



**NOTICE OF THE REGULAR MEETING OF THE GENERAL ASSEMBLY
TOWN OF OPHIR, CO 81426
TUESDAY 7:00 pm September 16, 2025
OPHIR TOWN HALL 36 PORPHYRY ST.**

[Join Zoom Meeting](#)

Meeting ID: 867 0143 8435 Passcode: 373146

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AGENDA

1. CALL TO ORDER
2. ADOPTION & SIGNATURE OF August 19, 2025 MEETING MINUTES
3. APPROVAL OF AGENDA
4. BUSINESS ITEMS
 - a. Executive Session for a Conference with the Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Under CRS 24-6-402(4)(b) Regarding Threatened Waller Litigation (Carmer)
 - b. Continuation for Public Hearing: Consideration of Ordinance #2025-02, AN ORDINANCE AMENDING THE TOWN OF OPHIR HAZARD OVERLAY MAP REGARDING AVALANCHE ZONES on second reading
 - i. Applicant: Town of Ophir
 - ii. Purpose: LUC Map Amendment to correct high avalanche hazard zones in northwest and southeast corners of Town
 - c. Public Hearing: Consideration of Ordinance 2025-3, AN ORDINANCE AMENDING THE TOWN OF OPHIR HAZARD OVERLAY MAP, on second reading
 - i. Applicant: Sheamus Croke
 - ii. Purpose: LUC Map Amendment designating Lots 5&6, Block M, Ophir, as outside the Moderate Avalanche Hazard Zone
 - d. Consider Settlement Agreement with Waller, Cornwall, and Whitaker
 - e. P&Z Appointments:
 - i. Mark Rosenthal
 - ii. Gunnar Doyle
 - iii. ???
5. STAFF REPORTS

- a. Town Manager
 - b. Staff
 - i. Joe Shults- water system update
- 6. NEW BUSINESS
- 7. ADJOURN

****DRAFT**MINUTES OF THE REGULAR MEETING OF THE
GENERAL ASSEMBLY**

TOWN OF OPHIR, CO 81426

TUESDAY AUGUST 19TH, 2025 7:00 PM

OPHIR TOWN HALL 36 PORPHYRY ST.

Video and audio recording available upon request

1. CALL TO ORDER

Andy Ward calls the meeting to order at 7:01pm

VOTING MEMBERS PRESENT: Phil Hayden, Catherine Gockley, Mark Rosenthal, Joan May, Gunnar Doyle, Matt Williamson, Melanie Kent, Allyn Hart, Jerry Oyama, Doris Glynn, Eric Beerman, Abby Gamache, Daniel Forgrave, Dave Chew, Lucas Leighton, Maddie Crowell, Natalie Fijalkowski, Tyler Simmons, John Humphries, Will Marsh, Joe Schults, Amanda Fefferman, Gregory Hope, Kirk Drogsvold, Corinne Platt, Mark Worth, Kim Wheels, Slator Aplin, Ryan Ehlers, Tyler Schultz

NON-VOTING MEMBERS: John Wontrobski, Haley Carmer, Kara Gray, Sheamus Croke, Mollie, Mark Pearson

2. APPROVAL OF AGENDA

Mark Rosenthal motions, Catherine Gockley seconds.

All in Favor (Yay): Unanimous

3. ADOPTION & SIGNATURE June 22nd 2025Regular GA minutes

Gunnar motions, Joan seconds.

All in Favor (Yay): Unanimous

**4. Williamson sisters present donation to Camp Mystic for
recovery/rebuilding efforts**

5. a) EXECUTIVE SESSION FOR PURPOSES OF DISCUSSION
WITH TOWN ATTORNEY

Andy motions, John Humphries seconds

All in Favor (Yay): Unanimous

Executive session begins @ 7:09 and recording is stopped.

Executive session ends @ 7:46 and recording is resumed.

Andy requests that if anyone has any concerns regarding the discussion during the executive session to speak now. No one speaks.

b) CONSIDERATION OF CONTINUATION FOR PUBLIC
HEARING ON ORDINANCE #2025-01 TO SEPTEMBER 16TH, 2025
GA MEETING

Mark Rosenthal motions, Joan May seconds.

Voice vote taken: 2 no votes, motion passes

c) CONSIDERATION OF ORDINANCE 2025-3, APPLICANT:
SHEAMUS CROKE FOR AN LUC MAP AMENDMENT ON LOTS
5&6, BLOCK M, OPHIR ON FIRST READING AND SETTING A
PUBLIC HEARING ON SEPTEMBER 16TH

Gunnar presents application overview.

Corinne asks if we can adopt the original InStarr map as the town avalanche hazard map at the next meeting.

Andy responds it will be on the agenda at the September GA.

Phil states he'd like to adopt the map which is most conservative.

John Wontrobski states the GA gave staff direction to follow the InStarr map as closely as possible. The InStarr map is the only map we have that is based directly on scientific study.

Hailey notes every iteration of a map ever seen by town is based on the original InStarr report/map.

Mark notes the study was done in the 70's and transcribed to color by Foley in the 90's.

Andy notes we can't find evidence for Foley's changes to the original InStarr map.

John Wontrobski responds he thinks the Foley map may have occurred during an LUC change/update.

Cat asks if Foley has been contacted.

Andy responds they have and could not find anything in their records about the changes to the map.

Eric Beerman echoes Corinne's sentiment and states he thinks it would be wise. He states we can address this application at the same time. He would like an expert avalanche opinion on this issue.

Andy states town has gotten expert opinion to support the use of the InStarr map zoning.

Mark Worth asks if this issue would be moot if we adopt the InStarr map.

Mark Worth motions to deny the motion, Allyn seconds.

Joan states she is not in favor of slowing down the process.

Hailey clarifies that the next GA amendment vote would not address the application issues.

Mark Worth explains he'd like to reduce the number of variances.

Mark Rosenthal notes it is an ordinance not a variance.

Hailey confirms this is a change to the hazard map via ordinance.

John Wontrobski notes he has checked the avalanche maps for disagreement and has not found many. He believes therefore that a case by case method is more efficient and supports the ordinance.

Kim asks if it would be harmful to Sheamus' process to slow down and he confirms that it could.

Mark Worth requests a roll call vote.

John Wontrobski states if the vote is close via voice vote we will proceed to roll call.

Voice vote: 3 yes votes, motion fails.

Joan May motions to approve and set second reading for September 16th GA, Slator seconds.

Voice vote: 3 no votes, motion passes.

6. STAFF REPORTS

TOWN MANAGER – County staff is working on emergency response issues. Town staff is discussing potential wildfire mitigation.

Community bus ride from Ophir to Easy Jim concert? Would be about \$15/20 per trip. Is town interested?

East Ophir backup pump is on order for around \$5k. When it is up and running the other pump will be serviced and replaced.

P&Z elections are next month.

Corinne asks when traffic control signs are being put up. John responds next week.

OEC – Bee Happy has removed ox eye daisies and thistle. Town compost and bio char have been mixed w/ seed and spread around open spaces. One more visit is scheduled for this season.

P&Z – Solar ordinance will be looked into next month, if you have questions please reach out. Starting on the LUC amendments process soon.

Kim notes federal tax credits for solar are expiring at the end of 2025.

MAYOR – The redwood box in waterfall canyon will be replaced in September.

7. NEW BUSINESS

Phil asks for a water use update.

John Wontrobski responds use is up marginally from past years.

8. ADJOURN

Andy adjourns the meeting @ 8:45pm

Minutes prepared by Ben Foster, Town Clerk

Audio and video recordings of all General Assembly Meetings are available to the public. Please contact the Town Clerk if you would like a copy of this month's audio of the meeting minutes.

Arthur I. Mears, P.E.
555 County Road 16
Gunnison, Colorado

Mr. John Wontrobski
Town of Ophir
Via email

August 15, 2025

Re: Avalanche mapping inquiry

Dear Mr. Wontrobski:

Thank you for your questions regarding snow-avalanche mapping in Ophir. In this letter I will try to address and explain some of the confusion you addressed in your email to me dated August 8, 2025 and the assumed accuracy, resolution and uncertainty of the Ophir avalanche map and also provide some historical background on the mapping. As you may know, I have a history with avalanche mapping at Ophir since the 1970s and have worked almost exclusively on avalanche analysis, mapping and engineering mitigation for avalanche hazards throughout North America since then.

Avalanche mapping in Ophir

In 1975 I was hired as a consultant by the Colorado Geological Survey (CGS) to map selected avalanche paths in various areas in Colorado, including Ophir. These maps became available as a number of "Open File Reports," dated November 19, 1975. The original maps were done at a scale of 1:24,000 (1" = 2,000') and were based on interpretation of U.S. Forest Service aerial photography (mostly dated from the 1960s), U.S. Geological Survey topographic maps with a 40-foot contour interval and supplemented by on-site field checking in most cases, including in Ophir. In 1979, 15 of the original maps were summarized at a reduced scale of 1:50,000 in Colorado Geological Survey Special Publication 7. Additional field work and/or aerial-photo interpretation was not done for Special Publication 7. However, as stated on page 37: *Avalanche-hazard maps prepared on a scale of 1:24,000 give some indication of avalanche frequency and impact pressures, but they do not provide the necessary criteria for building within hazard zones.*

In the original CGS Ophir map published in 1975 it is stated in the text under "Acknowledgements" that: *Previous work on avalanche hazard in the Ophir vicinity, with particular emphasis on Spring Gulch was conducted by the University of Colorado, Institute of Arctic (Sp) and Alpine Research (INSTARR), in 1974. The results of this study are incorporated into this report.* A March 1976 paper in *ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS* provides a map (Figure 10) of avalanche-hazards areas near Ophir which, I understand is the basis for the adopted Ophir hazard map.

Additional avalanche hazard also affects portions of the platted Ophir townsite from avalanches originating in Staatsborg Basin, directly west of Spring Gulch. I assume "The INSTAAR maps" for Ophir refer to the maps discussed above. If any other INSTAAR maps of the Ophir avalanche areas exist I do not know of them.

Subsequent to the mapping work discussed above I was also contacted by a Telluride resident in about the year 2000 who had property in the Ophir valley. He obtained more detailed topographic mapping than the original U.S. Geological Survey base maps that the above-referenced avalanche mapping was based on and wanted the Ophir avalanche map boundaries projected onto his new, more detailed topography. Consequently, I projected my new estimate of the runouts onto his new maps. However no new analytical methods for computing avalanche runouts (which are discussed below) were used by me at that time. The newer methods had not been developed. To my knowledge, these revised maps done for the Telluride resident were never adopted by Ophir.

Selected areas of Ophir have also been mapped and mitigation recommended by my business partner Chris Wilbur, P.E. who has applied new methods developed in the past two decades. He has also carefully researched the avalanche history. Chris is also a Colorado registered engineer and has worked with me on numerous projects in several western states since 2006.

Updated avalanche mapping methods

During the past two decades two technical advances enable more reliable avalanche mapping than that done in the 1970s:

1. Updated LIDAR (Light Detection and Ranging) topographic maps are available for many areas, including Ophir. This provides much higher resolution topographic detail particularly on terrain like the alluvial fan where Ophir is located. The detailed resolution defines shallow gullies and ridges that can control the direction of slower-moving dry or wet-snow avalanches. These are probably the type of avalanches that have impacted and moved buildings in the past.
2. New computer-based simulations of avalanche motion have been developed since the early 2000s, mostly by researchers in Switzerland. Avalanche release-volumes can be used to predict the motion of avalanches. We feel this is an important tool, particularly for predicting avalanche direction when the detailed LIDAR maps are available, as they are in Ophir.

To summarize, the Ophir townsite is obviously affected by avalanches now and has been in the past. When safety is the primary objective, it should be recognized that the old maps developed nearly 5 decades ago, should be updated.

Sincerely,



Arthur I. Mears, P.E.

References

Jack D. Ives, Arthur I. Mears, Paul E. Carrara, and Michael J. Bovis, 1976, Natural Hazards in Mountain Colorado, Annals of the Association of American Geographers, Vol. 66, No. 1.
Mears, Arthur I., 1979, Colorado Snow-Avalanche Area Studies , Colorado Geological Survey Special Publication 7, 123 p.

Memo to: John Wontrobski
Ophir Town Manager

From: Dan Rohn, P.Eng., and Alan Jones, P.Eng.
Dynamic Avalanche Consulting Ltd.

Date: July 9, 2025

RE: Town of Ophir
Review of Proposed Updated Avalanche Hazard Map
24-0034-GHP-01 Rev 0

1.0 Introduction

This memo summarizes a review by Dynamic Avalanche Consulting Ltd. (DAC) of the proposed update to the Town of Ophir Avalanche Hazard Map. The proposed map (Foley, 2025) is based on the original Institute of Arctic and Alpine Research (INSTAAR) hazard map (Ives, Mears, Carrara, & Bovis, 1976). The purpose of this review is to evaluate the interpretation of the proposed map in comparison to the original INSTAAR map, from the perspective of professionals who produce avalanche hazard maps. It is important to note that the scope of this review does not include reviewing the methodology used to establish the original INSTAAR map, nor does it review the accuracy of the location of hazard lines on the Foley (2025) map with respect to residential property boundaries. Commenting on the Waterways/Wetland Hazard area depicted on the proposed map is also not part of the scope. This work was conducted at the request of Garfield & Hecht, P.C. on behalf of the Town of Ophir.

