

Appendix 4.8.1 Carbondale Municipal Code relevant to water resources

The electronic version of the Carbondale, CO Municipal Code is current through Ordinance 18-2006, passed December 19, 2006. For more recent provisions, contact the Town (<http://municipalcodes.lexisnexis.com/codes/carbondale/>).

Title 13 Public Utilities

Chapter 13.28 WATER CONSERVATION AND WASTE

13.28.010 Waste of water prohibited.

Each user of the town water or wastewater systems shall prevent waste of water and shall keep all water outlets closed when not in actual use unless otherwise authorized by the town in writing. Hydrants, stock troughs, urinals, water closets, bathtubs, and other openings shall not be left running for any purpose other than for the immediate use for which they were intended. (Ord. 11-1991 (part)).

13.28.020 Water shut off in event of waste.

The town may shut off water service at the curb box to any premises where water is being wasted, or water sprinkling or irrigation is taking place during hours other than those authorized. The town shall give notice pursuant to Section 13.12.040 prior to termination of water service for waste if the waste of water does not constitute an immediate threat to public health or safety, and the user shall have review rights set forth in Section 13.12.050. A reinstatement fee of twenty-five dollars shall be charged when water service is reinstated. Water may be shut off to any premises without notice in the event of waste that, in the opinion of the town, constitutes an immediate threat to public health or safety pursuant to Section 13.12.030. (Ord. 11-1991 (part)).

13.28.030 Restriction on use.

The town manager shall implement reasonably practicable water conservation measures during those times when water supplies are limited, after the town manager determines that a water shortage exists. Thereupon, the following plan shall be implemented. The duration of each stage shall be determined by the town manager, according to the exigent circumstances of the particular situation. (Ord. 11-1991 (part)).

13.28.040 Water shortage.

During the designated water shortage period:

- A. There shall be no washing of sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas;
- B. There shall be no draining and refilling of swimming pools, hot tubs, spas, or the like;
- C. There shall be no washing of privately owned cars, other motor vehicles, trailers, or boats, except from a bucket; a hose equipped with a positive shut-off nozzle may be used for a quick rinse;
- D. There shall be lawn watering and irrigation only to the extent determined to be permissible by the town;
- E. Water shall not be used for dust control, except for construction projects when authorized by the town manager;

- F. Restaurants shall provide drinking water to customers only upon request;
- G. A public awareness program shall be initiated for education as to the types of practices which a successful temporary program will require. The town shall distribute printed material emphasizing the need to schedule water use during off-peak hours, as well as suggested life style changes. (Ord. 11-1991 (part)).

13.28.050 Water crisis.

The board of trustees may declare a period known as a water crisis. During a water crisis, all restrictions under a water shortage shall remain in effect. In addition, the following measures shall also be in effect:

- A. Except for firefighting, there shall be no use of water from a fire hydrant;
- B. Watering of any lawn, garden, landscaped area, tree, shrub, or other plant with treated water from the municipal domestic water system shall be prohibited except from a hand-held container and only at designated times;
- C. Restaurants will be required to serve patrons with disposable plates, glasses, knives, forks and spoons and to use such other disposable utensils as is reasonable;
- D. There shall be no replenishment of water in swimming pools, whether for normal operating replacement water or otherwise. (Ord. 11-1991 (part)).

13.28.060 Water conservation restrictions.

To insure the proper functioning of the town water system during periods of peak demand, the town manager may establish restrictions on irrigation and use as are appropriate. Due to high flow demands through the town water distribution system during summer irrigation months, the following irrigation restrictions may apply each year:

- A. Restriction Period. The irrigation restrictions shall be in effect yearly commencing at twelve a.m. on May 15th and continuing until twelve p.m. on October 15th.
- B. No Use Period. No irrigation may be permitted between ten a.m. and three p.m. daily.
- C. Even Day Irrigation. Irrigation may be allowed on even numbered days of each month during the irrigation restriction period and on the 31st day of each month for those users with addresses ending in even numbers.
- D. Odd Day Irrigation. Irrigation may be allowed on odd numbered days of each month during the irrigation restriction period for those users with addresses ending in odd numbers.
- E. Exemption Permit. The town manager may issue not more than one exemption permit to a customer for the purpose of irrigation of newly installed landscaping, lawns and trees, provided that the total area of irrigation is not in excess of four hundred square feet. The customer shall prominently display a copy of the exemption permit in the area to be irrigated. The exemption permit may authorize the customer to irrigate on an even or odd numbered day which is not authorized, but shall not entitle the customer to irrigate during any period when irrigation usage is entirely prohibited. The exemption permit shall be in effect for the restriction period of the year of issuance only, unless sooner terminated by the town manager due to the establishment of further restrictions on irrigation and use. (Ord. 11-1991 (part)).

Chapter 13.32 POLLUTION OF WATER AND WASTEWATER SYSTEMS

13.32.010 Pollution of water.

A. It is unlawful for any person to discharge or allow the discharge in the town's water system of any substance or material which will in any manner injure or obstruct the system, or which will contaminate or pollute the water, or in any manner, pollute, obstruct or contaminate the water in said waterworks.

B. As used in this title, the terms "pollute," "contaminate," and "contaminated" include the manmade, man-induced, animal-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. (Ord. 11-1991 (part)).

13.32.020 Pollution of wastewater system.

The discharge of nonacceptable wastes into the town wastewater system, whether directly or indirectly, is prohibited, and where investigation reveals the presence of nonacceptable wastes emanating from any lot, land, building or premises, the owner, lessor, renter or occupant of such lot, land, building or premises shall be required at his own expense to treat, neutralize, remove, or in other ways to prepare the noxious substance therein to the satisfaction of the town in order to convert the same into acceptable waste. The following are deemed to be nonacceptable wastes:

A. Any liquid or vapor having a temperature higher than 105 degrees Fahrenheit;

B. Any water or waste having a five-day biological oxygen demand which may contain more than one thousand parts per million by weight averaged during any twelve-hour period and does not exceed 250 ppm at wastewater plant influent sampling point;

C. Any gasoline, benzene, fuel oil, flammable or explosive liquid, solvent or gas;

D. Any residential garbage which has not been properly shredded by a residential garbage disposal;

E. Any garbage from any commercial operations, including restaurants and supermarkets;

F. Any ashes, cinders, sand, mud, tar, straw, shavings, metal, grass, rags, feathers, plastics, manure, wood, grit, cement, brick, onyx, carbide, or other solid or viscous substance capable of obstruction of the floor of the wastewater treatment works or any other interference with the proper operation of the wastewater works;

G. Any water or waste having a pH concentration lower than six and one-half or higher than nine or having any other corrosive property causing damage or hazard to structures, equipment or personnel of the town's wastewater facilities;

H. Any water or wastes containing a toxic or poisonous substance in sufficient quantities to injure or interfere with the wastewater treatment process, constituting a hazard to humans or animals or creating any hazard in the receiving of waters of the wastewater treatment plant;

I. Any waters or wastes containing the suspended solids of such character or quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant;

J. Any noxious or malodorous gas or substance capable of creating a public nuisance;

K. Any surface or groundwater;

L. Salinity of any nature in violation of applicable state regulations;

M. Any other substance which cannot be discharged under applicable State Department of Health regulations. (Ord. 11-1991 (part)).

