

**Effective Date of Updated Policy:
August 10, 2024**

**LITTLE ELK CREEK VILLAGE HOME OWNERS ASSOCIATION
DITCH MAINTENANCE POLICY AND PROCEDURE**

The following Ditch Maintenance Policy and Procedure was adopted by the Board of Trustees of the Little Elk Creek Village Home Owners Association (“Association”), at a regular meeting of the Board of Trustees held on March 15, 2024, and updated at a regular meeting of the Board of Trustees held on July 10, 2024.

WHEREAS, the Board of Trustees of the Association has the authority to adopt rules and regulations, pursuant to Article VII, Section 1 of the Bylaws and the Association’s Policy and Procedure regarding Adoption, Amendment, and Enforcement of Policies, Procedures, Rules and Regulations; and

WHEREAS, the Board of Trustees of the Association has determined that it is reasonable and necessary to adopt this Ditch Maintenance Policy, which is intended to preserve, protect and enhance the property values of the Association’s member Owners; and

WHEREAS, the Association is the owner of certain water rights adjudicated by the State of Colorado that require adherence to the laws and regulations applicable to ditch access and maintenance, and for which the Association requires the cooperation of all Owners for such compliance as stated in Amended Protective Covenants with First, Second, Third & Fourth Amendments for the Little Elk Creek Subdivision Filing No. 1 and Filing No. 2 (“Protective Covenants”) paragraph 2; and

WHEREAS, the infrastructure for the Association’s domestic water supply has been developed pursuant to an Augmentation Plan issued by Water Division No. 5 of the State of Colorado in 1986, and the Association is legally bound to conform to the terms of that Augmentation Plan which require the Association to maintain proper ditch and pond structures to ensure riparian return flow from the irrigation control structures that operate within the Association’s boundaries; and

WHEREAS, it is incumbent upon the members of the Association to ensure that the benefits of the Association’s water rights are enjoyed by all members of the Association, pursuant to Protective Covenant paragraph 5; and

WHEREAS, the Association and its agents have the right “to enter upon any lot or lots at reasonable times for the purpose of repair, construction or maintenance of irrigation canals or ditches located upon existing easements in order to utilize any irrigation rights vested or owned by it,” pursuant to Protective Covenant paragraph 5; and

WHEREAS, the Association has the right “to regulate, manage and maintain the supply of domestic water in Little Elk Creek Subdivision, and to manage and maintain the easements reserved” to the Association, pursuant to Protective Covenant paragraph 16; and

WHEREAS, the Board of Trustees for the Association has determined that this policy and procedure does not create an impact that varies among different groups of Owners but rather imposes equivalent benefits and burdens upon all Owners; and

NOW, THEREFORE, the Board of Trustees adopts the following Ditch Maintenance Policy and Procedure:

1. Association to categorize ditches for water flow. The Board shall categorize its irrigation ditches in three levels. Level A ditches are those ditches that receive water from Little Elk Creek. Level B ditches are those ditches that receive water from the Boram & White Ditch or the Little Elk Creek Ditch and that transport water through the boundaries of Little Elk Creek Village for delivery to downstream ditch diverters. Level C ditches are those ditches that receive water from the Boram & White Ditch or the Little Elk Creek Ditch but terminate within the boundaries of Little Elk Creek Village. The required water carrying capacity of each ditch category shall be delineated by reference to either cubic feet per second (“cfs”) of water transport, or by reference to a ditch width and depth.
2. Association to identify irrigation control structures. The Association is required by the Augmentation Plan to ensure that irrigation control structures are maintained within the boundaries of Little Elk Creek Village to ensure that there is adequate ground water return flow to Capitol Creek after the Association’s out-of-priority use for domestic water delivery. (Irrigation control structures have been typically called “ponds” by the member-owners of the Association.) By law, irrigation control structures are filled by irrigation ditches and must drain within 72 hours of the completion of irrigation season. Irrigation control structures may not be lined to impede drainage and conversion to a non-draining landscaping pond feature except as may be approved by the Association’s Architectural Control Authority and as may be allowed by law, which may (*inter alia*) require a special permit issued by Pitkin County and issuance of a Water Court decree related to the management of that pond.
 - a. Pre-existing lined ponds. The Association acknowledges that in prior years homeowners have been authorized to install impermeable lining on the ponds that are in place on their properties, to capture and contain water. These lined ponds may have been installed for aesthetic purposes. The water rights of the Association, however, allow only irrigation uses. Due to evaporation, aesthetic ponds may impact the return flow requirements of the Association’s adjudicated water rights. With changes in enforcement of Colorado’s water policies associated with drought in the Colorado River Basin, such lined ponds may become the subject of enforcement activity by the Water District Engineer. Each homeowner must, therefore, ensure that irrigation flow into their lined pond can be stopped immediately upon notice from the Association, through construction and maintenance of a bypass ditch that will deliver water downstream without containment.

