

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT made and entered into this 22<sup>nd</sup> day of March, A.D. 1995, by and between Ruth M. Kapushion, hereinafter referred to as "ANNEXOR," and the TOWN of Crested Butte, a municipal corporation, of the County of Gunnison, State of Colorado, hereinafter referred to as the "TOWN."

W I T N E S S E T H:

WHEREAS, ANNEXOR is the owner of the property described in Exhibit A, attached hereto (the "Property") and Annexor's predecessor in interest has filed a petition to annex said property to the TOWN; and

WHEREAS, the parties mutually agree pursuant to the Town Annexation Ordinance that the annexation of the property to the TOWN satisfies the criteria for Annexation Decision set forth in Section 15-4-8.B.2 of ~~1987~~ 1987 Crested Butte Municipal Code, and shall not create any additional cost or impose additional burden on the existing residents of the TOWN to provide public facilities and services to the property after annexation.

In consideration of the foregoing premises and the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them.

IT IS AGREED:

I

ANNEXATION

The TOWN agrees to the annexation of the whole parcel representing the Property.

II

DEFINITIONS

"Annexor" shall mean and refer to the ANNEXOR, and their heirs, successors, assigns, and designees.

"Final Subdivision Plat" shall mean The Kapushion Subdivision as finally approved by the TOWN, the approved Preliminary Plan for

The Kapushion Subdivision, and all approved plans submitted by ANNEXOR to the Town in connection therewith.

"Public Improvements" shall mean the widening of Butte Avenue and installation of curb and gutter; the construction of Ruth's Road; water and sewer lines; gas, electric, cable TV and U.S. West utility installation; storm drainage improvements; and construction of the dedicated trails within the Final Subdivision Plat.

### III

#### STREETS AND TRAILS

- A. ANNEXOR shall dedicate and convey by warranty deed the right-of-way for Ruth's Road for the full width thereof, and design and fully improve such Road, and curbs and gutters, in conformance with the specifications and as shown on the Final Subdivision Plat for the Property, and subject to approval by the Town's Director of Public Works or his designee of the materials used, and to his final inspection. ANNEXOR shall dedicate and convey additional right-of-way for Butte Avenue as shown on the Final Subdivision Plat without cost to the TOWN. Such dedication of streets shall occur at the time of subdivision platting; however, ANNEXOR agrees to dedicate such rights of way at an earlier time if and when determined by the TOWN to be required for commencement of construction of such streets or for extension of utilities.
- B. ANNEXOR shall pay for installation of traffic and street signs for all streets within the Property.
- C. After completion of the improvement of Ruth's Road as set forth in Section III A., the TOWN shall conduct a final inspection of the improvements and shall accept said improvements if they comply with the referenced design, materials and construction specifications. If the TOWN does not accept the improvements, it shall notify ANNEXOR as to the deficiencies thereof and ANNEXOR shall cause said deficiencies to be cured within thirty days after receiving written notice of the deficiencies, unless otherwise agreed by the parties. Notwithstanding the foregoing, the TOWN shall have the right to delay the paving of Ruth's Road until the summer after the year the curbs, gutters and road base are completed. The ANNEXOR shall warrant the design, materials and construction of the improvements for a period of two years after acceptance by the TOWN, and for this purpose, ANNEXOR agrees to leave \$100,000.00 (which is inclusive of the \$17,500 for paving Ruth's Road) available through its letter of credit or Town approved substitute escrow account referenced in Section IX, as that amount may be reduced pursuant to Section IX.K between

the time of acceptance of the public improvements and the two year warranty date.

- D. The construction of the trails shown on the road and utility plans of ANNEXOR shall be at ANNEXOR's expense.