13.32.030 Pollution of water collection system.

A. It is unlawful for any person or entity to pollute or contaminate, or to keep or maintain any building, privy, pen, yard, or corral, or to maintain or graze any livestock, or to keep or conduct any business which will contaminate or pollute or lead to the contamination or pollution of:

1. Any well site operated by the town in connection with the town waterworks, whether located inside or outside the town's municipal boundaries, including any of the following:

a. Any well or well site used or operated by the town in connection with the town waterworks, including by way of example and not by way of limitation, those wells operated at or near the Crystal River and those wells operated at or near the Roaring Fork River;

b. Nettle Creek, its tributaries, and its adjacent spring;

c. Any area five miles above the point from which water is taken by any well operated by the town, by the town's Nettle Creek intake system, or any other point from which the town takes water for the town's waterworks.

B. The following are the legal descriptions of the town's well sites:

1. Well Site No. A. A parcel of land situated in Lot 1 of Section 34, township 7 South, Range 88 West of the Sixth Principal Meridian, County of Garfield, State of Colorado, said parcel of land described as follows: Beginning at the Witness Point to the South Quarter Corner of Section 35 in township 7 South, Range 88 West; thence N. 35 degrees 25' 38" W. 5836.71 feet to the true point of beginning; thence S. 00 degrees 49' 00" W. 25.00 feet; thence S. 89 degrees 11' 00" E. 60.00 feet; thence N. 00 degrees 49' 00" E. 25.00 feet; thence N. 89 degrees 11' 00" N. 60.00 feet, more or less, to the true point of beginning.

2. Well Site No. B. A parcel of land situated in Lot 1 of Section 34, township 7 South, Range 83 West of the Sixth Principal Meridian, County of Garfield, State of Colorado, said parcel of land is described as follows: Beginning at the Witness Point to the South Quarter Corner of Section 35 in township 7 South, Range 88 West, thence N. 33 degrees 06' 37" W. 5478.17 feet to the true point of beginning; thence West 25.00 feet; thence North 25.00 feet; thence East 25.00 feet; thence South 25.00 feet to the true point of beginning.

3. Well Site No. C. A parcel of land situated in Lot 3 of Section 35, township 7 South, Range 88 West of the Sixth Principal Meridian, County of Garfield, State of Colorado, said parcel of land is described as follows: Beginning at the Witness Point to the South Quarter Corner of Section 35, township 7 South, Range 88 West, thence N. 80 degrees 09' 58" W. 5191.52 feet to the true point of beginning; thence N. 77 degrees 59' 00" W. 25.00 feet; thence N. 12 degrees 01' 00" E. 25.00 feet; thence S. 77 degrees 59' 00" E. 25 feet; thence S. 12 degrees 01' 00" N. 25.00 feet, more or less, to the true point of beginning.

4. Well Site No. D. The point located in the SW 1/4 SE 1/4 of Section 3, township 8 South, Range 88 West of the Sixth Principal Meridian, 1900 feet west of the east line and 1,300 feet north of the south line of said Section 3, township 8 South, Range 88 West of the 6th Principal Meridian, County of Garfield, State of Colorado. (Ord. 11-1991 (part)).

13.32.040 Pretreatment for grease removal.

A. Installation of Grease Interceptors. All commercial and industrial customers of the town's wastewater system having a probability of significant grease discharge in their wastewaters shall install grease interceptors. All new customers and customers whose use changes the EQR value of the particular use as a result of renovation, remodel, or otherwise, shall install grease interceptors. The utilities/public works department shall determine whether a specific customer has a probability of having significant amounts of grease in its wastewater based on an evaluation of the type of use or proposed use of the customer.

B. Existing Facilities. Any restaurant in existence at the time the ordinance codified in this section becomes effective shall be required to install and properly maintain a town-approved grease interceptor by April 1, 1999. [*]

C. Design Requirements for Grease Interceptors. The utilities/public works department shall establish minimum requirements and specifications for grease interceptors for restaurants within the town. Such requirements and specifications shall include the size and type of construction based on the plumbing fixtures within the restaurant, which requirements and specifications may be amended from time to time by the utilities/public works department. A copy of current requirements and specifications shall be kept by the utility/public works department and building department and shall be available upon request to the public.

D. Grease Interceptor Size. The minimum size of the interceptor shall be determined by the utilities/public works department. The utilities/public works department reserves the right to determine the size of the interceptor.

E. Location Requirements. All grease interceptors shall be located outside of improvements, except with the prior written approval of the utilities/public works department.

F. Installation Requirements. Prior to installation, the proposed design and location for a grease interceptor shall be submitted to the utilities/public works department for approval. The utilities/public works department may require information and documentation reasonably necessary to determine whether the grease interceptor will comply with this section.

G. Maintenance. The customer shall be responsible for regular cleaning and maintenance of the grease interceptor. Accumulated grease and grit shall be removed as solids and disposed of in a manner approved by the utilities/public works department, and that meets state and federal requirements. Unless otherwise approved in writing by the utilities/public works department, cleaning shall be required not less than once every two months for grease interceptors.

H. Record of Maintenance. The user of a grease interceptor shall maintain and display to the utilities/ public works department upon request, proof of adequate cleaning of the grease interceptors, including an adequate record of the date of each cleaning, and the volume of grease removed, or an estimate thereof.

I. Inspection. The utilities/public works department may make periodic inspections of grease interceptors to insure compliance. (Ord. 24-1998: Ord. 11-1991 (part)).

13.32.050 Manufacturing and industrial uses.

Manufacturers and industries are prohibited from using the town wastewater system unless they obtain a special permit from the town, the granting of which is discretionary,

said permit defining the conditions, limitations, and restrictions, and the fees and charges determined by the board of trustees to be for the best interest of the town and its inhabitants. (Ord. 11-1991 (part)).

13.32.060 Usage increasing operating costs.

Each user which discharges any pollutants which cause an increase in the cost of managing the effluent or the sludge of the town's treatment works shall pay for such increased costs. (Ord. 11-1991 (part)).

Chapter 13.44 TOWN DITCH SYSTEM

13.44.010 Town ditch system.

A. The town owns water and water rights, and rights in ditches flowing through the town, including the main and lateral ditches of the WeaverLeonhardy Ditch, Leonhardy Ditch, Carbondale Town Ditch, Rockford Ditch and Vetter Ditch (to be referred to as the "Town Ditch System").

B. The town desires to enact, in addition to this chapter, rules and regulations for the orderly use of water in the town ditch system, and to clarify, among other things, that the use of water by persons or entities other than the town is by permission of the town only, and can be revoked at any time for any purpose. (Ord. 11-1991 (part)).

13.44.020 Rights in town ditch system.

All rights of persons and entities to use or divert water from the town ditch system shall be permissive only, and may be refused, canceled, or revoked at any time by the town for any reason whatsoever. Without limiting the foregoing, no use or diversion by any person or entity of water from the town ditch system shall entitle such user to any legal water right of any kind. (Ord. 11-1991 (part)).