2.0 INSTAAR Map

The original INSTAAR map communicates two categories of avalanche hazard (Zone I and Zone II) which are defined based on impact pressures (Figure 1). These categories are similar to modern zoning categories where Zone I is often called the High (or Red) Hazard zone, and Zone II is called the Moderate (or Blue) Hazard zone. Zones I and II are described explicitly on the INSTAAR map with a detailed map legend. Some zone boundaries are defined by avalanche modelling (i.e., Voellmy's equations), and other zone boundaries are defined by the estimated extent of avalanche runout from historical observations.

While some historical avalanche events have been used to establish zone boundaries (e.g., third item in the map legend), two additional historical avalanche events are presented in the legend without explicitly being assigned a hazard zone. The "estimated run-out of the 1973 wet spring avalanche" (fourth item in the map legend) is shown on the map entirely within one of the Zone I (High Hazard) polygons and is therefore clearly within an area of high avalanche hazard.

However, the fifth item in the map legend illustrates the estimated extent of a wet spring avalanche from Spring Gulch that reportedly moved two houses on the west side of the map. The map legend does not explicitly assign a hazard zone to this historical event, as it does for the historical event

described in the third item in the legend. Part of the mapped historical event (i.e., the dotted line) overlaps with the Zone I (High Hazard) area in the northwest corner of the map, while part of it is outside of any defined hazard zone (including where the two houses are shown to have been moved by avalanche impact).

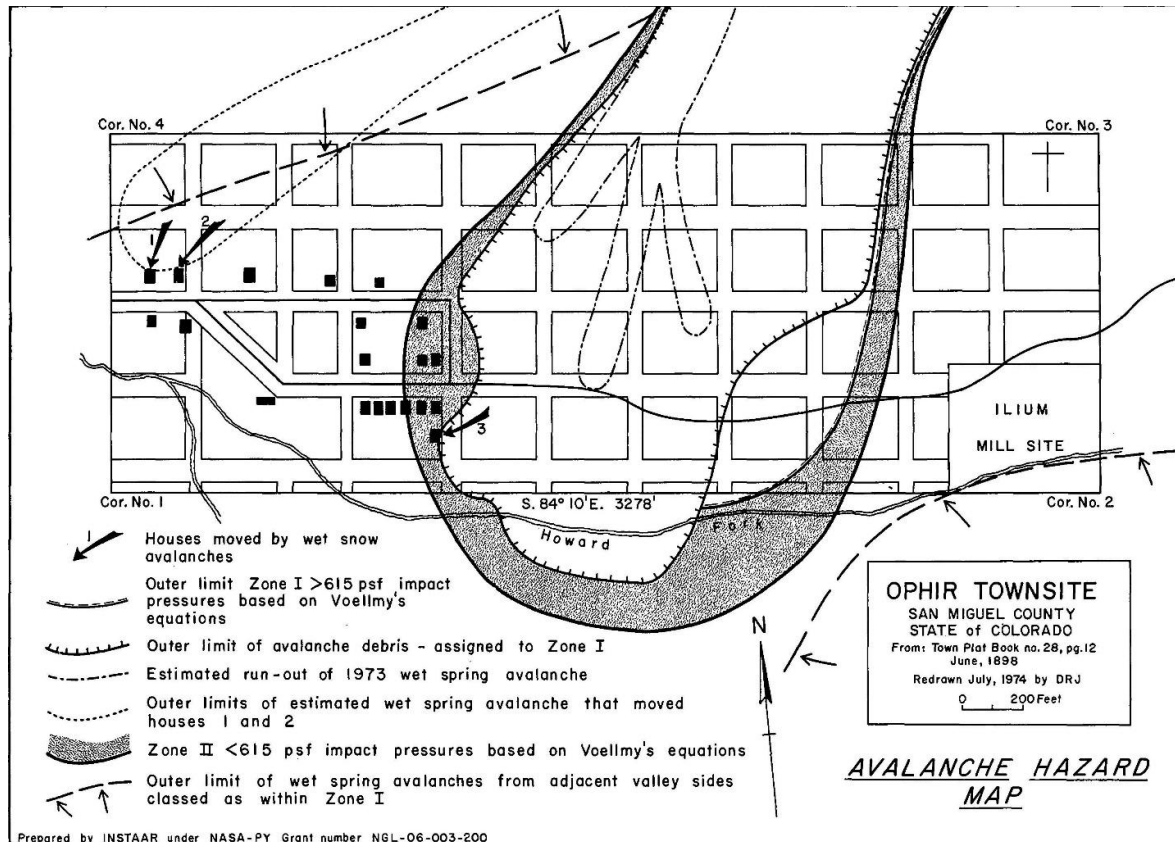


Figure 1. Original avalanche hazard map for the Town of Ophir developed by INSTAAR.

3.0 Proposed Updated Town of Ophir Map

The proposed updated Town of Ophir avalanche hazard map is based on the above INSTAAR map and is shown in Figure 2. It illustrates areas of High Hazard (Zone I) in dark orange and areas of Moderate Hazard (Zone II) in light yellow. There is no other avalanche-related information communicated on the map (e.g., no estimated extents of historical avalanche events), which is consistent with modern avalanche hazard maps. The zoning presented in the proposed map matches the zoning that was presented on the original INSTAAR map. Specifically, there are three areas of High Hazard:

1. The northwest corner of the map which was assigned as Zone I in INSTAAR due to wet spring avalanches from adjacent valley sides (not the Spring Gulch path).

2. The southeast corner of the map which was assigned as Zone I in INSTAAR due to wet spring avalanches on the south side of the valley.
3. The center of flow from the Spring Gulch path which was assigned as Zone I in INSTAAR due to a combination of historical avalanche observations and Voellmy's equations.

The only Moderate Hazard area surrounds the third High Hazard area above (from Spring Gulch), as per the INSTAAR mapping (which is based on Voellmy's equations). No other Moderate Hazard areas were identified on the INSTAAR mapping.

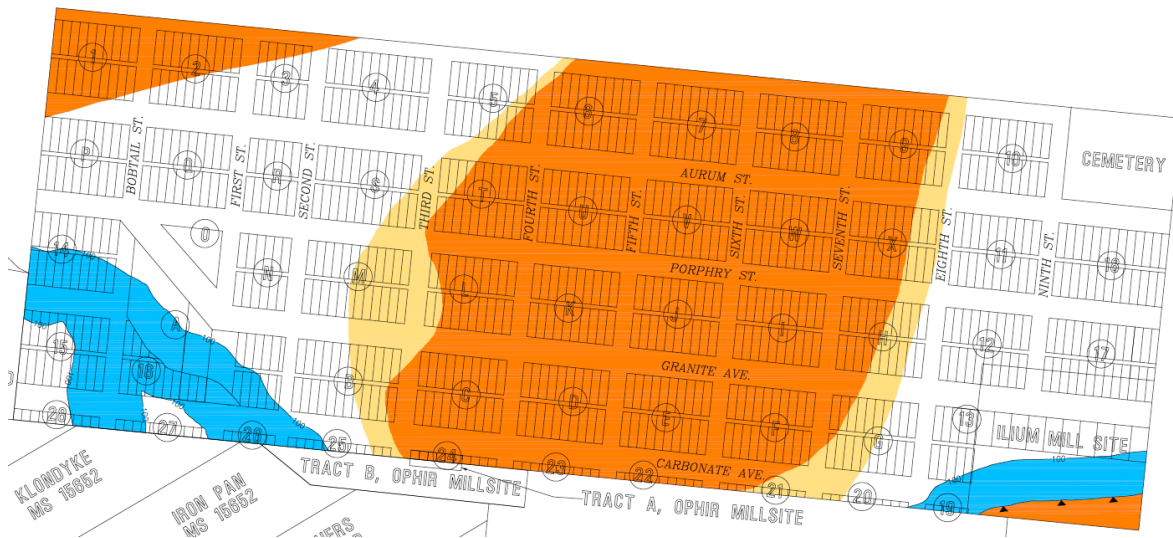


Figure 2. Proposed updated Town of Ophir Avalanche Hazard Map. Dark orange represents High Hazard areas, and light yellow represents Moderate Hazard areas.

4.0 Discussion

The zoning presented on the proposed updated Town of Ophir Avalanche Hazard Map is the same as the zoning that was explicitly communicated on the INSTAAR map (i.e., the four hazard areas discussed above). For this reason, the proposed map is arguably a reasonable interpretation of the original zoning presented on the INSTAAR map.

However, the original INSTAAR map presents some avalanche hazard zoning ambiguity by illustrating the estimated extent of a spring avalanche that reportedly moved two houses (fifth legend item on the INSTAAR map). This event is shown to extend beyond the Zone I (High Hazard) boundary in the northwest corner of the map into an area without an assigned hazard zone. If the extent of this historical event is represented accurately on the map, and the event did in fact move two houses, that would imply that this area is exposed to some degree of avalanche hazard. It would therefore also be a reasonable interpretation of the information provided on the INSTAAR map to assign a hazard zone to this wet spring avalanche polygon. Insufficient information (e.g., avalanche impact pressure and frequency estimates) is provided in the original INSTAAR work to assign this area as Zone I, Zone II, or no hazard with confidence. Additional investigation would be required to determine appropriate zoning in this area.

Three options could be considered to resolve the ambiguity in the INSTAAR map:

1. Contact the authors of the original INSTAAR map to clarify how the historical avalanche information that reportedly moved two houses was intended to be used in the development of a municipal avalanche hazard map.
2. Investigate the validity of the report of the historical avalanche that supposedly moved the two houses.
3. Complete updated avalanche hazard mapping using modern methods that consider all historical avalanche events.

We trust this memo satisfies the current needs of the Town of Ophir for the review of the proposed update to the town avalanche hazard map. For questions, please contact the undersigned.

Dynamic Avalanche Consulting Ltd.

Prepared by:



Dan Rohn, P.Eng.

Reviewed by:



Alan Jones, P.Eng.

5.0 References

Foley. (2025). *Town of Ophir Hazards Map 2025*. Telluride, Colorado: Foley Associates, Inc.

Ives, J. D., Mears, A. I., Carrara, P. E., & Bovis, M. J. (1976). *Natural Hazards in Mountain Colorado*. Annals of the Association of American Geographers. Institute of Arctic and Alpine Research.

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GARFIELD & HECHT, P.C.
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MEMORANDUM

To: Town of Ophir Planning & Zoning Commission

From: Garfield & Hecht, P.C.

Date: June 6, 2025

RE: Proposed amendment of Hazard Overlay Map

INTRODUCTION AND PROPOSED ACTION

The Town of Ophir Land Use Code (“Code”) establishes an Avalanche Hazard Overlay Zone District (“Avalanche Hazard Zone”) within the Town. The purpose of the Avalanche Hazard Zone is to define areas where avalanche hazard threatens the health, safety and welfare of persons and property. There are two classifications within the Avalanche Hazard Zone: high avalanche hazard and moderate avalanche hazard. The boundaries of the Avalanche Hazard Zone—including designation of high and moderate hazard areas—are established on the official Hazards Overlay Map of the Town of Ophir. The current Hazards Overlay Map was adopted in 2003 and is included as Appendix C to the Code. The basis for the Avalanche Hazard Zone and the locations of the high and moderate hazard areas are based on the 1976 Natural Hazards in Mountain Colorado study authored by Jack D. Ives, Arthur I. Mears, Paul E. Carrara, and Michael J. Bovis, specifically Figure 10 in the report (the “INSTARR Map”).

The current Hazard Overlay Map designates Lots 1 through 10, Block 2 of the Town (the “Lots”) as a high hazard zone. Section 803.4 of the Code provides that no dwelling structures are permitted in the high hazard area. In 2023, the owners of the Lots sought to amend the Hazard Overlay Map to reclassify the Lots from high to moderate, which, if successful, would have allowed the owners to seek a variance or special use permit to construct homes on the Lots. The General Assembly ultimately denied the application. The owners then challenged the denial and asserted other claims against the Town related to the hazard classification of the Lots.

While working through the possibility of and options for a resolution of the disputes between the Town and the owners of the Lots, the Town identified a discrepancy between the INSTARR Map and its current Hazard Overlay Map. Specifically, the INSTARR Map defines “Zone 1” (high hazard) in the vicinity of the Lots by a straight line running through the northwest corner of Town (see Figure 1, below). In contrast, the Hazard Overlay Map defines the high hazard area by a “finger” (see Figure 2, below). And unlike the Spring Gulch hazard area, the INSTARR Map does not identify a moderate zone around the high zone in the northwest corner. The same is true for the high zone in the southeast corner of Town (see Figure 1).

