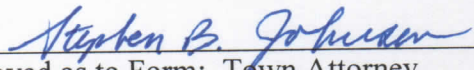
construed to revive any ordinance or resolution or part of any ordinance or resolution heretofore repealed.

Introduced, Read and Approved on First Reading by the General Assembly on the 20th day of February, 2018.

Approved and Adopted on Second and Final Reading by the General Assembly of the Town of Ophir on the 20th day of March, 2018.

By: 
Corinne Platt, Mayor

Attest: 
Lisa Rutledge, Town Clerk


Approved as to Form: Town Attorney