13.44.030 Restrictions on use.

A. No person or entity shall use or divert water from the town ditch system:

1. Between October 15th and the following April 15th of each year;
2. At any time not specifically authorized by the town;
3. At any time when the town manager determines that there is insufficient water in the town ditch system to conveniently allow the user to use or divert water from the town ditch system;
4. When, upon notice and opportunity to be heard, as set forth in Section 13.44.030(D), it is determined that the user or anyone acting under his or its behalf has used or diverted water from the town ditch system contrary to the provisions of this Chapter 13-44.

B. If the town manager determines that insufficient water is flowing through the town ditch system to permit any one or more users to use or divert water from the town ditch system, he shall suspend the right of any user to use or divert water from the town ditch system by giving written notice to the address of the user by regular mail which notice shall be effective within two business days after the date of mailing. No user shall have rights superior to any other user to use and divert water from the town ditch system, and therefore the town manager may suspend the rights of as many users and in any order as he deems reasonably necessary to protect the physical supply of water in the town ditch system and the town's legal rights to water in the town ditch system.

C. Water used or diverted from the town ditch system shall be for out-of-house lawn and garden irrigation and livestock watering. No such water shall be used for human consumption or applied to any use inside a dwelling or structure. Each user shall give notice, by sign or otherwise, to all users or occupants of the real property where the water will be used that the water is untreated, unfit for human consumption, unfit for in-house use, and suitable for out-of-house lawn and garden irrigation only.

D. Any person or entity whose privilege to use the town ditch system is to be revoked for a violation of this chapter shall be entitled to a review. The utility director, or his designee, shall mail a notice of the revocation to the last known address of the person or entity whose privilege to use the town ditch system is to be revoked, and the notice shall state a time, date, and place for an informal hearing. If the person or entity whose privilege is to be revoked is still dissatisfied with the decision of the utility director, he may appeal that decision to the town manager by filing a written statement of appeal setting forth the manner in which the revocation is disputed. The statement of appeal to the town manager shall be filed within two business days after the decision of the utility director. The town manager, or his designee, shall mail a notice of the time, date, and place of an informal hearing to the person or entity appealing, the hearing to take place not less than three business days nor more than fourteen business days after the date of mailing of the notice. The decision of the town manager shall be final. (Ord. 31-1995 (part); Ord. 11-1991 (part)).

13.44.040 Obstructions.

No person or entity shall:

- A. Place any obstructions to the flow of water in any ditch in the town ditch system;
- B. Place any fence or other structure across or within the easement of any ditch in the town ditch system;
- C. Throw or lodge any solid matter into any ditch in the town ditch system;
- D. Refuse to remove any obstruction, fence or structure from any easement of any ditch in the town ditch system, when so requested by the town;
- E. Pollute any ditch, or water therein, in the town ditch system;
- F. Prevent access for authorized town personnel to operate, maintain, inspect, or otherwise use the town ditch system, or easements or headgates utilized by the town ditch system. (Ord. 11-1991 (part)).

13.44.050 Exceptions.

Nothing herein shall limit the rights of those persons or entities who own legal title to water rights in any ditch in the Carbondale town system, separate and apart from those water rights owned by the town. (Ord. 11-1991 (part)).

Chapter 13.50 TOWN WATER RIGHTS DEDICATION

13.50.010 Title.

The ordinance codified in this chapter shall be known and may be cited as the "Town Water Rights Dedication Ordinance." (Ord. 4-2002 (part)).

13.50.020 Intent and purpose.

A. It is the intent and purpose of this chapter to require the dedication of water rights prior to the extension of treated or raw water service to new customers or to existing customers with inadequate and stable supply of water to the town service area; to prevent the abandonment of water rights to the detriment of the town; to ensure the financial stability of the town water utility; and to promote the general welfare of the public.

B. This chapter, in part, provides a supplemental requirement for annexation as provided by state statutes and also supplemental requirements to the subdivision requirements of the town; and does not eliminate, modify, or replace any requirements set forth in other statutes or ordinances. (Ord. 4-2002 (part)).

13.50.030 Definitions.

A. "Annexation" means the act of attaching, adding, joining or uniting a parcel of land to the legal entity known as the Town of Carbondale, Colorado.

B. "Appurtenant" means belonging to, accessory or incident to, adjunct, appended, annexed to, or used in conjunction with.

C. "Board" or "board of trustees" means the board of trustees of the town.

D. "Conveyance ... of water rights" means the legal process by which legal title to the water rights to be dedicated is transferred to the town by appropriate deed, stock assignment, or both.

E. "Dedication" means an appropriation of an interest in land or water to some public use, made by the owner, and accepted for such use by or on behalf of the public.

F. "Equivalent residential unit" or "EQR," as used in this chapter, means a number related to the volume of water used by a single-family residence up to one thousand five hundred square feet in size, housing a statistical average of 3.5 persons and having not more than two thousand five hundred square feet of irrigated lawn and garden. The consumptive use, for water uses not associated with use at a single-family residence, is considered to be equal to a volume of water, expressed in EQR units, as determined by the town with guidance by the schedule provided in the table of EQRs under Section 13.50.060. The town shall have sole and exclusive discretion in determining whether the basic dedication requirement should be increased or decreased, on a case by case basis, after consideration of the place, method, efficiency and operation of wastewater treatment for the use served; provided, however, for residential uses, it is not the intent hereof for the town to reassess the dedication requirement should such limits be exceeded.

Residential units shall only be reassessed upon the addition of fixtures, habitable space or a substantial enlargement of lawn size.

G. "Extension of service" means any extension of the municipal water utility for which a tapping charge is assessed.

H. "Historical use affidavit" means a document which sets forth the following information concerning the water rights proposed for dedication:

1. The name(s) and address(es) of the owner(s) of all water rights owned by the party seeking extension of service;
2. A legal description of the land to be annexed or provided with municipal water service;
3. The total number of acres to be annexed or provided with municipal water service;
4. The total number of acres presently being irrigated and/or intended to remain in irrigation;
5. A copy of all decrees concerning all water rights appurtenant to the property and all

other rights owned or controlled by the party seeking extensions of service;

6. A copy of any legal decree or judgment which affects the title of those water rights entered since the owner received title to the water rights appurtenant to the property and/or proposed for dedication;

7. A copy of the documents by which the owner received title to the water rights appurtenant to the property and/or proposed for dedication;

8. A copy of all diversion records of the water rights proposed for dedication;

9. The owner's statement as to the historic use of the water rights appurtenant to the property and/or proposed for dedication.

I. "Lease" means any grant for permissive use which results in the creation of a landlord-tenant relationship.

J. "Person" means an individual, a partnership, a corporation, a limited liability company, municipality, or any other legal entity, public or private.

K. "Plat" is an accurately surveyed map of a piece of land subdivided into lots with streets, alleys, roads, and other such avenues of transportation delineated thereon and drawn to a scale.

L. "Replat" means to make a change in the original plat.

M. "Subdivide" means to separate into small divisions a tract of land into two or more lots, tracts, parcels, sites, separate interests in common, condominium interest or other divisions for the purpose, whether immediate or future, or transfer of ownership, or for building or other development, or for street use by reference to such subdivision or a recorded plat thereof.