Figure 1

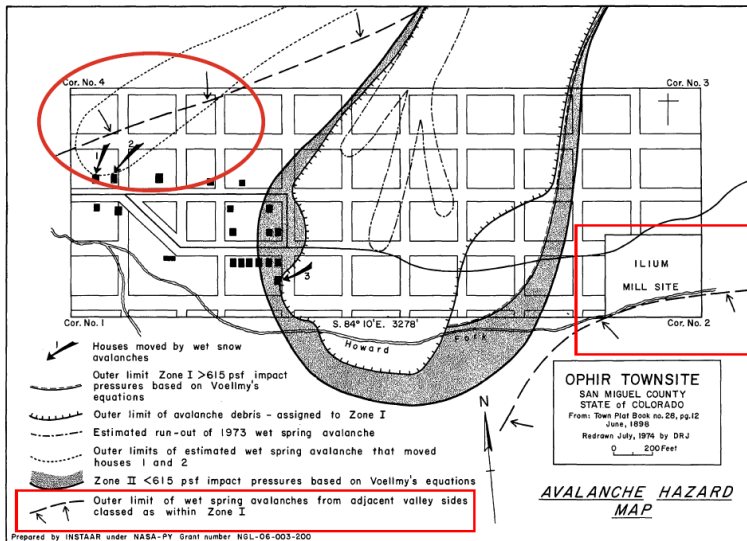
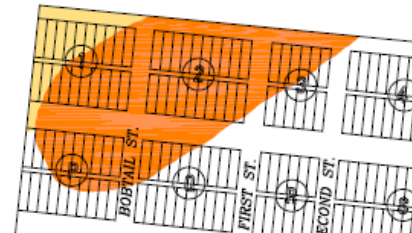


Figure 2



Because the INSTARR Map and associated analysis provide the scientific basis for the Town's hazard areas, the Town is proposing to amend the Hazard Overlay Map to align with the INSTARR Map by defining as "high hazard" those areas (i) north of the line in the northwest corner and (ii) south of the line in the southeast corner of Town. As a result of this change, areas south of the line in the northwest corner that are high hazard under the existing Hazard Overlay Map—including portions of the Lots—will have no avalanche hazard designation. A survey exhibit showing where the northwest line falls in relation to the Lots is enclosed. The revised Hazard Overlay Map making these changes is attached as Exhibit A to the proposed ordinance included with this memo. If the ordinance is approved by the General Assembly, Exhibit A will become the new Hazard Overlay Map for the Town.

ANALYSIS

Article XIV of the Code governs amendments of the Code and Town zoning and other maps, including the Hazard Overlay Map. Per Section 1415 of the Code, the Planning & Zoning Commission may recommend approval of an amendment to Hazards Overlay Map if the Commission finds that any three of the criteria listed and discussed below have been met.

- A. There has been a substantial change in conditions in the neighborhood or area proposed to be rezoned since the date of approval of the existing zoning map designation which justifies the proposed amendment.

Staff response: This criterion is not applicable here because no change in zoning is proposed.

TOWN OF OPHIR, COLORADO

ORDINANCE NO. 2025-2

**AN ORDINANCE AMENDING THE TOWN OF OPHIR HAZARD OVERLAY MAP
REGARDING AVALANCHE ZONES**

WHEREAS, the Town of Ophir, Colorado (“Town”), is a home-rule town and political subdivision of the State of Colorado, duly organized and operating under the Constitution and laws of the state and the Ophir Town Charter.

WHEREAS, the Town has adopted a Hazard Overlay Map including an Avalanche Hazard Zone that is intended to define areas where avalanche hazard threatens the health, safety and welfare of persons and property.

WHEREAS, the Avalanche Hazard Zone locations shown on the Hazard Overlay Map are derived from the 1976 Natural Hazards in Mountain Colorado study authored by Jack D. Ives, Arthur I. Mears, Paul E. Carrara, and Michael J. Bovis (the “INSTARR Report”), specifically Figure 10 in the INSTARR Report.

WHEREAS, the Town has identified a discrepancy between the hazard areas shown in the INSTARR Report and the Avalanche Hazard Zones identified on the current Hazard Overlay Map.

WHEREAS, pursuant to Article XIV of the Town of Ophir Land Use Code (the “Code”), the Town desires to amend the Hazard Overlay Map to correct the discrepancy.

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

Section 1. Recitals. The Recitals set forth above are incorporated herein as findings and declarations of the General Assembly.

Section 2. Findings. Pursuant to Section 1415 of the Code, the General Assembly finds that amending the Hazard Overlay Map as provided in this Ordinance satisfies the following criteria:

- A. There is demonstrated to be a material error in the existing Hazard Overlay Map, the correction of which justifies the proposed amendment;
- B. The areas affected by the amendment are suitable for the uses permitted as a result of the amendment;
- C. The proposed amendment is in conformance with the Ophir Master Plan; and
- D. There exists a substantial and compelling public interest in adopting the proposed amendment.

Section 3. Hazard Overlay Map Amendment. The Hazard Overlay Map dated April 23, 2003, and attached as Appendix C to the Code is replaced in its entirety by the map dated June 5, 2025, attached to this Ordinance as Exhibit A.

Section 4. Publication. After final adoption, a public notice shall be published which notice shall contain the number and title of this ordinance, a brief description of the ordinance, its effective date and notice that all copies are available for inspection at the Town Hall office.

Section 5. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Introduced, Read, and Referred to Public Hearing on First Reading by the General Assembly of the Town of Ophir on the 17th day of June, 2025.

Approved and Adopted on Second and Final Reading as Amended by the General Assembly of the Town of Ophir on the 16th day of September, 2025.

By: _____

Andy Ward, Mayor

Attest: _____

Ben Foster, Town Clerk

Approved as to Form: Town Attorney

Exhibit A

Amended Hazard Overlay Map



LAND USE CODE AMENDMENTS APPLICATION - TOWN OF OPHIR

Applicant Name: Sheamus Croke **Phone No.** 970-729-2448
Address: 122 N Oak St, Telluride CO 81435 **Fax No.** _____
E-Mail: sheamuscroke@gmail.com

Street Address and Legal Description of Subject Property:
LOTS 5 AND 6 BLK M, OPHIR

Zone District of Subject Property: Residential **Application Fee:** \$500.00/lot, see §1404.6

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 ARTICLE XIV 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:** 7/1/2025

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: _____

Section 1: Narrative

To whom it may concern,

My name is Sheamus Croke, and I am submitting this application to Amend the Ophir Land Use Code with the goal of purchasing land to build a home on for myself and my partner, Mollie Theis, on the LOTS 5 AND 6 BLK M, OPHIR ("Parcel"), on Granite Ave (just east of the Sprackling's property, see Figures 1-5 for more details). I am under contract for this Parcel, which is currently owned by Alta Investments LLC, and am submitting this Land Use Code Amendment Application to redesignate this Parcel as completely out of the moderate hazard avalanche zone. I believe an updated designation of this Parcel is appropriate for the following reasons:

1. The avalanche danger zones in the current Town of Ophir Hazards Map (Figure 2) are directly informed by the Black and white INSTAAR hazards map (Figure 3). The recent discussions of the town relating to other rezoning considerations reflect this fact.
2. As evident in the attached site plan and maps (Figures 1-6), there is a discrepancy between where the western edge of the moderate avalanche danger zone lies in the Town of Ophir's color avalanche hazard map (Figure 2, 2.1), and both the black and white 1976 INSTAAR study map (Figure 3) and the 1994 EPD Planners Map (Figure 4). More specifically, as can be seen in the red highlighted Parcel in Figures 3 and 4, no part of the Parcel is in the moderate danger zone, while in Figure 2, part of the east lot (Lot 6) of the Parcel is in moderate danger. Figures 4.2, 5 and 5.1 show this discrepancy in more detail. Additionally, I spoke to Jeff Haskel at Foley surveying whose company helped transcribe the map, and while he did not know the specific situation how this map got transcribed (he was not personally involved), he did recognize the discrepancy. Overall, this discrepancy validates the argument that this Parcel can be considered out of the Moderate avalanche danger zone.
3. As evident in Figure 6, this Parcel currently has an existing structure on it of significant age (constructed prior to detailed records), and is surrounded by other structures, some of which were originally built more than 100 years ago and remain undamaged, providing further evidence that this Parcel has not recently faced significant avalanche hazards, could be considered as out of the moderate Avalanche danger zone, and therefore be considered a buildable lot.
4. Updated avalanche studies with a higher level of contour detail (e.g. 2002 Mears Study) determined this Parcel to not be in any avalanche danger.

I humbly request that this application to update the avalanche danger designation of this Parcel be approved by adopting the proposed updated avalanche danger zone line as presented in Figure 7. As a lifelong resident in the region and someone dedicated to improving my community both through my work and personal life, it has been a longstanding dream to build and live in Ophir (within a timeline of before the end of 2027, ideally). We consider many people who live and own in Ophir very close friends, and we truly hope to become secure members of this wonderful mountain community.