3. Maintenance of Ditch and Irrigation Control Structure on Owner member's property. Each member of the Association is responsible to maintain the condition of the ditches and irrigation control structures on their property, at least as follows:
 - a. Each ditch shall be maintained to deliver water by the cfs or by the ditch size requirements designated by the Association for the category of ditch that crosses the Owner member's property;
 - b. Each irrigation control structure must be maintained to comply with the Augmentation Plan;
 - c. Each irrigation control structure must have a bypass option to enable drainage maintenance if required by the applicable ditch companies;
 - d. Each ditch shall be maintained reasonably clear of willows and other impediments to ditch inspection and maintenance, through burning in accordance with Pitkin County regulations, digging by the Owner, digging by the Association's agents, or other means;
 - e. The Owner shall coordinate with the Association to maintain ditch structures on or adjacent to Association property, e.g. culverts under roads;
 - f. The Owner shall coordinate with the Association as required by the Architectural Guidelines before changing or abandoning any ditch or irrigation control structure;
 - g. The Owner shall facilitate inspection of the ditches on the Owner's property by installation of a gate or other means for the agent to pass through or over fences;
 - h. The Owner shall facilitate traverse of equipment across the Owner's property if necessary for ditch maintenance; and
 - i. The Owner shall take such other actions as may be reasonably requested by the Association to ensure compliance with all legal obligations of the Association to the applicable ditch companies and under broader Colorado law.
4. Periodic inspection by Association. The Association will inspect the Association's ditch system each year prior to the irrigation season, and may inspect ditches at any time to ensure the free flow of water as required by law, to avoid damage to downstream ditches, and to ensure efficient delivery of water downstream. Such inspections will be conducted "at reasonable times," pursuant to Protective Covenant paragraph 5, based on the reasonable discretion of the Association's agents. The Association may, but it not required, to provide prior notice to Owners regarding inspection. There may be circumstances where the Association's agent must enter a Lot to perform an inspection or maintenance activity without providing prior notice. To the extent reasonably feasible, the Association's agents shall not intrude upon the privacy of persons within the dwelling located on the Lot.
5. Ensure ditches are ready for opening and closing. The Association will notify Owners of the opening and closing dates for the irrigation season promptly after learning the dates from the applicable ditch companies. Owners must thereafter have ditches ready for opening and closing as described in this policy.
6. Mitigation of identified issues. When the Association identifies issues that have a negative effect on the prescribed flow within the ditches that traverse an Owner's

property, the Owner will cooperate with the Association to mitigate those issues. The Association will notify the Owner by email or other means of issues arising from ditch inspection and suggest a procedure for mitigation. The Owner shall respond by email to the Association's notification of issues within three days and shall take action to facilitate the required flow within seven days. The Association and the Owner shall work collaboratively to resolve the issues that require remediation.

7. Cooperate in costs. The Owner is responsible for the costs required to maintain the ditches and irrigation control structures on the Owner's property. Where the Owner's ditches adjoin the ditches of other owners or the Association's greenbelt properties, or when the Owner's ditches include an irrigation structure operated by an applicable ditch company, the Owner will coordinate with the Association to address the costs of maintenance. If the costs of maintenance exceed the Owner's financial resources, the Association may undertake the required maintenance and assess the Owner for the costs over a period of time, or may place a lien on the Owner's property in accordance with applicable law.
8. Enforcement. This policy may be enforced as provided in the Association's policy on Enforcement of the Declaration, Bylaws, Rules & Regulations.

SECRETARY'S CERTIFICATION: The undersigned, being the Secretary of The Little Elk Creek Village Homeowners' Association, a Colorado non-profit corporation, certifies that the foregoing Ditch Maintenance Policy and Procedure was adopted by the Board of Trustees of the Association, at a duly called and held meeting of the Board on March 14, 2024, and in witness thereof, the undersigned has subscribed his/her name.

THE LITTLE ELK CREEK VILLAGE HOMEOWNERS' ASSOCIATION,
a Colorado non-profit corporation

By:



Sharon Caulfield, Secretary