N. "Sufficient legal priority" means that the water rights proposed for dedication may reasonably be expected to provide a dependable water supply throughout the season of use in the amount for which they are decreed. In making this determination, factors to be considered shall include, but not by way of limitation, the adjudication date and appropriation date of the water rights, the decreed use(s), the historic use of the water under the decree, the physical flow available, and the administration practices of the Office of the State Engineer.

O. "Town" means the town of Carbondale, Colorado.

P. "Town manager" means any town manager of Carbondale, Colorado.

Q. "Transfer of water rights" means the conveyance of legal title to water rights of the town in addition to referring to all actions required under the laws of the State of Colorado to be brought in the Water Court, Water Division No. 5, to ensure that the dedication requirement is fulfilled. Such action may include, but not by way of limitation, a change in the type, place, or time of use, a change in the point of diversion, a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, change in the place of storage, a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct application, a change from a fixed place of storage to alternate places of storage, or any combination of such changes. Transfer of water rights includes transfer of conditional as well as absolute water rights.

R. "Water rights" means a decreed right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same. (Ord. 4-2002 (part)).

13.50.040 Dedication requirement-Generally.

It shall be the policy of the town, to the greatest extent possible, to require that any development in the town dedicate sufficient water rights of a satisfactory priority to the town to equal or exceed the water use of the proposed project based on diversion requirements. In the event of annexation, all water rights appurtenant to the property proposed for annexation shall be dedicated to the town even though said water rights may exceed the anticipated diversion requirements of the proposed project as provided in Section 13.50.070. A dedication or transfer of direct flow and/or storage water rights to the town shall be required prior to the town committing to provide any new or enlarged water service as follows:

A. Residential Uses. For any new or enlarged residential use of water, an estimate of water demands based on the dedication requirements stated in Section 13.50.060 shall be submitted to the town prior to any approval of annexation, or any subdivision or zoning request. Such estimate shall also include a detailed list of all water rights and water resources owned or controlled by applicant or otherwise associated, in any way, with the property to be supplied water. The dedication requirement shall be satisfied upon preliminary plan approval as may be determined by the board. When annexation or subdivision is not occurring, the dedication requirement shall be satisfied at such time that actual building plans and/or a request for a tap are submitted to the town for any property to be served, and the dedications requirement shall be verified and modified to reflect the actual nature of the facilities to be served under Section 13.50.060.

B. Non-Residential Uses. All other new or enlarged uses of water including, but not limited to, commercial, industrial, transportation facility, irrigation, recreational, office, retail, schools, churches or lodging uses shall provide an estimate of water demands based on the dedication requirements stated in Section 13.50.060 to the town prior to any approval of annexation, or any subdivision or request. Such estimate shall include a detailed list of all water rights and water resources owned or controlled by applicant or otherwise associated, in any way, with the property to be supplied water. The dedication requirement shall be satisfied upon preliminary plan approval as may be determined by the board. When annexation or subdivision is not occurring, the dedication requirement shall be satisfied at such time that actual building plans and/or a request for a tap are submitted to the town for any property to be served, and the dedications requirement shall be verified and modified to reflect the actual nature of the facilities to be served under Section 13.50.060, and adjusted as necessary.

C. Reinspection and Recalculation. As a condition of continued water delivery by the town and to ensure compliance with the intent of this chapter, the town shall have the right to reassess, reinspect and recalculate an existing connection's use, where it is demonstrated to the reasonable discretion of the town that the dedication requirement originally established for a connection was either in error or where demands from the connection exceed the anticipated or represented demands for that connection. Nothing herein shall be construed to grant a right to any owner or user of a connection to compel the town to recalculate the demand and no reconveyance, refund or rebate of water rights or cash in lieu of water rights shall be made by the town. (Ord. 4-2002 (part)).

13.50.050 Dedication requirement-Forms and accompanying documents.

The dedication requirement shall be calculated in accordance with Section 13.50.060 forms provided by the town. Such forms shall be accompanied by a historical use affidavit. For those persons whose compliance with Section 13.50.060 results in a total EQR of greater than thirty EQR, as determined by Section 13.50.060, the following shall be provided to the town: 1) a historical use affidavit; and 2) an engineering analysis, acceptable to the town, of the historic use of all water rights belonging to the applicant or owner of the real property involved, including but not limited to, any and all water, water rights, structures and structure rights historically used, appurtenant to or otherwise benefiting the real property which is sought to be annexed, subdivided or to which water service is to be extended. (Ord. 4-2002 (part)).

13.50.060 Dedication requirement-Table.

The basic water rights dedication requirement shall be 0.75 acre foot of historic consumptive use per year, over the course of a full calendar year, for a water right, or water rights, of sufficient legal priority and season of use to service each equivalent residential unit (EQR) of demand as calculated under the table of EQRs below, as determined by the town in its sole discretion. The actual annual demand of 0.54 acre feet of consumptive use water assumes actual diversions, without transit losses, throughout the year; however, the town has determined that 0.75 acre foot of historic consumptive use water is necessary to satisfy said demand after reasonable transfer and transit losses. The determination of suitability of a water right for transfer or the fee in lieu of water right dedication shall be determined in the town’s sole discretion. Consistent with Section 13.50.070, such dedicated amount shall not be less than the total amount of water, expressed in EQRs, necessary to meet the total water demand requirement of the new or expanded water use(s). Payment of a fee in lieu of water right dedication will be at the sole discretion of the town and at a rate of payment consistent with the provisions of Section 13.50.110(A).

Table of EQRs

Nature of Facility to be served	EQR
1. A. Single-family detached residence, not to exceed 1,500 square feet, one full kitchen, two outside hose bibs and up to 2,500 square feet of irrigated lawn and garden watered by sprinkler or drip irrigation.	1.00
B. Residences over 1,500 square feet will be charged an additional .05 EQR for each increment of 100 square feet over 1,500 square feet, or fraction thereof, in building size. There shall not be an adjustment for fractional increments of less than 100 square feet.	0.05
2. A. An annual average water demand equal to 0.426 acre feet.	1.00
B. An average monthly peak water demand equal to 22,000 gallons.	1.00
C. A peak daily demand of 1,000 gallons.	1.00
3. Each additional 100 square feet of irrigated lawn and	0.02

garden by sprinkler or drip irrigation.	
4. Each additional 100 square feet of non-residential irrigated landscape by sprinkler or drip irrigation.	0.02
5. Multi-family residential units, including duplexes, apartments and condominiums:	
A. Buffet or studio apartment or condo with one kitchen up to 1,500 square feet.	0.60
B. Up to and including two bedrooms with up to 1½ baths and one kitchen, up to 1,500 square feet.	0.80
C. Three bedrooms with up to 2 baths and one kitchen, up to 3,000 square feet.	1.00
D. Each additional 100 square feet or fraction thereof, in excess of the above limits will be assessed 0.03 EQR. There shall not be an adjustment for fractional increments of less than 100 square feet.	0.03
E. Each coin operated washing machine up to 12 lbs. capacity.	0.35
F. Common area irrigation and amenities such as swimming pools, club houses and laundry facilities to be assessed on a case-by-case basis, at the town's sole discretion, in addition to the EQR values expressed above.	
6. There shall be no partial EQR credit granted for irrigation of less than 2,500 square feet of lawn or landscaping. Any uses described in subpart-graph 1 of this table, above, which do not utilize municipal water for any irrigation shall be:	
A. Entitled to a reduction in EQR rating of 0.02 EQR per 100 square feet of lawn or landscaping which is irrigated with non-potable water from a non-municipal system. The maximum credit which can be obtained for residential uses is 25% of the total EQR dedication requirement due from the project (however, if credit for any percentage of total EQR is obtained under this code provision, by irrigation from non-potable water from a non-municipal system, then the town shall proportionately reduce the water delivered for the residential use);	
B. Prohibited from having more than one outside hose bib which shall be placed on the front of the residence and shall not be used for any watering of lawns and gardens; and	
C. Subject to an irrigation plan disclosure statement as described in Section 13.50.170.	