Sincerely,
Sheamus Croke

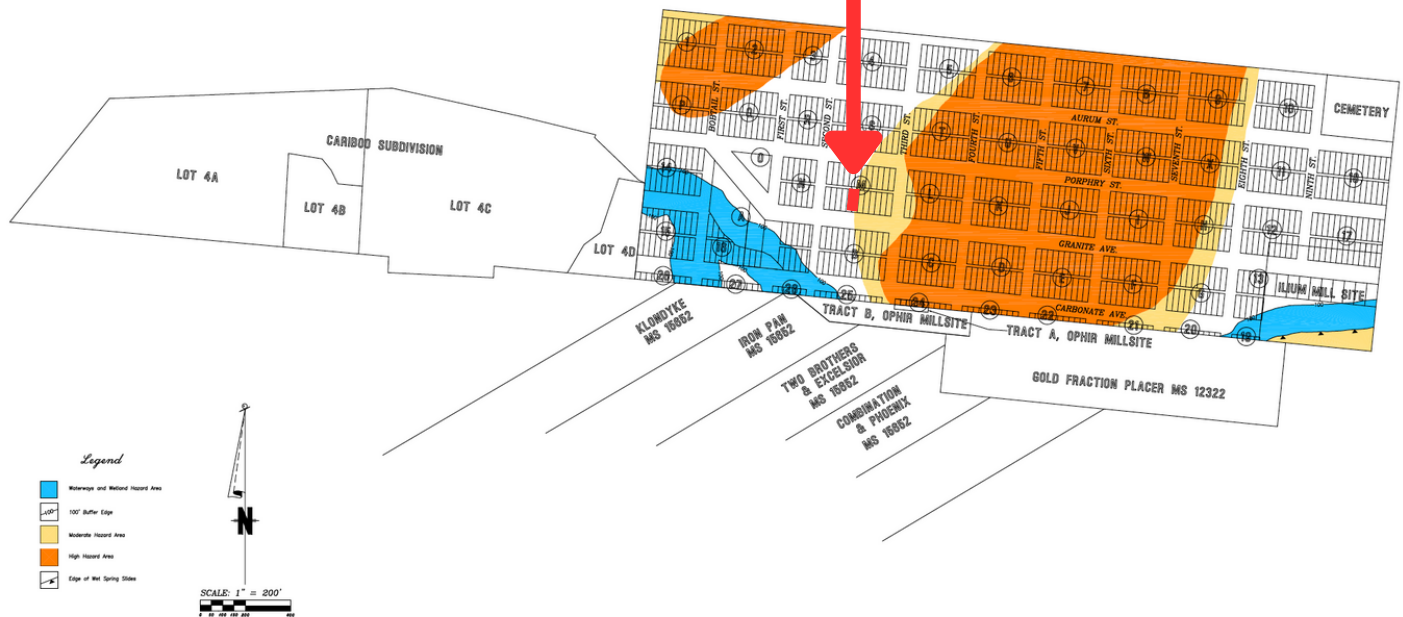
Section 2: Maps

See Figures 1-7 below

Figure 1
Lot Boundaries and
Rough Proposed
Structure Footprint



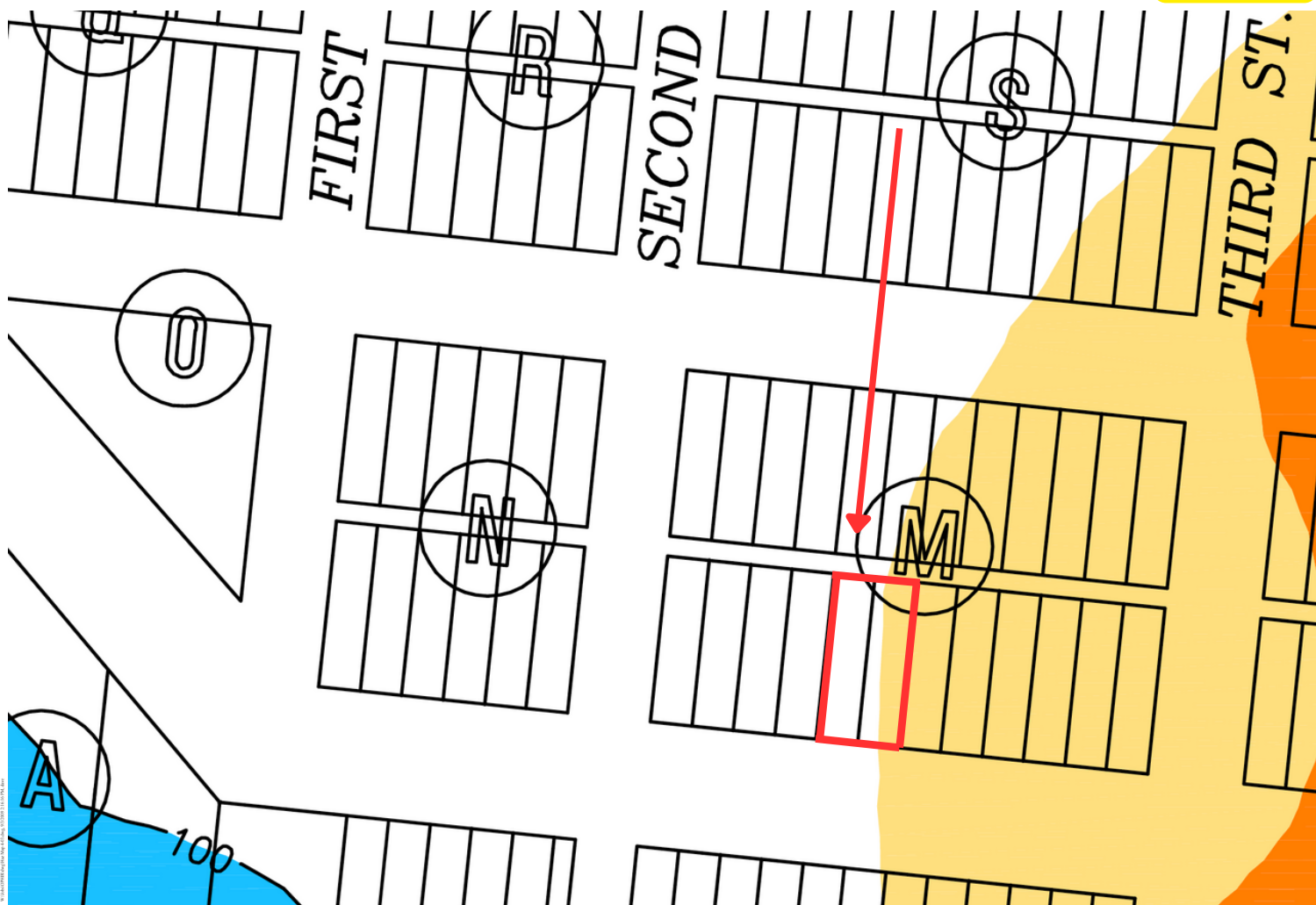
Figure 2 Ophir Hazards Map



TOWN OF OPHIR HAZARDS MAP

Project mgr.: 08			FOLEY	970-728-6153	970-728-6050 fax
Technician: 00			ASSOCIATES, INC.	P.O. BOX 1386	
Technician:				128 W. PACIFIC, SUITE B-1	
Checked by: 08				TELLURIDE, COLORADO 81435	
Start date: 4/23/03			Drawing path: \CONTRACTS\HAYWARD_4-23.DWG	Sheet: of 1	Project #: 0808

Figure 2.1



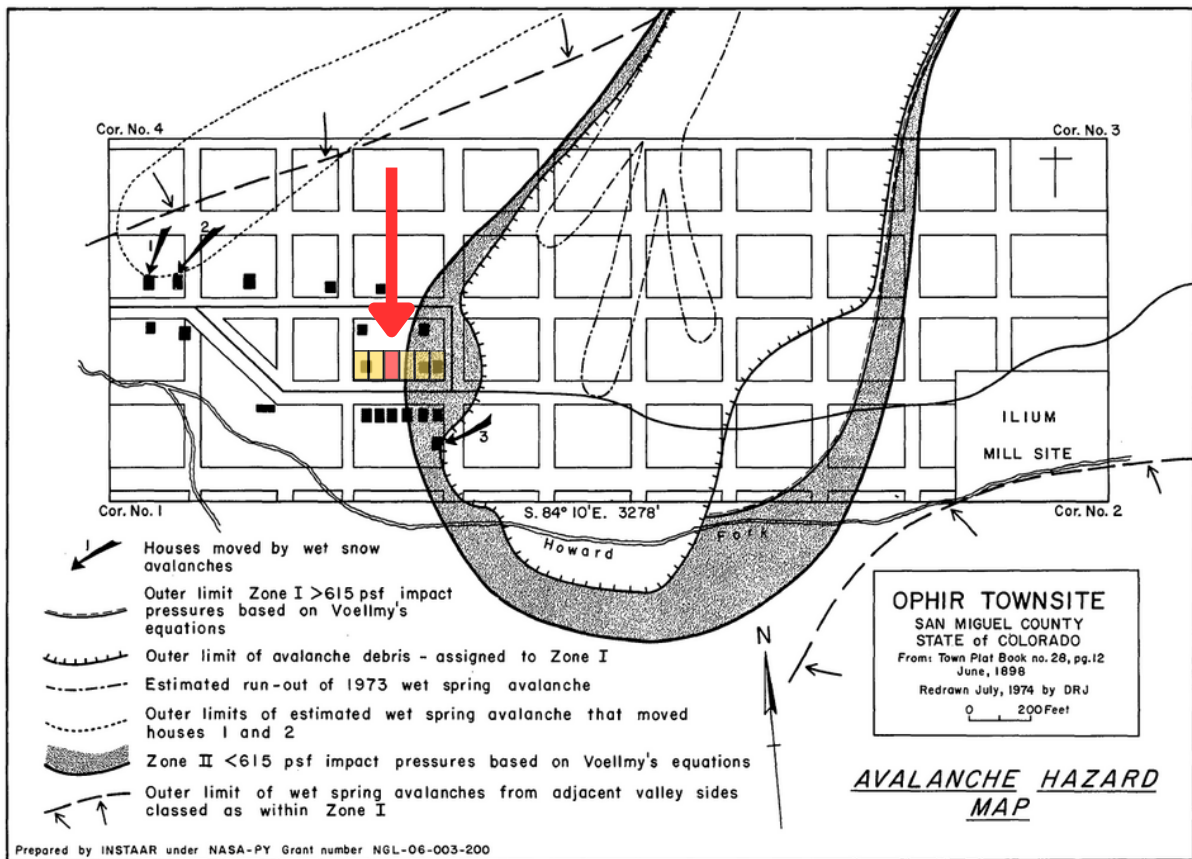


FIG. 10. Detailed avalanche hazard map, Ophir.

Figure 4
Initial 1994 INSTAAR
Map Transcription by
EPD Land Planners

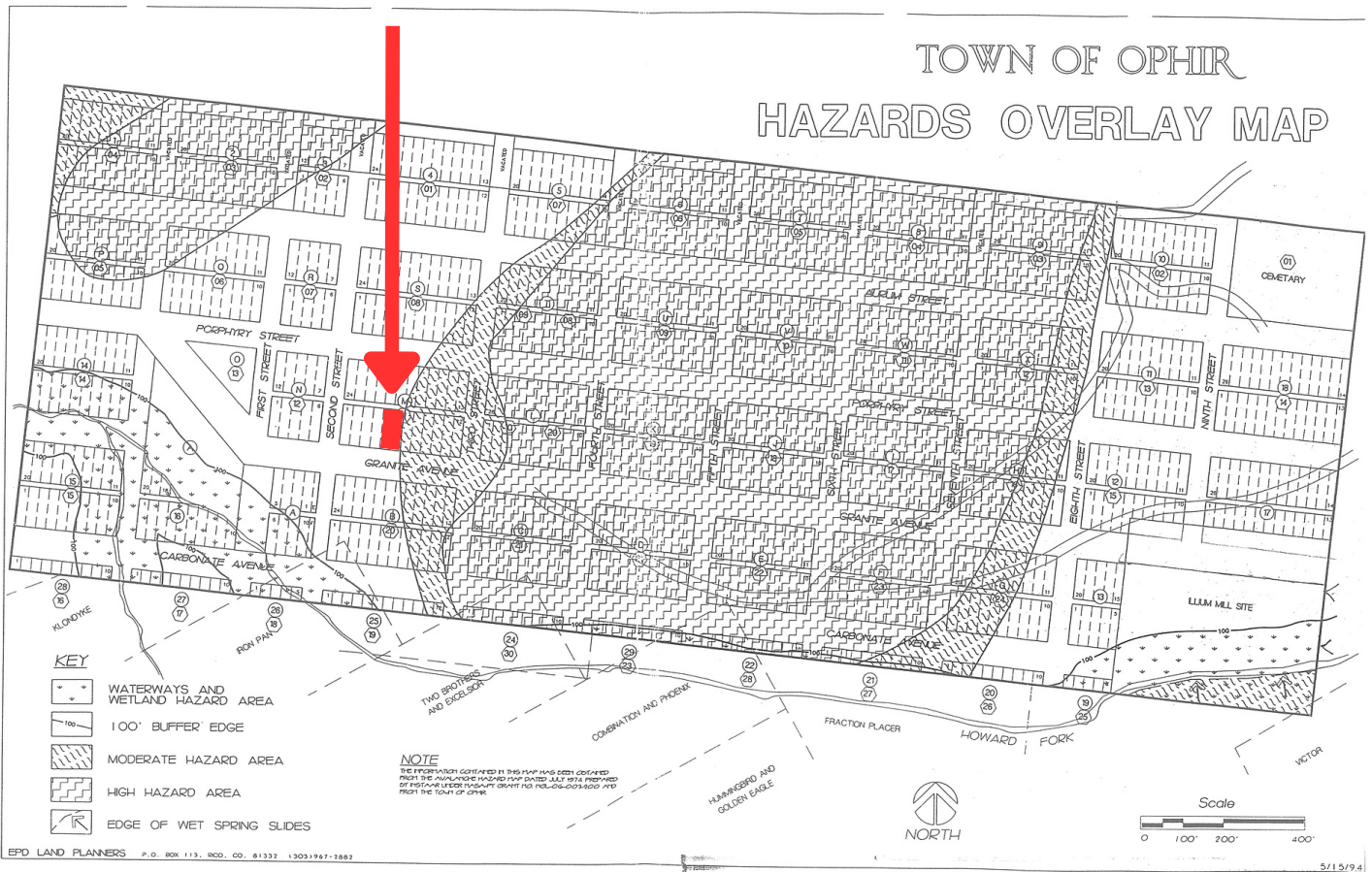


Figure 4.1

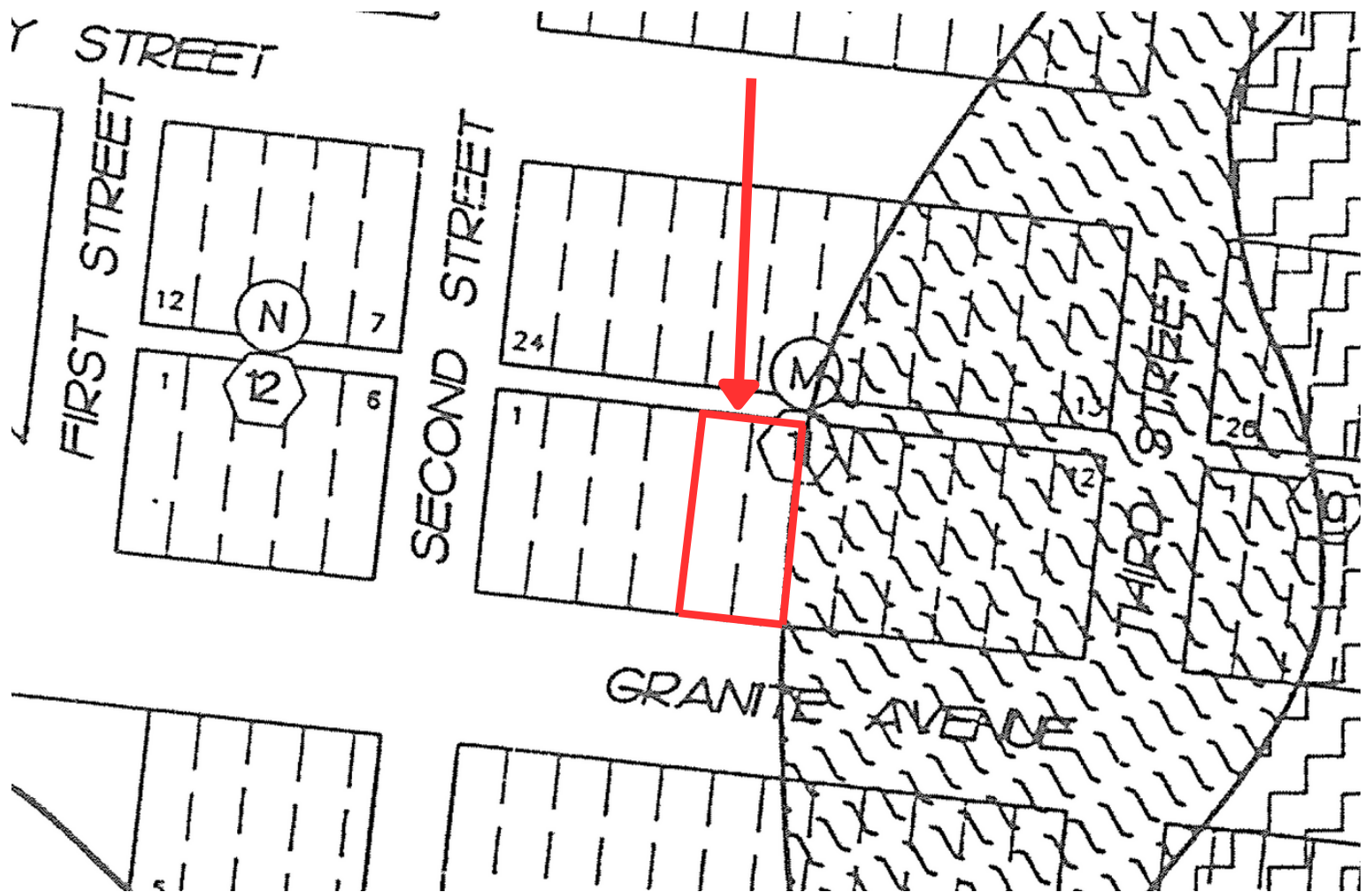


Figure 4.2

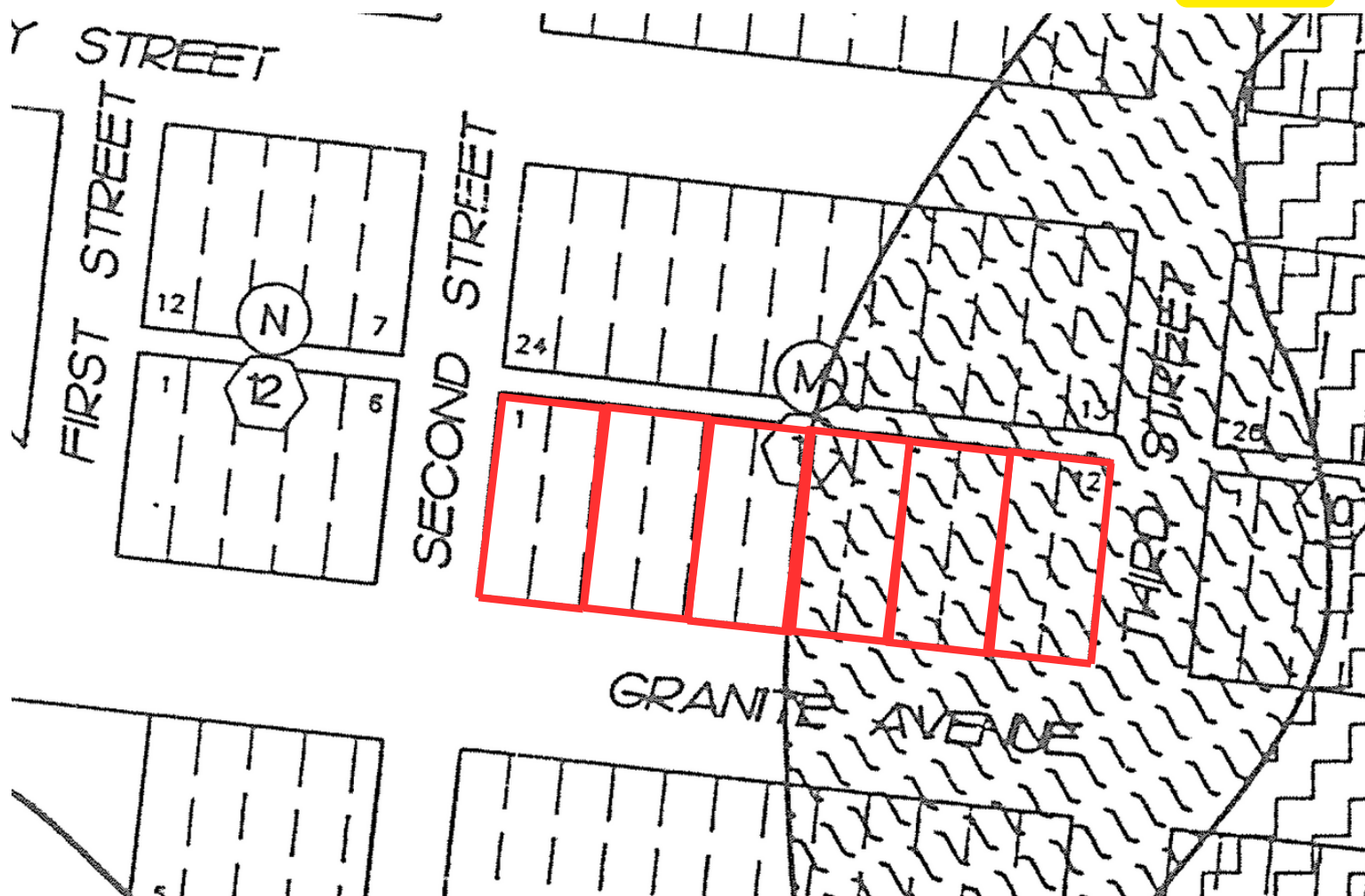


Figure 5
Current Color map and EPD map Overlaid with
affected lot lines aligned

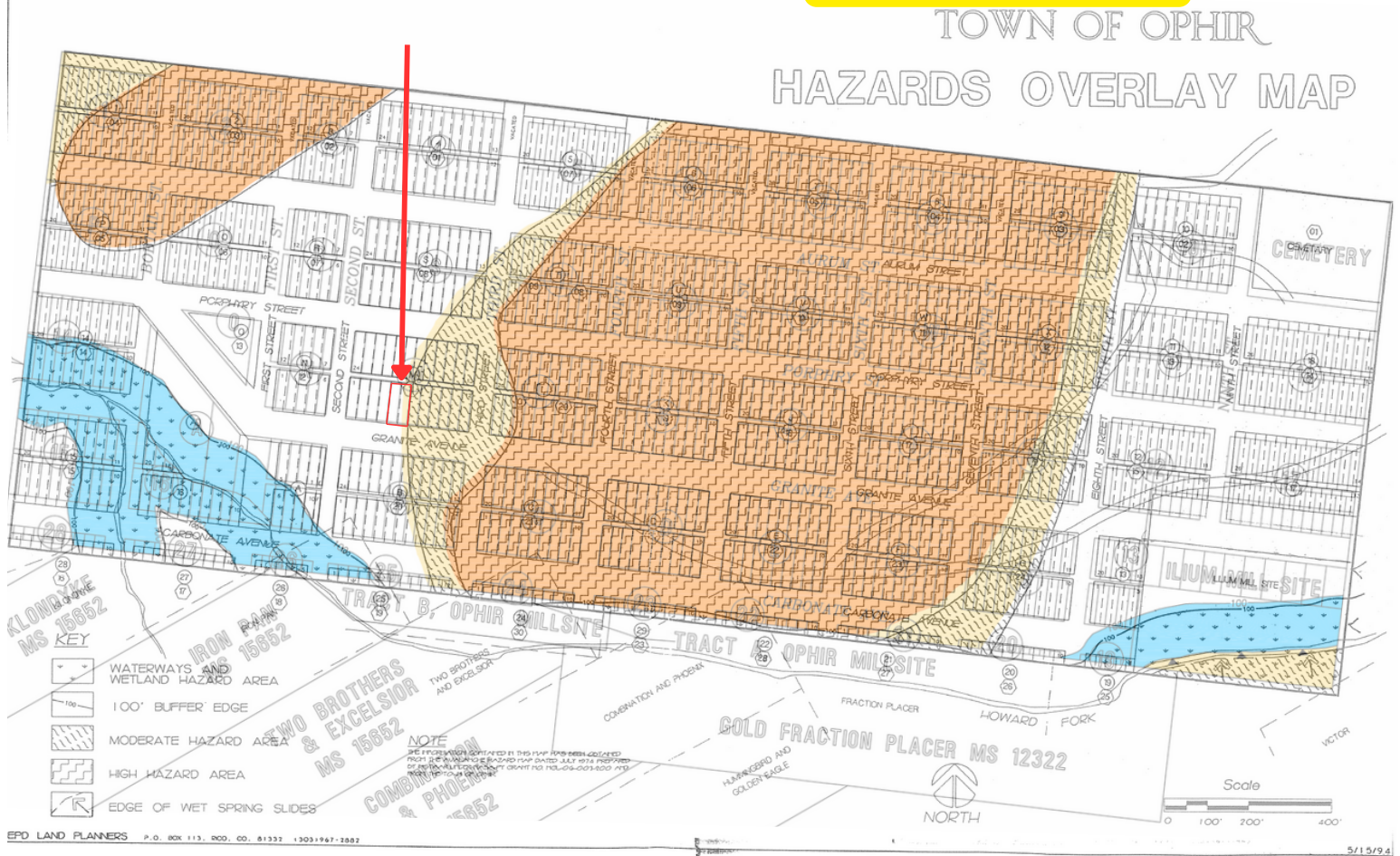


Figure 5.1
Current Color map and EPD map Overlaid with hazard zones aligned

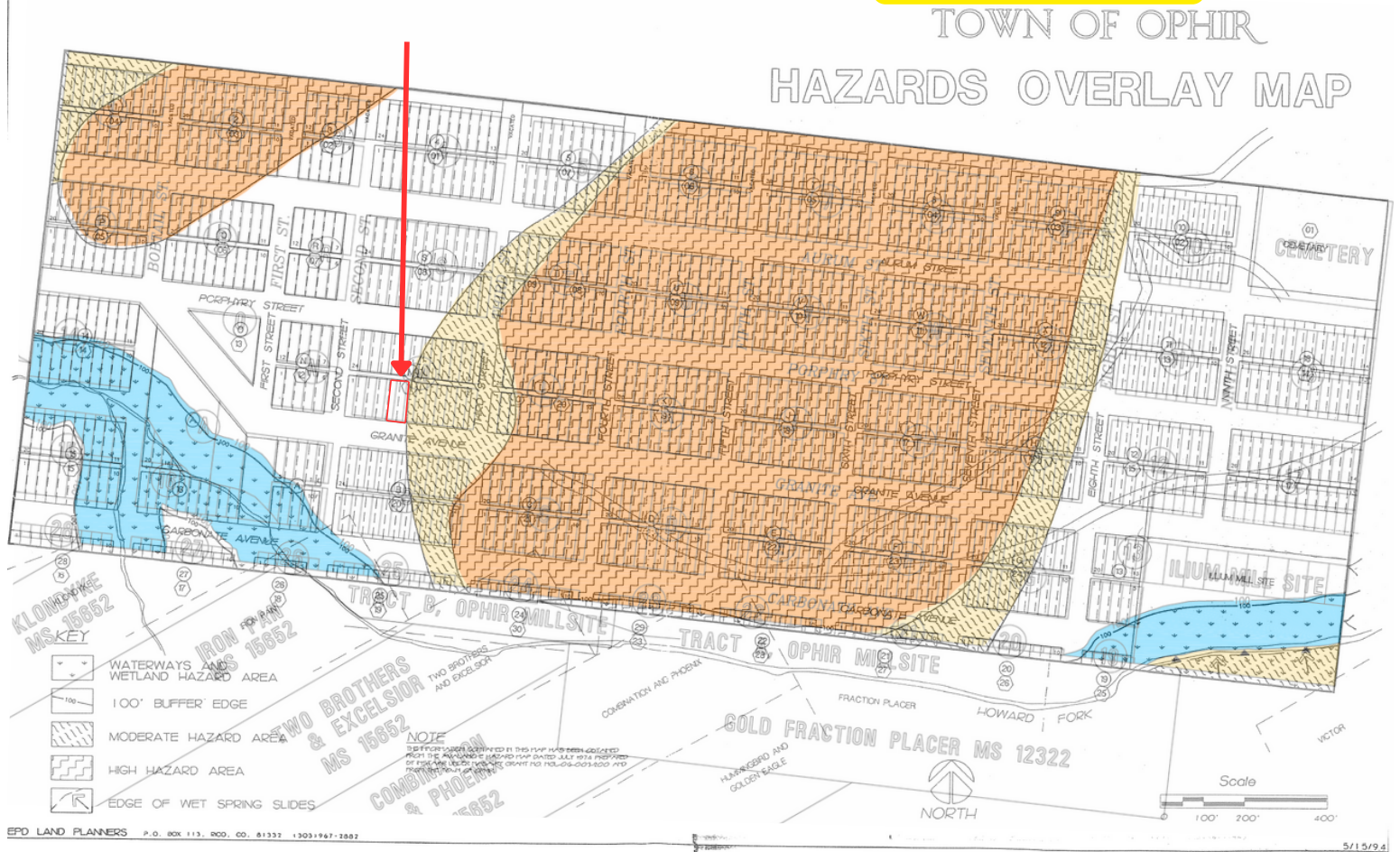
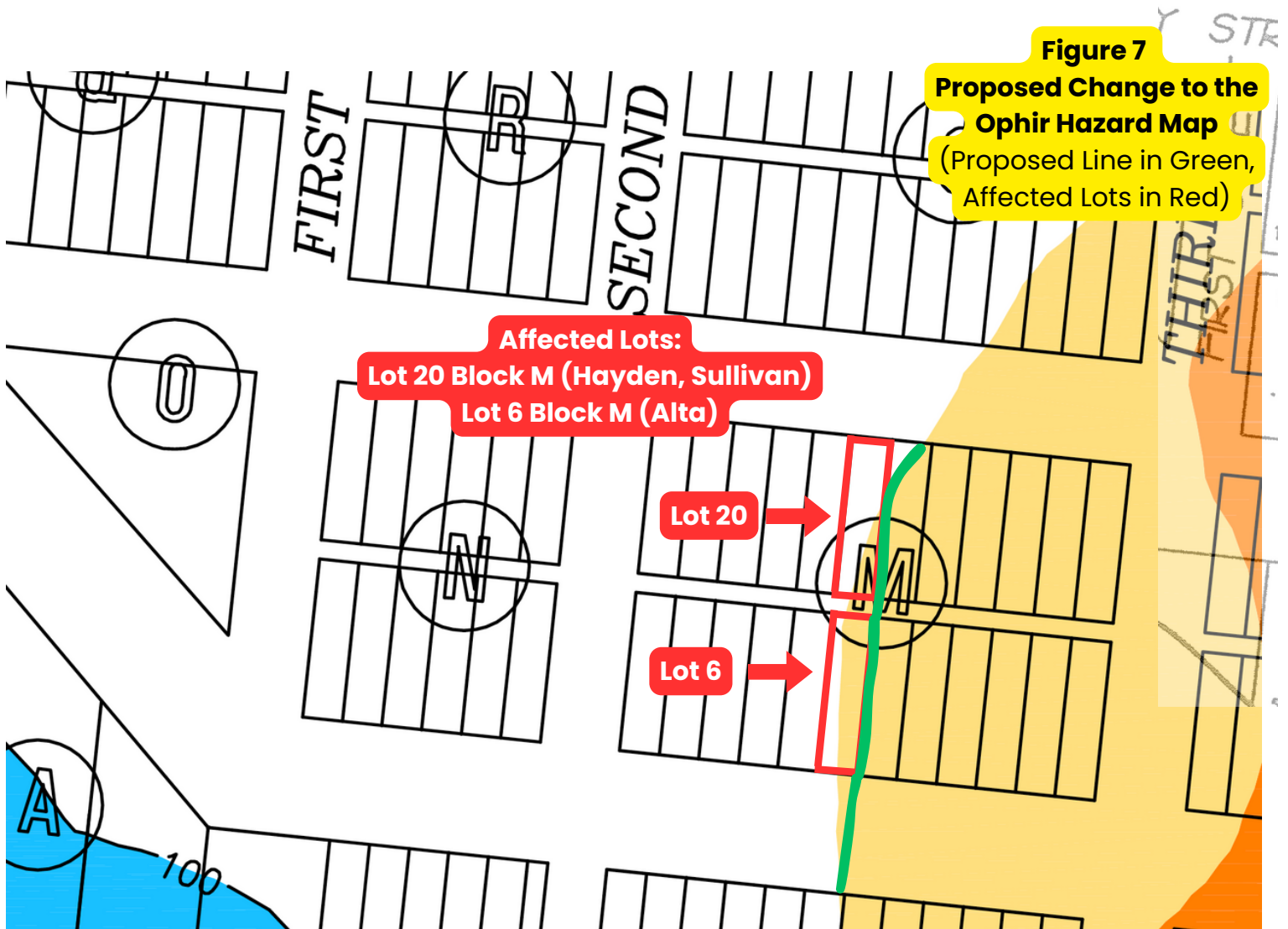