7. Each mobile home or mobile home space in a court with not more than 1,000 square feet of irrigated lawn and garden.	0.80
8. Transient rental units, hotels, motels or rental units within residences:	
A. Managers unit: Uses single family or multi-family classification as applicable.	
B. Each additional room without cooking or kitchen facilities.	0.40
C. Each additional room with cooking or kitchen facilities.	0.50
D. Coin operated washing machine 12 lb. capacity or less.	0.30
9. Dormitories (per each rental bed space) without laundry or kitchen facilities.	0.10
10. Recreational vehicle parks:	
A. For each camping or vehicle space without sewer hook-up.	0.35
B. For each camping or vehicle space with sewer hook-up.	0.40
C. For common facilities, managers unit and related facilities, see categories above (spaces which have year-round occupancy are to be evaluated as mobile home parks).	
11. Bars and restaurants:	
A. For businesses with less than 25 seats.	1.50
B. For each additional seat.	0.04
12. Service stations and gas stations:	
A. Full service station with 2 toilets, 2 lavatories and 1 hand wash bay.	1.00
B. Demands in excess of the above are determined by projected volume.	
13. Churches and nonprofit organizations with no residence or regular eating facilities.	1.00
14. Commercial retail stores with no processed water, no residences, and no eating facilities of up to 5,000 square feet including two restrooms which have a total of two lavatories and two toilets (one each per restroom):	1.00
A. For each additional toilet or urinal with manual flush.	0.30
B. For each additional toilet or urinal with continuous flow.	1.00
C. For each additional lavatory.	0.15
D. For each shower or bath or combination.	0.30

E. For each manual operated drinking fountain.	0.10
F. For each continuous flow drinking fountain.	1.00
G. For each additional 1,000 square feet of floor space above 5,000 feet.	0.02
15. Commercial offices (such as banks, professional office space and other low traffic occupations) with no processed water, no residences, and no eating facilities of up to 7,000 square feet including two restrooms which have a total of two lavatories and two toilets (one each per restroom):	1.00
A. For each additional toilet or urinal with manual flush.	0.30
B. For each additional toilet or urinal with continuous flow.	1.00
C. For each additional lavatory.	0.15
D. For each shower or bath or combination.	0.30
E. For each manual operated drinking fountain.	0.10
F. For each continuous flow drinking fountain.	1.00
G. For each additional 1,000 square feet of floor space above 7,000 feet.	0.14
16. Industrial, including warehouses up to 8,000 square feet which include two restrooms which have a total of two lavatories and two toilets (one each per restroom):	1.00
A. For every 350 gallons/day of processed water with not more than 15% consumptive use.	1.00
B. For each additional toilet or urinal with manual flush.	0.30
C. For each additional toilet or urinal with continuous flow.	1.00
D. For each additional lavatory.	0.15
E. For each shower or bath or combination.	0.10
F. For each mop sink.	1.00
G. For each manual operated drinking fountain.	0.10
H. For each continuous flow drinking fountain.	1.00
I. For each additional 1,000 square feet of floor space above 8,000 feet.	0.13
17. Schools including principal's administrative office and school staff but not including cafeteria, gymnasium or athletic field facilities:	
A. Up to 50 students.	1.00
B. For each additional student.	0.02
C. Cafeteria, gymnasium and athletic requirements determined on a case-by-case basis at the town's sole	

discretion.	
The foregoing shall be based on the projected maximum usage of the school facilities and shall be subject to a periodic audit as required by Section 13.50.190.	
18. Swimming pools up to 25,000 gallon capacity:	
A. Year-round operation.	1.00
B. Summer only (less than 6 months).	0.50
C. For each additional 1,000 gallons of capacity.	0.02
19. Fire protection sprinkler systems.	0.00
20. Irrigation by sprinkler or drip system:	
A. Residential per 100 square feet.	0.02
B. Commercial per 100 square feet.	0.02
C. Commercial or residential irrigation of more than 5,000 square feet of lawn or landscaping subject to special rates imposed by the town at the town's sole discretion.	
21. Car washes:	
A. All car washes will be based on water delivery requirements and consumptive use projections with EQRs to be determined by the town at the town's sole discretion.	
22. Commercial laundromats:	
A. Each washer up to 12 lb. capacity.	0.35
B. For each additional pound of capacity over 12 lbs.	0.015

Uses which are connected to the waste water facilities of the town will be evaluated by location of the waste water return point in setting, modifying or determining dedication requirements, in the town's sole discretion. Additionally, all uses which compute to be more than 3.0 EQR per tap connection are subject to review, calculation and assessment on an ad hoc basis by the town after consideration of the anticipated water to be used. (Ord. 4-2002 (part)).

13.50.070 Water rights dedication requirements-Increasing overall system yield. Water rights dedication requirements as determined and set forth in Section 13.50.050 herein must be serviced by water rights capable of increasing the overall yield of the town's water supply system, as determined by the town, in its discretion. Sufficient water rights must be dedicated so as to enable the town to divert a quantity of water, at a point of diversion specified by the town, equal to the total demand required, and as set forth in Section 13.50.060, to fully serve the applicant's full development water requirements from the town's water system taking into account the period of service required for the applicant's uses. Absent a written agreement between the town and an applicant providing for immediate service, no water service under Chapter 13.50 shall be extended nor water delivered to any tap until and unless the basic dedication referenced has been

satisfied hereunder and until the water rights dedicated or payment of a fee in lieu of water rights dedication has been made, the choice of which shall solely rest in the town, in a manner whereby administrative or judicial confirmation of the right to divert such additional demands by the town has been finally accomplished. (Ord. 4-2002 (part)).

13.50.080 Responsibility for satisfying the basic water rights dedication requirements.

The basic water rights dedication requirement shall be satisfied by the applicant seeking approval of annexation, subdivision, replatting, or the extension of municipally treated water service, whether or not that person will be the ultimate user(s). (Ord. 4-2002 (part)).