Figure 6
2024 Satellite imagery





Section 3: Proof of Notification

Section 1103.3 of the Land Use Code States: 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.

I plan to comply with all of the above tasks in regard to public notice, and if there is any format preferred by the Town of Ophir (aside from what is stated above) in which these communications shall be distributed, I will gladly comply with these requests.

Section 4: Proof of Ownership

Title Commitment attached on following pages for reference, as well as the following authorization:

We hereby authorize Sheamus Croke to act as our agent to apply for, sign, and file the documents necessary to obtain a change to the avalanche risk designation and/or the rights to build on our Property on LOTS 5 AND 6 BLK M in Ophir, CO.

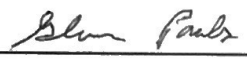
Authorized Agent: Sheamus Croke

Address: 122 N Oak St., Telluride CO, 81435

Phone: 970-729-2448

Signature:  Date: 7/2/25

Property Owners:

Signature:  MANAGER OF PAULS MANAGEMENT, I Date: 7/2/25

AS MANAGER OF ALTA INVESTMENTS LLC
Signature:  Date: 



Customer Distribution



Prevent fraud - Please call a member of our closing team for wire transfer instructions or to initiate a wire transfer. Note that our wiring instructions will never change.

Order Number: **TLR86016175-2**

Date: **05/08/2025**

Property Address: **(VACANT - LOTS 5 & 6, BLOCK M) GRANITE AVENUE, OPHIR, CO 81426**

For Closing Assistance

Robin Watkinson
PO BOX 277
TELLURIDE, CO 81435
191 SOUTH PINE STREET,
SUITE 1C
(970) 728-1023 (Work)
(877) 348-5414 (Work Fax)
rwatkinson@ltgc.com
Contact License: CO338561
Company License: CO44565

HOA Assistant

Jennifer Ogilvie
PO BOX 277
TELLURIDE, CO 81435
191 SOUTH PINE STREET,
SUITE 1C
(970) 519-7015 (Work)
jogilvie@ltgc.com
Company License: CO44565

Closing Associate

Gaylene Anderson
PO BOX 277
TELLURIDE, CO 81435
191 SOUTH PINE STREET,
SUITE 1C
(970) 728-1023 (Work)
(877) 348-5414 (Work Fax)
ganderson@ltgc.com
Contact License: CO380183
Company License: CO44565

HOA Assistant

Jodi Repola
PO BOX 277
TELLURIDE, CO 81435
191 SOUTH PINE STREET,
SUITE 1C
(970) 728-1023 (Work)
jrepola@ltgc.com
Company License: CO44565

Closing Processor

Ethan Butler
PO BOX 277
TELLURIDE, CO 81435
191 SOUTH PINE STREET,
SUITE 1C
(970) 728-1023 (Work)
ebutler@ltgc.com
Company License: CO44565

For Title Assistance

Land Title San Miguel County Title
Team
PO BOX 277
TELLURIDE, CO 81435
191 SOUTH PINE STREET,
SUITE 1C
(970) 519-2463 (Work)
(877) 261-1730 (Work Fax)
tlresponse@ltgc.com

Buyer/Borrower

SHEAMUS CROKE
Delivered via: Electronic Mail

TREVOR PAULS

Delivered via: Electronic Mail

Seller/Owner

ALTA INVESTMENTS, LLC
Attention: GLENN PAULS
Delivered via: Electronic Mail



Estimate of Title Fees

Order Number: TLR86016175-2

Date: 05/08/2025

Property Address: (VACANT - LOTS 5 & 6, BLOCK M) GRANITE AVENUE, OPHIR, CO 81426

Seller(s): ALTA LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY

Buyer(s): SHEAMUS CROKE

Thank you for putting your trust in Land Title. Below is the estimate of title fees for the transaction. The final fees will be collected at closing. Visit ltgc.com to learn more about Land Title.

Estimate of Title Insurance Fees	
"ALTA" Owner's Policy 07-30-21 Builder/Developer Rate	\$669.00
Deletion of Standard Exception(s)	\$75.00
"ALTA" Loan Policy 07-30-21 Bundled Purchase Loan Rate	\$548.00
Endorsement ALTA 8.1	\$0.00
Endorsement ALTA 9.1	\$0.00
Tax Certificate	\$27.00
TOTAL	\$1,319.00

Note: The documents linked in this commitment should be reviewed carefully. These documents, such as covenants conditions and restrictions, may affect the title, ownership and use of the property. You may wish to engage legal assistance in order to fully understand and be aware of the implications of the documents on your property.

Chain of Title Documents:

[San Miguel county recorded 04/28/2025 under reception no. 488957](#)

[San Miguel county recorded 04/27/2009 under reception no. 406753](#)

[San Miguel county recorded 10/27/2008 under reception no. 404393](#)

[San Miguel county recorded 01/21/1992 under reception no. 274810 at book 487 page 30](#)

[San Miguel county recorded 11/18/1991 under reception no. 273898 at book 484 page 902](#)

Plat Map(s):

San Miguel county recorded 06/16/1898 at book 28 page 12

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule A

Order Number: TLR86016175-2

Property Address:

(VACANT - LOTS 5 & 6, BLOCK M) GRANITE AVENUE, OPHIR, CO 81426

1. Commitment Date:

04/30/2025 at 5:00 P.M.

2. Policy to be Issued and Proposed Insured:

"ALTA" Owner's Policy 07-30-21 Builder/Developer Rate \$
Proposed Insured:
SHEAMUS CROKE

"ALTA" Loan Policy 07-30-21 Bundled Purchase Loan Rate \$
Proposed Insured:
A LENDER TO BE DETERMINED, ITS SUCCESSORS AND/OR
ASSIGNS

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

FEE SIMPLE

4. The Title is, at the Commitment Date, vested in:

ALTA LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY

5. The Land is described as follows:

LOTS 5 AND 6, BLOCK M, OPHIR TOWNSITE, ACCORDING TO THE PLAT RECORDED JUNE 16, 1898 IN
PLAT BOOK 28 AT PAGE 12, COUNTY OF SAN MIGUEL, STATE OF COLORADO.

This page is only a part of a 2021 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part I
(Requirements)

Order Number: TLR86016175-2

All of the following Requirements must be met:

This proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

Pay the agreed amount for the estate or interest to be insured.

Pay the premiums, fees, and charges for the Policy to the Company.

Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

1. (THIS ITEM WAS INTENTIONALLY DELETED)
2. DULY EXECUTED AND ACKNOWLEDGED STATEMENT OF AUTHORITY SETTING FORTH THE NAME OF ALTA LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY AS A A COLORADO LIMITED LIABILITY COMPANY. THE STATEMENT OF AUTHORITY MUST STATE UNDER WHICH LAWS THE ENTITY WAS CREATED, THE MAILING ADDRESS OF THE ENTITY, AND THE NAME AND POSITION OF THE PERSON(S) AUTHORIZED TO EXECUTE INSTRUMENTS CONVEYING, ENCUMBERING, OR OTHERWISE AFFECTING TITLE TO REAL PROPERTY ON BEHALF OF THE ENTITY AND OTHERWISE COMPLYING WITH THE PROVISIONS OF SECTION 38-30-172, CRS.

NOTE: THE STATEMENT OF AUTHORITY MUST BE RECORDED WITH THE CLERK AND RECORDER.

3. RERECORD STATEMENT OF AUTHORITY FOR ALTA INVESTMENTS, LLC, A COLORADO LIMITED LIABILITY COMPANY RECORDED APRIL 25, 2025 UNDER RECEPTION NO. [488954](#) WHICH DISCLOSES PAULS MANAGEMENT, LLC AS THE MANAGER AUTHORIZED TO EXECUTE INSTRUMENTS CONVEYING, ENCUMBERING OR OTHERWISE AFFECTING TITLE TO REAL PROPERTY ON BEHALF OF SAID ENTITY.

NOTE: THE STATEMENT OF AUTHORITY IS MISSING THE NOTARY ACKNOWLEDGEMENT

4. EVIDENCE SATISFACTORY TO THE COMPANY THAT THE TERMS, CONDITIONS AND PROVISIONS OF THE TOWN OF OPHIR TRANSFER TAX HAVE BEEN SATISFIED AS TO BARGAIN AND SALE DEED RECORDED APRIL 28, 2025 UNDER RECEPTION NO. [488957](#)
5. EVIDENCE SATISFACTORY TO THE COMPANY THAT THE TERMS, CONDITIONS AND PROVISIONS OF THE TOWN OF OPHIR TRANSFER TAX HAVE BEEN SATISFIED.
6. SPECIAL WARRANTY DEED FROM ALTA LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY TO SHEAMUS CROKE CONVEYING SUBJECT PROPERTY.
7. DEED OF TRUST FROM SHEAMUS CROKE TO THE PUBLIC TRUSTEE OF SAN MIGUEL COUNTY FOR THE USE OF A LENDER TO BE DETERMINED TO SECURE THE SUM OF \$305,000.00.

REQUIREMENTS TO DELETE THE PRE-PRINTED EXCEPTIONS IN THE OWNER'S POLICY TO BE ISSUED:

A. UPON RECEIPT BY THE COMPANY OF A SATISFACTORY FINAL AFFIDAVIT AND AGREEMENT FROM THE SELLER AND PROPOSED INSURED, ITEMS 1-4 OF THE PRE-PRINTED EXCEPTIONS WILL BE DELETED. ANY ADVERSE MATTERS DISCLOSED BY THE FINAL AFFIDAVIT AND AGREEMENT WILL BE ADDED AS EXCEPTIONS.

B. IF LAND TITLE GUARANTEE CONDUCTS THE CLOSING OF THE CONTEMPLATED TRANSACTIONS AND RECORDS THE DOCUMENTS IN CONNECTION THEREWITH, ITEM NO. 5 OF THE PRE-PRINTED EXCEPTIONS WILL BE DELETED.

C. UPON RECEIPT OF PROOF OF PAYMENT OF ALL PRIOR YEARS' TAXES AND ASSESSMENTS, ITEM NO. 6 OF THE PRE-PRINTED EXCEPTIONS WILL BE AMENDED TO READ:

TAXES AND ASSESSMENTS FOR THE YEAR 2025 AND SUBSEQUENT YEARS.

ALTA COMMITMENT

Old Republic National Title Insurance Company

Schedule B, Part I

(Requirements)

Order Number: TLR86016175-2

All of the following Requirements must be met:

NOTE: ITEMS 1-3 OF THE PRE-PRINTED EXCEPTIONS ARE HEREBY DELETED FROM THE MORTGAGEE'S POLICY. ITEM 4 OF THE PRE-PRINTED EXCEPTIONS WILL BE DELETED UPON RECEIPT OF A SATISFACTORY LIEN AFFIDAVIT.

NOTE: ALL PARTIES WILL BE REQUIRED TO SIGN THE LIEN AFFIDAVIT AT CLOSING.

ALTA COMMITMENT

Old Republic National Title Insurance Company

Schedule B, Part II

(Exceptions)

Order Number: TLR86016175-2

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
8. RESERVATION OF ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER, OR TO ANY VALID MINING CLAIM OR POSSESSION HELD UNDER EXISTING LAWS, AND SUBJECT TO ALL CONDITIONS, LIMITATIONS AND RESTRICTIONS CONTAINED IN SECTION 2386 OF THE REVISED STATUTES OF THE UNITED STATES AS CONTAINED IN UNITED STATES PATENT RECORDED JULY 20, 1887 IN BOOK 50 AT PAGE [6](#).
9. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF OPHIR TOWNSITE RECORDED JANUARY 13, 1896 IN PLAT BOOK 28 AT PAGE [9](#) AND THE REVISED PLAT OF OPHIR TOWNSITE RECORDED JUNE 16, 1898 IN PLAT BOOK 28 AT PAGE [12](#).
10. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN TOWN ZONING ORDINANCE RECORDED JUNE 28, 1977 IN BOOK 365 AT PAGE [975](#) AND AS AMENDED IN INSTRUMENT RECORDED DECEMBER 31, 1980 IN BOOK 390 AT PAGE [746](#) AND AS AMENDED IN INSTRUMENT RECORDED OCTOBER 7, 1992 IN BOOK 499 AT PAGE [408](#).
11. EASEMENT GRANTED TO MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, FOR COMMUNICATION AND OTHER FACILITIES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 24, 1982, IN BOOK 400 AT PAGE [651](#).
12. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DOG CONTROL & LICENSING ORDINANCE RECORDED NOVEMBER 22, 1991 IN BOOK 485 AT PAGE [54](#).
13. TERMS, CONDITIONS AND PROVISIONS OF INTERGOVERNMENTAL AGREEMENT RECORDED APRIL 21, 1993 IN BOOK 509 AT PAGE [884](#) AND RE-RECORDED APRIL 23, 1993 IN BOOK 509 AT PAGE [1005](#).

ALTA COMMITMENT

Old Republic National Title Insurance Company

Schedule B, Part II

(Exceptions)

Order Number: TLR86016175-2

14. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SERVICE PLAN FOR THE OPHIR VALLEY WILDLIFE AND CONSERVATION DISTRICT RECORDED MAY 29, 1996 IN BOOK 562 AT PAGE [442](#).
15. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN RESOLUTION #1996-5 AMENDING THE SAN MIGUEL COUNTY LAND USE CODE RECORDED JUNE 19, 1996 IN BOOK 563 AT PAGE [562](#).
16. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ORDINANCE #2010-7 RECORDED DECEMBER 23, 2010 UNDER RECEPTION NO. [415529](#).



ALTA Commitment For Title Insurance

issued by Old Republic National Title Insurance Company

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Minnesota corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of insurance and the name of the Proposed Insured. If all of the Schedule B, Part I—Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
- (b) "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
- (c) "Land": The land described in item 5 of Schedule A and affixed improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (d) "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
- (e) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (f) "Proposed Amount of Insurance": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.
- (g) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (h) "Public Records": The recording or filing system established under State statutes in effect at the Commitment Date under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
- (i) "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
- (j) "Title": The estate or interest in the Land identified in Item 3 of Schedule A.

- 2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, Commitment terminates and the Company's liability and obligation end.

- 3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements; and
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - i. comply with the Schedule B, Part I—Requirements;
 - ii. eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - iii. acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company is not liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5(a) or the Proposed Amount of Insurance.
- (e) The Company is not liable for the content of the Transaction Identification Data, if any.
- (f) The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.

(g) The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT. CHOICE OF LAW AND CHOICE OF FORUM

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.
- (c) This Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. CLAIMS PROCEDURES

This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.

10. CLASS ACTION

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.

11. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Amount of insurance is \$2,000,000 or less may be arbitrated at the election of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>

IN WITNESS WHEREOF, Old Republic National Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A to be valid when countersigned by a validating officer or other authorized signatory.

Issued by:
Land Title Guarantee Company
3033 East First Avenue Suite 600
Denver, Colorado 80206
303-321-1880



Craig B. Rants, Senior Vice President



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
1408 North Westshore Blvd., Suite 900, Tampa, Florida 33607
(612) 371-1111 www.oldrepublictitle.com

By  President

Attest  Secretary

This page is only a part of a 2021 ALTA® Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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Land Title Guarantee Company

Disclosure Statements

Note: Pursuant to CRS 10-11-122, notice is hereby given that:

- (A) The Subject real property may be located in a special taxing district.
- (B) A certificate of taxes due listing each taxing jurisdiction will be obtained from the county treasurer of the county in which the real property is located or that county treasurer's authorized agent unless the proposed insured provides written instructions to the contrary. (for an Owner's Policy of Title Insurance pertaining to a sale of residential real property).
- (C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note: Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

Note: Colorado Division of Insurance Regulations 8-1-2 requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lenders Policy when issued.

Note: Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

- (A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.
- (B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.
- (C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.
- (D) The Company must receive payment of the appropriate premium.
- (E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

Note: Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments disclosing that a mineral estate has been severed from the surface estate, in Schedule B-2.

- (A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- (B) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

Note: Pursuant to Colorado Division of Insurance Regulations 8-1-3, notice is hereby given of the availability of a closing protection letter for the lender, purchaser, lessee or seller in connection with this transaction.

Note: Pursuant to CRS 24-21-514.5, Colorado notaries may remotely notarize real estate deeds and other documents using real-time audio-video communication technology. You may choose not to use remote notarization for any document.



Joint Notice of Privacy Policy of Land Title Guarantee Company Land Title Insurance Corporation and Old Republic National Title Insurance Company

This Statement is provided to you as a customer of Land Title Guarantee Company as agent for Land Title Insurance Corporation and Old Republic National Title Insurance Company.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to your non-public personal information ("Personal Information").

In the course of our business, we may collect Personal Information about you from:

- applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
 - your transactions with, or from the services being performed by us, our affiliates, or others;
 - a consumer reporting agency, if such information is provided to us in connection with your transaction;
- and
- The public records maintained by governmental entities that we obtain either directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- We may share your Personal Information with affiliated contractors or service providers who provide services in the course of our business, but only to the extent necessary for these providers to perform their services and to provide these services to you as may be required by your transaction.
- We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- We regularly assess security standards and procedures to protect against unauthorized access to Personal Information.

WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT STATED ABOVE OR PERMITTED BY LAW.

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows: Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration

Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Pass-Through Review Cost Agreement

Subject: Amendment of Avalanche Danger Map by Sheamus Croke

Summary: The evaluation of avalanche hazard and mapping within LOT 6 BLK M of OPHIR

Legal Description: Lots 5 and 6 BLK M, Ophir, Colorado

Address: N/A

Owner: Alta Investments LLC

Applicant: Sheamus Croke

Sheamus Croke, the applicant, agrees to pay all of The Town of Ophir's application review fees, regardless of whether the application is approved, denied, approved with conditions, suspended, withdrawn, or dismissed. Sheamus Croke shall be responsible for all costs borne by the Town of Ophir to review, analyze, comment upon and process the application.

Sheamus Croke

Name



Signature

7/21/2025

Date

TOWN OF OPHIR, COLORADO

ORDINANCE NO. 2025-3

AN ORDINANCE AMENDING THE TOWN OF OPHIR HAZARD OVERLAY MAP

WHEREAS, the Town of Ophir, Colorado (“Town”), is a home-rule town and political subdivision of the State of Colorado, duly organized and operating under the Constitution and laws of the state and the Ophir Town Charter.

WHEREAS, the Town has adopted a Hazard Overlay Map including an Avalanche Hazard Zone that is intended to define areas where avalanche hazard threatens the health, safety, and welfare of persons and property.

WHEREAS, the Avalanche Hazard Zone locations shown on the Hazard Overlay Map are derived from the 1976 Natural Hazards in Mountain Colorado study authored by Jack D. Ives, Arthur I. Mears, Paul E. Carrara, and Michael J. Bovis (the “INSTARR Report”), specifically Figure 10 in the INSTARR Report.

WHEREAS, Sheamus Croke (“Applicant”) filed a land use application under Article XIV of the Town Land Use Code (“LUC”) seeking to amend the Hazard Overlay Map to resolve an apparent discrepancy between the hazard areas shown in the INSTARR Report and the Avalanche Hazard Zones identified on the current Hazard Overlay Map with respect to Lots 5 & 6, Block M in the Town (“the Property”) (the “Application”).

WHEREAS, based on recommendations from the Planning & Zoning Commission and the testimony and evidence presented regarding the Application, pursuant to Article XIV of the Code, the Town desires to amend the Hazard Overlay Map as set forth herein.

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

Section 1. Recitals. The Recitals set forth above are incorporated herein as findings and declarations of the General Assembly.

Section 2. Application Approval and Findings. Based on its review and consideration of the Application and the testimony and evidence presented regarding the same, the General Assembly finds that the INSTARR Report classifies the Property as being entirely outside any avalanche hazard zone. Because the current Hazard Overlay Map identifies a portion of the Property as being within the Moderate Hazard Zone, the Application is approved, and the Hazard Overlay Map shall be amended as provided in Section 3. Further, pursuant to Section 1415 of the Code, the General Assembly finds that amending the Hazard Overlay Map as provided in this Ordinance satisfies the following criteria:

- A. There is demonstrated to be a material error in the existing Hazard Overlay Map, the correction of which justifies the proposed amendment;

- B. The areas affected by the amendment are suitable for the uses permitted as a result of the amendment;
- C. The proposed amendment is in conformance with the Ophir Master Plan; and
- D. There exists a substantial and compelling public interest in adopting the proposed amendment.

Section 3. Hazard Overlay Map Amendment. The most current version of the Hazard Overlay Map is hereby amended to include the following note regarding the Property:

Due to a transcription error, Lot 6, Block M, is shown as being partially within the Moderate Hazard Area. According to the 1976 INSTARR report upon which this Hazard Map is based, Lot 6, Block M, is entirely outside the Moderate Hazard Area, and Lot 6, Block M, will be treated accordingly for land use purposes notwithstanding the designations shown hereon. *See* Ordinance No. 2025-3.

Town staff is directed to cause the Hazard Overlay Map to be revised to include note above. The as-revised Hazard Overlay Map shall then become Appendix C to the LUC.

Section 4. Publication. After final adoption, a public notice shall be published which notice shall contain the number and title of this ordinance, a brief description of the ordinance, its effective date and notice that all copies are available for inspection at the Town Hall office.

Section 5. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Introduced, Read, and Referred to Public Hearing on First Reading by the General Assembly of the Town of Ophir on the 19th day of August, 2025.

Approved and Adopted on Second and Final Reading as Amended by the General Assembly of the Town of Ophir on the 16th day of September, 2025.

By: _____
Andy Ward, Mayor

Attest: _____
Ben Foster, Town Clerk

Approved as to Form: Town Attorney

SETTLEMENT AND DEVELOPMENT AGREEMENT

THIS SETTLEMENT AND DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into this ____ day of September, 2025 (“**Effective Date**”), by and between the Town of Ophir (“**Town**”), and Joseph Waller, David T. Cornwall, Linda A Cornwall, Joyce A. Whitaker, and Gary W. Whitaker (collectively, “**Owners**”) (each, a “**Party**,” and together, the “**Parties**”).

RECITALS

(a) The Town is a Colorado home rule municipality in San Miguel County, Colorado; and

(b) Owners are the owners of certain real property more particularly described in Exhibit A (the “**Property**”);

(c) Owners, through their agent, Joe Waller, have sought to remove the Property from the “high” hazard zone as reflected on the Town’s avalanche hazard map (the “**Hazard Map**”) and submitted an application to amend the Hazard Map (the “**Amendment**”).

(d) On March 23, 2023, the Town’s General Assembly formally denied the Amendment.

(e) Owners contend that they may have claims against the Town with connection to the Property, the Hazard Map, and the Amendment, including without limitation, a claim for a taking of private property without just compensation (the “**Claim(s)**”).

(f) The Parties desire to resolve the Claims without the cost, uncertainty, or delay of litigation and to provide for the orderly development of the Property consistent with C.R.S. §§ 24-68-101 *et seq.* (the “**Act**”);

(g) The Town acknowledges that it has the authority to enter into this Agreement, to confer vested development rights under the Act, and that the provisions set forth herein do not constitute an improper delegation or the Town’s legislative, quasi-judicial, or administrative authority; and

(h) WHEREAS, without admitting any liability by any Party to any other Party, the Parties now desire to settle, compromise, and resolve the Claims on the terms set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are incorporated by this reference.