13.50.090 Reimbursement for future costs/deposit.

In addition to all other requirements which must be met in order to obtain final subdivision or condominiumization approval, annexation, extensions of water service, or resubdivision, developers, or other parties seeking the aforementioned approvals shall pay to the town, for all subdivisions, annexations, or other related developments which require town approval, the amount necessary to reimburse the town for all costs and expenses incurred by the town. In addition, a deposit shall be paid to the town in an amount equal to the per acre foot anticipated costs of all legal and engineering fees required to analyze and/or transfer the water rights to the town's facilities for diversion and use, as determined solely by the town; provided, however, said deposit shall not exceed the sum of five hundred dollars for each equivalent residential unit (EQR) proposed to be served by the town's municipal-treated or raw water supply, as EQR is defined in this chapter. The deposit shall be due and payable at the time of submittal of the applicable application to the town, and in no event shall municipal water service be extended to such development until all costs have been fully paid. A final determination of the costs to be paid for the purposes of this section only shall be made by the town staff, based upon water rights dedications, plans for the proposed development, and other relevant factors. Any person aggrieved by such determination may file a written protest to the board of trustees within ten days of the date of such determination, and the decision of the board of trustees shall be final. The timely filing of a protest hereunder shall be a condition precedent to the bringing of any action challenging such a determination. (Ord. 4-2002 (part)).

13.50.100 Determination of service demands.

In accordance with the basic dedication requirements set forth in Section 13.50.040 and this chapter, the town shall determine, after consultation with the person or persons skilled in the knowledge of water rights, whether the water rights proposed for dedication pursuant to the provisions of this chapter will be of sufficient legal priority under the laws of the state to ensure the town's ability to meet the service demands of the new user. This determination will be aided by an historic use affidavit and/or engineering report which must be provided by the new user, as well as analysis by the town's water engineer. The determination of the town shall be final; provided, however, any person aggrieved by such a determination may file a written protest to the board of trustees within ten days of the date of such determination and the decision of the board of trustees shall be final. The

timely filing of a protest hereunder shall be a condition precedent to the bringing of any action challenging such a determination. (Ord. 4-2002 (part)).

13.50.110 Water rights acceptance, rejection or in lieu of fees.

The town shall have the right, in its sole discretion, to accept or reject any water rights dedication pursuant to the provisions of this chapter. Rejection of any water rights may be based on an opinion by the town's water attorney or water engineer that the water rights do not have sufficient legal priority or yield, or are not susceptible to transfer for use by the town at the town's point of municipal diversion, to be of reliable long term use to the town. If the town determines that the proposed water rights fail to satisfy the basic dedication requirement, the town may reject the application or may allow the applicant to satisfy the water rights dedication requirements by one of the following alternatives or combination thereof, which the town and not the applicant, shall elect:

A. The applicant, in order to comply with the basic water rights dedication requirement, at the town's request, will pay the town a fee equal to three thousand dollars for each acre foot of demand as calculated under Section 13.50.060 (demand [acre feet] equals EQR total times 0.75). The town may require in all annexation agreements, that the applicant pay two thousand dollars per acre foot of demand of the dedication fee at the time of annexation approval as credit toward future dedication fees if there is not a simultaneous approval of a final subdivision plat so that an accurate determination of total EQRs for the project can be determined; or

B. The town may require a dedication of water rights and provide to the applicant a partial credit toward full compliance with the dedication requirement and require a cash in lieu of water right dedication for the balance. The town's determination of the extent of the partial credit may be appealed to the board of trustees by providing a written protest and appeal within ten days of the notice of determination of the partial credit. The decision of the board of trustees shall be final with respect to the determination. The timely filing of the protest and appeal shall be a condition precedent to any action challenging such a determination; or

C. The town may, in its sole discretion, negotiate with the applicant to establish other terms or conditions which shall constitute compliance with the basic water rights dedication requirement of this chapter. (Ord. 4-2002 (part)).

13.50.120 Water rights dedication procedure.

The applicant shall first determine the total water requirements and capacities necessary to reliable and fully service the proposed development. This shall be done through the submittal of a water service requirement analysis to the town's water department personnel. Upon satisfactory acceptance by the water department of the water requirements for the new development and a positive determination by the water department that the development can physically and reasonably be serviced by the town, water rights meeting the requirements set forth in Section 13.50.070 and 13.50.110 shall be submitted to the town for consideration. It is the policy of the town that no water service shall be extended to an applicant or to applicant's new development until such time as the water rights dedication requirements have been fully satisfied and the dedication of water rights has occurred. (Ord. 4-2002 (part)).

13.50.130 Costs and expenses.

All costs and expenses attendant to the review of water demand and water rights as well as conveyance, and transfer of water rights dedicated to the town and all costs relating to the enforcement of or compliance with this chapter shall be borne by the applicant. (Ord. 4-2002 (part)).

13.50.140 Procedure for dedication by town board.

Any decision made by the town board designate under the delegation powers contained within this chapter shall be submitted by the designate to the town board of trustees at its next regular meeting, and the decision shall not become final until the same has been ratified by the board of trustees. Any interested parties shall have the opportunity to be heard with respect to the decision. (Ord. 4-2002 (part)).

13.50.150 Dedication of water rights for open space.

The owner of any property proposed to be annexed or subdivided who dedicates property to the town pursuant to any other ordinance of the town to be used for open space, park, aesthetic, recreation, or irrigation purposes shall also comply with the provisions of this chapter. (Ord. 4-2002 (part)).

13.50.160 Lease of water rights for agricultural or open space property.

If the owner of the property proposed to be annexed or subdivided desires to retain the land, or any portion thereof, in agricultural production or as open space prior to development, he may be permitted to lease back, on an annual basis and for irrigation, aesthetic and recreational purposes only, the water rights transferred pursuant to this chapter. The terms of the lease shall be negotiated with the town board of trustees or their designate. (Ord. 4-2002 (part)).

13.50.170 Exceptions.

- A. The town may substitute or waive any conditions or requirements deemed necessary to meet the purposes of this chapter.
- B. This chapter does not apply to the extension of a new municipal-treated water service or raw water service for which the basic dedication requirement has been previously complied with by any person and where no increase in demand is constituted. (Ord. 4-2002 (part)).

13.50.180 Raw water irrigation.

It is the policy of the town to encourage the use of non-potable water for irrigation of lawns, gardens and greenbelt areas. In pursuit thereof, a credit for the use of non-potable irrigation systems has been made in the table of EQRs contained in Section 13.50.060. To receive credit, developer shall, prior to preliminary plan approval:

- A. Provide an opinion letter from a qualified attorney, professional engineer or hydrologist which represents that the water rights to be used in a raw water irrigation system are adequate in character, amount and seniority to provide a reliable source of irrigation water for the uses intended;
- B. Demonstrate to the town's satisfaction that the use of water rights owned by developer will not materially injure the town's water rights;

C. Cause covenants and a plat note on the final plat to be recorded which provides notice to lot purchasers that 1) municipal water supplies shall not be used for irrigation use absent further compliance with this chapter; 2) prohibits cross-connection of potable and irrigation water systems; 3) prohibits more than one hose bib to be located on any structure and that hose bib shall be located on the front of the structure and shall not be used for irrigation purposes; and 4) contains such other terms and conditions which the town reasonably requires.

D. Developer shall not realign or modify any existing irrigation ditches in conjunction with the development of a raw water irrigation system without first presenting to the town evidence that written consent to such activity has been provided by all owners of the ditch or lateral if required by law and without town approval. (Ord. 4-2002 (part)).

13.50.190 Periodic audit of connections/recalculation of dedication requirement.

The town shall have the right to, upon reasonable notice and at reasonable times, inspect any premises connected to the municipal water system of the town to verify that connections or water using features or uses are not being made of municipal water for which water right dedication fees or compliance has not been made. In the event new or expanded facilities or uses are being made of town water for which compliance with this chapter has not been made, the town shall recompute the dedication requirement and bill such to the owner or a charge due and collectible as requirement of continued water service. Schools shall be subject to a review of projected maximum-student usage every five years. (Ord. 4-2002 (part)).

^[*] Editor's Note: Ord. 24-1998, which amends □ 13.32.040, is effective on September 11, 1998.

Title 15 Building and Construction

Chapter 15.20 FLOOD DAMAGE PREVENTION

15.20.010 Findings.

A. The flood hazard areas of the town are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

C. The federal government may impose certain sanctions if the town does not enact floodplain management regulations. (Ord. 3-1986 § 1.0).

15.20.020 Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions to specific areas by provisions designed to:

A. Protect human life and health;

B. Minimize expenditure of public money for costly flood control projects;

C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. Minimize prolonged business interruptions;

E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and

H. Ensure that those who occupy the areas of special flood hazards assume responsibility for their actions. (Ord. 3-1986 § 1.2).

15.20.030 Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

D. Controlling filling, grading, dredging and other development which may increase flood damage; and

E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas. (Ord. 3-1986 § 1.3).

15.20.040 Definitions.

Unless specifically defined in this section, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. For purposes of this chapter, unless the context in which they are used clearly indicates otherwise:

A. "Appeal" means a request for a review of the floodplain administrator's interpretation of any provisions of this chapter or a request for a variance.

B. "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

C. "Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

D. "Development" means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

E. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or run-off of surface waters from any source.

F. "Flood insurance rate map" (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

G. "Flood insurance study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

H. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

I. "Floodway fringe" means that area between the floodway and the one-hundred-year floodplain boundary.

J. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed wall of a structure.

K. "Lowest floor" means the lowest floor of the lowest enclosed area, including basement.

L. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. This term also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty consecutive days.

M. "New construction" means structures for which the "start of construction" commences on or after the effective date of the ordinance codified in this chapter.

N. "Recreational vehicle" means a vehicular or portable unit mounted on a chassis and wheels, not more than eight feet in width and forty feet in length prior to siting for

occupancy. A recreational vehicle is primarily designed to provide temporary living quarters for recreational camping or travel use, and which either has its own motive power or is mounted on or drawn by another vehicle such as travel trailers, truck campers, camping trailers and motor homes.

O. "Start of construction" includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or sidewalks; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not as part of the main structure.

P. "Structure" means a walled and roofed building or manufactured home that is principally aboveground.

Q. "Subdivision" means any parcel of land which is to be used for condominiums, apartments or any other multiple dwelling, unless such land was previously subdivided and the filing accompanying such subdivision complied with municipal regulations applicable to subdivisions of substantially the same density or the division of a lot, tract or parcel of land into two or more lots, tracts, sites, or other divisions of land for the purpose, whether immediate or future of sale or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or to the territory subdivided.

R. "Substantial improvement" means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred.

For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

S. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter. (Ord. 5-1987 §§ 1, 2; Ord. 3-1986 § 2.0).

15.20.050 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the municipal boundaries of the town. (Ord. 3-1986 § 3.1).

15.20.060 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled “The Flood Insurance Study” for the town, dated February 5, 1986, with an accompanying flood insurance rate map is adopted by reference and declared to be a part of this chapter. The flood insurance study is on file at the Town Hall, 76 South Second Street, Carbondale, Colorado. (Ord. 3-1986 § 3.2).

15.20.070 Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. (Ord. 3-1986 § 3.3).

15.20.080 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate or impair any existing easement, covenants or deed restrictions; however, where this chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 3-1986 § 3.4).

15.20.090 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 3-1986 § 3.5).

15.20.100 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the town, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 3-1986 § 3.6).

15.20.110 Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.20.060. Application for a development permit shall be made on forms furnished by the town manager and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed

structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following is required:

- A. Elevation in relation to mean sea level, of the lowest floor, including basement, of all structures;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 15.20.180(B); and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Ord. 3-1986 § 4.1).

15.20.120 Designation of the floodplain administrator.

The town manager or his designee is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions. (Ord. 3-1986 § 4.2).

15.20.130 Duties and responsibilities of the floodplain administrator.

Duties of the floodplain administrator shall include, but not be limited to:

A. Permit Review.

- 1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;
- 2. Review all developments to determine that all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is required;
- 3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 15.20.190(A) are met.

B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 15.20.060, the town manager or his designee shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer subsections (A) and (B) of Section 15.20.180.

C. Information to be Obtained and Maintained.

- 1. Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved structures;
- 2. For all substantially improved floodproofed structures:
 - a. Verify and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed, and
 - b. Maintain the floodproofing certifications required in Section 15.20.110(C);
- 3. Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Alteration of Watercourses.

- 1. Notify adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- 2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Interpretation of FIRM Boundaries. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards; for example, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.20.140. (Ord. 5-1987 § 4; Ord. 3-1986 § 4.3).

15.20.140 Appeal board.

A. The zoning board of adjustment as established by the town shall hear and decide appeals and requests for variances from the requirements of this chapter.

B. The zoning board of adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement or administration of this chapter.

C. Those aggrieved by the decision of the zoning board of adjustment, or any taxpayer, may appeal such decisions to the district court as provided by law.

D. In passing upon such applications, the zoning board of adjustment shall consider all technical evaluations, all relevant factors and standards specified in other sections of this chapter, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with the existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

E. Upon consideration of the factors of subsection (D) of this section and the purposes of this chapter, the zoning board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

F. The town manager or his designee shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency. (Ord. 3-1986 § 4.4-1).

15.20.150 Conditions for variances.

A. Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots

with existing structures constructed below the base level, providing subdivisions (1) through (11) of subsection (D) of Section 15.20.140 have been fully considered. As the lot size increases beyond the one-half acre, the technical justifications required for issuing the variance increase.

B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

C. Variances shall not be issued within any designated floodway if any increase in flood discharge would result.

D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

E. Variances shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 15.20.140(D) or conflict with existing local laws or ordinances.

F. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest flood elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. 3-1986 § 4.4-2).

15.20.160 Flood hazard reduction-Permitted uses.

A. The permitted uses in areas of special flood hazards shall be as follows:

1. Flood and/or irrigation control structures;
2. Roads;
3. Bridges, as well as approaches and fill to such bridges;
4. Recreational facilities not including walled and roofed structures greater than two hundred square feet;
5. Parks and other open space uses;
6. Agricultural uses and facilities not including walled and roofed structures greater than two hundred square feet;
7. Wells; and
8. Sanitation plant facilities.

All of the uses permitted by this subsection, except wells and irrigation control structures, must comply with all development permit procedures as specified in Sections 15.20.110 through 15.20.150.