2. Resolution of Claims.

- a. Upon or before the Effective Date, and in accordance with the Town of Ophir Land Use Code(the “**Code**”), the Town shall initiate and process an amendment to its Hazards Overlay Map, such that the areas of “high” hazard, and the areas outside the Avalanche Hazard Overlay Zone District, as that term is used in the Town of Ophir Land Use Code, shall be as depicted in Exhibit B (the “**Hazard Map Amendment**”). The Parties acknowledge and agree that the general intent of the Hazard Map Amendment is to define the “high” hazard zone in the northeast corner of the Town as the area north of the dashed line demarcating the “Outer limit of wet spring avalanches from adjacent valley slide . . .” on the avalanche hazard map attached as Exhibit C (the “**INSTARR Map**”) instead of by the area commonly known as the “thumbprint” in the northwest corner of the INSTARR Map. If the Amendment is approved, portions of the Property will be outside the Avalanche Hazard Overlay Zone and the remainder will remain in the “high” hazard zone.
- b. If the Town approves the Hazard Map Amendment, and a third party challenges that approval, whether under C.R.C.P. 106(a)(4) or otherwise, the Parties will cooperate in defense of the approval.

3. Release of Claims, Indemnification.

(a) Upon the Final, Non-Appealable Approval of the Hazard Map Amendment, each Party shall be deemed to have waived and released any and all demands, liabilities, damages, claims, counterclaims, and causes of action, of whatever type or nature, it may have against the other Party in connection with the Claims.

(b) Further, upon Final, Non-Appealable Approval of the Hazard Map Amendment, Owners agree for themselves and their heirs, successors, and assigns to indemnify and hold harmless and release the Town and its officials, General Assembly members, employees, attorneys, insurers, and authorized agents, from and against any and all damages, costs, expenses, losses, claims, or liability asserted by any person, including Owners, for damage or destruction to property, injury, or death arising out of or resulting directly or indirectly from (i) the construction, development, use or occupancy of a single family dwelling and/or accessory buildings on the Property; and (ii) the approval of the Amendment and approval or permitting of such construction, development, use or occupancy by the Town of Ophir and its officials, employees, and authorized agents. Owners acknowledge that they assume all risk of danger and injury by reason of construction, development, use or occupancy of the Property (collectively with the preceding sentence, the “**Acknowledgement and Indemnification**”). The Acknowledgement and Indemnification is appurtenant to the Property, shall run with the land, and upon the conveyance of all or a portion of the Property to a third party shall bind said third party and cease to bind Owners with respect to the portion of the Property so conveyed.

(c) For purposes of this Agreement, “**Final, Non-Appealable Approval**” shall mean the passage of any time periods within which any referendum, administrative appeal, or request for review of such approval pursuant to C.R.C.P. 106(a)(4) must be brought, without any such referendum, administrative appeal, or C.R.C.P. 106(a)(4) action having been filed, commenced, or

asserted, or, if filed, commenced, or asserted, after any such referendum, administrative appeal, or C.R.C.P. 106(a)(4) action is resolved with affirmation that such approval is effective.

4. Vested Rights. In light of the uncertainties of mountain development, market conditions, and all other relevant conditions, if the Town approves the Hazard Map Amendment, Owners shall be entitled to construct, without further Town discretionary approval(s) and upon terms no less favorable than those generally applicable to other lots in the Town including, without limitation, issuance of a building permit and compliance with dimensional and other zoning standards set forth in the Code, a minimum of three single family dwellings (as that term is used in the Code) on the Property (the “**Development Rights**”). The Town further acknowledges and agrees that, in connection with the development of the Property, Owners may construct the underground components of any on-site wastewater treatment system (“OWTS”) in any areas of the Property that remain in the “high” hazard zone if the Hazard Map Amendment is approved, provided that (i) lid risers and inspection ports are cut to grade after installation; (ii) any above-grade components of the OWTS are located outside the “high” hazard zone; and (iii) the location and design of the OWTS otherwise comply with San Miguel County environmental health standards, regulations, and permit requirements. Excluded from “Development Rights” is any application to adjust lot lines or otherwise subdivide the Property or for a variance from any dimensional or other zoning requirements if desired by Owners. The Development Rights shall be “vested property rights” within the meaning of C.R.S. § 24-68-102(5), and pursuant to the Town’s authority to enter into development agreements pursuant to C.R.S. § 24-68-104(2), the Development Rights shall be vested for a period of five (5) years, from the Effective Date or Final, Non-Appealable Approval of the Hazard Map Amendment, whichever is later. For purposes of C.R.S. § 24-68-105(1)(b), the Town acknowledges that avalanche risk is a natural or man-made hazard on or in the immediate vicinity of the Property and that the Town has been sufficiently apprised of that risk or that such risk reasonably could have been discovered as of the Effective Date.

5. No Admissions. This Agreement is made as a compromise to avoid expense and to resolve the Lawsuit. None of the Parties admits liability of any sort, nor have any of the Parties made any agreements or promises to do or omit to do anything or act except as set forth herein.

6. Voluntary Agreement. The Parties acknowledge that they have read this Agreement, have had the assistance of legal counsel, and understand all of its terms, and that this Agreement is executed voluntarily, without duress, and with full knowledge of its legal significance.

7. Authority. The individuals executing this Agreement on behalf of the Parties represent and warrant that they have the authority to execute this document and bind the Party for which they are signing.

8. Counterparts. This Agreement may be signed in counterparts and, when each party has signed one counterpart hereof, it shall be a binding and enforceable agreement.

9. Complete Agreement. This Agreement, with all Exhibits, contains the entire, integrated agreement between the Parties regarding the subject matter discussed herein and supersedes all prior agreement and representations, written or verbal. This Agreement may not be modified in any manner, nor may any rights provided for herein be waived, except by an instrument in writing signed by the party to be charged in such modification or waiver. Subject to the foregoing, the

Town Manager is authorized to correct scrivener's errors, if any, with the consent of Owners and without further authorization from the General Assembly.

10. Severability. In the event that any provision of this Agreement is determined to be void, illegal, or unenforceable, all remaining provisions shall remain in effect and shall be construed to effectuate, as nearly as possible, the original intentions of the Parties based on the entire Agreement, including the invalidated provision.

11. Binding Upon Successors. This Agreement, including the indemnifications provided for in Section 3, above, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns and shall run with the Property. This Agreement shall be recorded in the real property records for San Miguel County.

12. Colorado Law; Venue; Remedies. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado. The exclusive venue shall be in San Miguel County District Court, and the substantially prevailing party in any such lawsuit shall be entitled to recover its costs and attorney fees.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date of the last signature set forth below:

TOWN OF OPHIR, COLORADO,

By: _____

Attest: _____

Joseph Waller:

By: _____

Name: _____

Date: _____

David T. Cornwall:

By: _____
Name: _____
Date: _____

Linda A. Cornwall:

By: _____

Name: _____

Date: _____

Joyce A. Whitaker:

By: _____

Name: _____

Date: _____

Gary W. Whitaker:

By: _____

Name: _____

Date: _____

EXHIBIT A
The Property

PARCEL A:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10, BLOCK 2, OPHIR TOWNSITE, ACCORDING TO THE PLAT RECORDED JUNE 16, 1898 IN PLAT BOOK 28 AT PAGE 12, COUNTY OF SAN MIGUEL, STATE OF COLORADO.

PARCEL B:

THE WESTERN HALF OF VACATED FIRST STREET LYING BETWEEN LOT 10, BLOCK 2 AND LOT 1, BLOCK 3 AND THAT PORTION ADJACENT TO THE SOUTHERN HALF OF THE VACATED ALLEY WITHIN BLOCK 2, OPHIR TOWNSITE, ACCORDING TO THE PLAT RECORDED JUNE 16, 1898 IN PLAT BOOK 28 AT PAGE 12 AS VACATED BY ORDINANCE NO. 79-1 RECORDED NOVEMBER 30, 1979 IN BOOK 383 AT PAGE 873.

AND

THE EASTERN HALF OF VACATED BOBTAIL STREET LYING BETWEEN LOT 10, BLOCK 1 AND LOT 1, BLOCK 2 AND THAT PORTION ADJACENT TO THE SOUTHERN HALF OF THE VACATED ALLEY WITHIN BLOCK 2, OPHIR TOWNSITE, ACCORDING TO THE PLAT RECORDED JUNE 16, 1898 IN PLAT BOOK 28 AT PAGE 12 AS VACATED BY ORDINANCE NO. 79-1 RECORDED NOVEMBER 30, 1979 IN BOOK 383 AT PAGE 873.

AND

THE SOUTHERN HALF OF VACATED ALLEY WITHIN BLOCK 2, OPHIR TOWNSITE, ACCORDING TO THE PLAT RECORDED JUNE 16, 1898 IN PLAT BOOK 28 AT PAGE 12 AS VACATED BY ORDINANCE NO. 79-1 RECORDED NOVEMBER 30, 1979 IN BOOK 383 AT PAGE 873.

EXHIBIT B
Revised Hazard Maps



EXHIBIT C
INSTARR Map

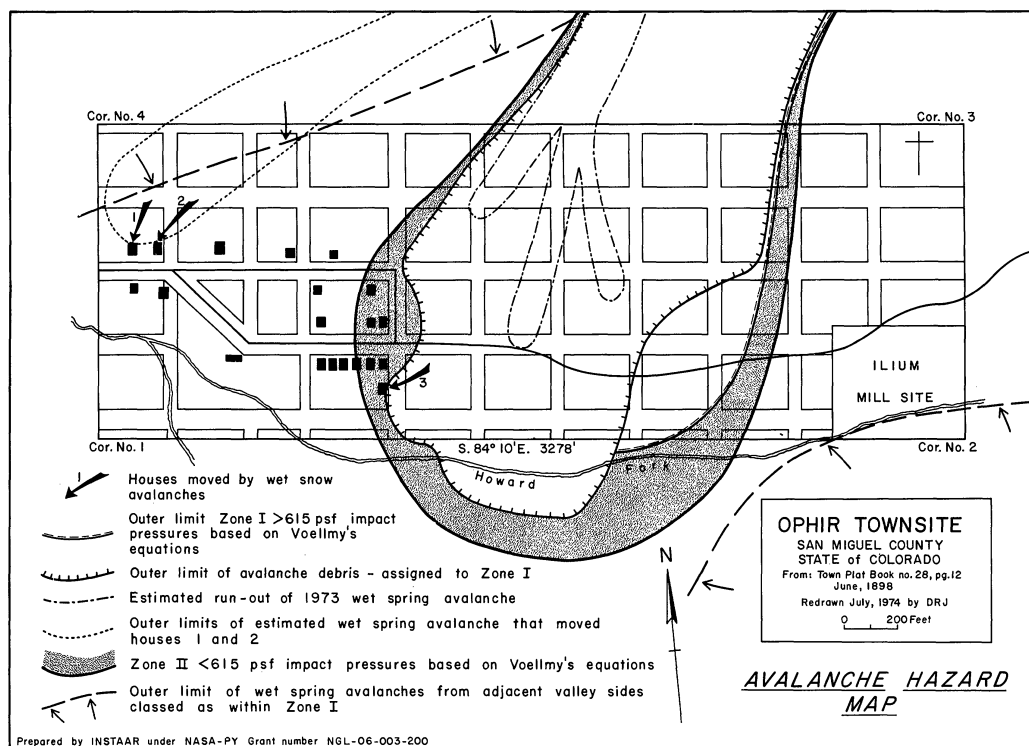


FIG. 10. Detailed avalanche hazard map, Ophir.

uplift force of the aerodynamic loading must also be considered. Wind blast from powder avalanches may also occur close to the indicated run-out limits, and even pressures less than 0.5 t/m^2 are potentially destructive for normal buildings. Windows, for instance, should not face the apex of the Spring Gulch alluvial fan. The other areas of Zone II indicate a recurrence interval greater than twenty years and diminished impact pressures, although the same building restrictions should apply.

Dry and wet snow avalanches originate on the aspen-covered slope just west of Spring Gulch and on the hillside southeast of the town. We recommend that consideration be given to the feasibility of evacuating the threatened section of the town of Ophir at times of extreme danger from large wet snow avalanches from Spring Gulch unless defense measures are undertaken. A successful evacuation policy will depend upon improvement in current forecasting. Although much progress has been made in predicting the timing of wet

snow avalanches, based upon recent work in the Red Mountain Pass-Silverton area on the far side of Ophir Pass, much more is required before a practical evacuation scheme can be developed.¹⁵ Finally, there is some undeterminable possibility that an even larger avalanche in the future will sweep through most of the existing built-up area. In the absence of historical evidence for an event of this magnitude, we are dealing with an extremely long recurrence interval that cannot be incorporated into any realistic land use policy.

For reduction of existing hazards that threaten Ophir, six standard mitigation approaches should be considered.

Warning and Evacuation: Local residents might be evacuated before a major avalanche if

¹⁵ R. L. Armstrong, E. R. LaChapelle, M. J. Bovis, and J. D. Ives, *Development of Methodology for Evaluation and Prediction of Avalanche Hazard in the San Juan Mountain Area of Southwestern Colorado*, Occasional Paper 13 (Boulder, Colorado: Institute of Arctic and Alpine Research, University of Colorado, 1974).