B. It is the intent of this chapter to prohibit new residential, commercial, or industrial development and the placement of new manufactured homes and recreational vehicles in areas of special flood hazard, the one-hundred-year floodplain. It is the responsibility of the developer to show that new construction is not located in an area of special flood hazard unless a variance is obtained under the procedures set forth in Sections 15.20.140 and 15.20.150. The town may require base flood elevation data to be provided by the developer for subdivision proposals which contain at least fifty lots or five acres,

whichever is less, when there is a question as to the precise location of the one-hundred-year floodplain. All subdivision proposals in the vicinity, abutting or extending through an area of special flood hazard shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage. (Ord. 5-1987 § 4; Ord. 3-1986 § 5.1).

15.20.170 Flood hazard reduction-General standards.

In all areas of special floodplain hazards the following standards are required:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
2. All manufactured homes shall be anchored to resist flotation, collapse or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
 - a. Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, with manufactured homes less than fifty feet long requiring one additional tie per side,
 - b. Frame ties be provided at each corner of the manufactured home with five additional ties per side at intermediate points, with manufactured homes less than fifty feet long requiring four additional ties per side,
 - c. All components of the anchoring system be capable of carrying a force of four thousand eight hundred pounds, and
 - d. Any additions to the manufactured home be similarly anchored.

C. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
3. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.

D. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. (Ord. 5-1987 §§ 5, 6; Ord. 3-1986 § 5.2).

15.20.180 Flood hazard reduction-Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 15.20.060 or Section 15.20.130(B), the following provisions are required:

A. Residential Construction. Substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least one foot above base flood elevation.

B. Non-residential Construction. New construction and substantial improvements of any non-residential structure shall either have the lowest floor, including basement, elevated at least one foot above base flood elevation, or, together with attendant utility and sanitary facilities, shall:

1. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Section 15.20.130(C)(2).

C. Manufactured Homes. Manufactured homes shall be anchored in accordance with subsection (A) of Section 15.20.170. (Ord. 5-1987 § 7; Ord. 3-1986 § 5.3).

15.20.190 Floodways.

Located within areas of special flood hazard established in Section 15.20.060 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements and other development, including manufactured homes, unless certification by a registered Professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. If subsection (A) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 15.20.160 through 15.20.180. (Ord. 5-1987 §§ 7, 8; Ord. 3-1986 § 5.4).

TITLE 18 ZONING

Chapter 18.45 OVERLAY DISTRICTS

18.45.010 Purpose.

A. The purpose of an overlay district is to address special concerns which are unique to a specific situation when such concerns do not effect entire zone districts and may cross zone district boundaries.

B. The intent of establishing overlay districts is to provide development standards designed specifically for the special circumstances found within the overlay district. (Ord. 16-1993 (part)).

18.45.020 Identification of districts.

The boundaries of an overlay district shall be established by special studies related to the purpose of the district. Such study shall result in:

A. Incorporation of a Map. A map shall be created and incorporated into this ordinance which shall identify the limits of the overlay district.

B. Specific Regulations. Special regulations which apply within the boundaries of the overlay district shall be created to guide development within the district. Such regulations shall be incorporated into this title after public hearings as an amendment to this title and shall be used to review and regulate the development of all land uses in any zone district which is within the boundaries of the overlay district. (Ord. 16-1993 (part)).

18.45.030 Significance of overlay districts.

The regulations of any overlay district shall apply to all property within the identified boundaries of such district and all development shall comply with such regulations. In case there is a conflict between the regulations of the overlay district and those of the zone district in which the proposed development is located, the more restrictive shall apply. (Ord. 16-1993 (part)).

18.45.040 Establishment of overlay districts.

The following overlay district(s) are established and all maps and regulations apart thereof are hereby incorporated into this title:

18.45.050 Conservation Overlay District

18.45.060 Flood Plain Designation and Flood Damage Prevention. (Ord. 16-1993 (part)).

18.45.050 Conservation overlay district.

A. Purpose. The purpose and design of the conservation district is to protect, restore or enhance lands which, due to the existence of factors which make the area environmentally sensitive (such as: riparian habitats, natural wildlife areas, wildlife migration routes, sensitive fishery conditions, eagle nesting areas or facilities of special historic or educational value) require special design or management consideration and more careful planning to ensure that the uses allowed in the underlying zone district address these special circumstances.

B. Permitted Uses.

1. All uses permitted in the underlying zone district may be permitted in the conservation overlay district but shall require either a special use permit or shall be processed as a simplified planned unit development as described in subsection C next below.

2. Any clearing of land, removal of vegetative cover, excavation or other disturbance to the natural conditions of a site within the conservation district shall require a special use permit.

3. Uses existing within a conservation overlay district prior to the establishment of such district shall be allowed to continue in a manner similar to that prior to the establishment of the conservation district. However, any expansion of such uses shall conform to the regulations herein and shall require a special use permit.

C. Procedures.

1. Step 1-A Preapplication Meeting. A preapplication meeting shall be held with applicant or an authorized representative and the planning director. The purpose of this meeting is to familiarize the applicant with the applicable regulations of the town and with any special conditions which must be addressed for the area within the conservation overlay district. At this meeting the planning director shall become familiar with the proposed project and shall inform the applicant of the options which exist for proceeding with the proposed use.

2. Step 2-Determination of Process. The applicant may choose the procedure from either of the following options. However, the method selected must be appropriate for the scale of the proposed development and must properly address the special circumstances in the conservation overlay district. Failure to properly address the specific circumstances may result in the denial of the application regardless of the procedure followed.

3. Option 1-Special Use Permit. The applicant may apply for a special use permit following the procedures in Section 18.55.015. Such application shall demonstrate how the proposed use addresses the special conditions within the conservation overlay district. The planning commission may recommend that the applicant follow the procedures in Option 2 if the proposed special use permit application does not adequately address the conditions of the area within the conservation overlay district in accordance with the purpose of the conservation district.

4. Option 2-Simplified Planned Unit Development. This option may allow the applicant the flexibility to address the conditions in the conservation overlay district through the planned unit development process without requiring the submittal of information which may not be necessary to evaluate the proposed project.

a. The applicant shall meet with the planning commission at a regular or special meeting of the commission prior to submitting a request for PUD zoning. At this meeting the applicant shall provide conceptual information regarding the proposed use of the land and sufficient information to demonstrate how the proposed plan addresses the special conditions within the conservation overlay district in accordance with the purpose of the district.

b. Based on the information presented by the applicant and planning staff at the preapplication meeting, the planning commission may direct the applicant to proceed with the PUD process in Section 18.55.030, but may waive any of the application requirements contained in that section. Notification of any waived requirements shall be provided to the applicant in writing by the planning director.

D. Supplementary Regulations.

1. The natural state of sites within a conservation overlay district shall be restored, enhanced or maintained to the greatest extent possible.

2. Uses in the conservation overlay district shall be planned and carried out in a manner which minimizes or mitigates any disturbance of the natural conditions within the overlay district.

3. The application for special use permit or planned unit development shall include special regulations which will be applicable to use of the area within the conservation overlay district and which address the special conditions within the district in accordance with the purpose of the conservation overlay district.

4. The board of trustees may consider input from specialized agencies such as the State Division of Wildlife in the review of any applications within the conservation overlay district. (Ord. 16-1993 (part)).

18.45.060 Floodplain designations and flood damage prevention.

A. Flood damage prevention regulations are set forth in Chapter 15.20 of the Carbondale Municipal Code. (Ord. 16-1993 (part)).