#### IV

#### WATER AND SEWER

- A. ANNEXOR agrees to install water distribution and sewer collection lines, pump stations, and other facilities within the Property in accordance with the standards and specifications set forth in plans approved by the TOWN, and subject to the TOWN's approval, and to dedicate the same, except the service lines to each lot, to the TOWN. The ANNEXOR shall connect the water and sewer lines to the TOWN's municipal water and sewer systems, including the necessary extension of main lines, at ANNEXOR's cost. The TOWN hereby grants temporary construction easements for installation of water and sewer main extensions where required. The construction and location easement for the necessary main water line extension in the form substantially set forth in Exhibit B shall be ~~be~~ <sup>be</sup> executed by the ANNEXOR prior to the execution hereof, and recorded within five days after the execution of this Agreement.
- B. The TOWN shall provide water and sewer service to the Property within a reasonable period of time after notification of need by the ANNEXOR as required for development of the Property.
- C. The parties mutually agree that ANNEXOR shall design and install water lines and fire hydrants within the Property in accordance with the standards and specifications set forth in the Final Subdivision Plat. It is expressly understood that the TOWN may thereafter be unable to provide water for fire protection to any of the Property prior to the installation of required fire hydrants.
- D. Butte Avenue sewer availability charges will commence when all public improvements have been accepted by the TOWN, and shall be paid monthly as billed. Ruth's Road sewer availability charges and all water availability charges will begin when the sale of each lot is closed. Tap fees as are required by the TOWN will be paid at the time said taps are needed. The ANNEXOR agrees that all promises of water and sanitary sewer service made by this Agreement are subject to any general restrictions of the TOWN relating to the provision of water and sanitary sewer service generally.

- E. Within forty-five (45) days of final annexation the ANNEXOR shall transfer by deed to the TOWN the rights to all owned mineral rights, to deep well aquifers underlying the Property, and to the property described on Exhibit C necessary to widen the public right-of-way on Butte Avenue to sixty-four (64) feet from the extension of the west boundary of Block 2 of the Town to the east boundary of the Property.

V

STORM DRAINAGE/ENVIRONMENTAL TESTING/UTILITIES

- A. ANNEXOR shall dedicate rights of way, and design and construct storm drainage facilities within the property in conformance with the specifications of Exhibit D. ANNEXOR agrees for itself and its successors and assigns that drainage water will be deposited outside the Property on the land east of Lot 33 owned by a related entity of Annexor and that said related entity and its successors and assigns shall hold the TOWN harmless as to any claims about water draining onto their land. ANNEXOR agrees to cause the related entity of ANNEXOR which owns the land north of the Property to allow access to the TOWN as reasonably needed to clear the sediment from the drainage ditches north of Lots 2 and 25 of the Final Subdivision Plat, and north of the cul-de-sac on Ruth's Road.
- B. ANNEXOR agrees prior to construction of the public improvements to test the gravel fill deposited on the Property during the 1970's, to remove it if it is found to contain hazardous substances, and to replace said gravel fill to current grade as needed. The TOWN's Director of Public Works or his designee shall determine if such removal is reasonably necessary, and approve the replacement fill and amount if removal occurs.
- C. ANNEXOR shall pay for the cost of moving the overhead lines as described in subparagraph D below, and for any other installation of utilities.
- D. ANNEXOR will, at their cost, terminate the large overhead power line at the alley between Butte Avenue and Teocalli Avenue on First Street and turn it at that point down the alley to the west. At the west end of the alley, the line will connect with the existing line which runs along the abandoned railroad grade on the Trappers Crossing lots towards Peanut Lake. The overhead line between First Street and the west edge of the TOWN and continuing west to the railroad grade will be removed. The power line pole at the intersection of First Street and Butte Avenue will be moved north to the north edge of the TOWN right-of-way on Butte Avenue and a guy wire will be installed to the north on the

TOWN park lot. ANNEXOR shall enter into an agreement with GCEA to do the work, a copy of which agreement shall be provided to the TOWN prior to work commencing on the lines.

## VI

### PUBLIC LAND DEDICATION

- A. ANNEXOR, agrees to dedicate to TOWN at the time of platting, those areas so designated on Exhibit E.
- B. ANNEXOR agrees that the lands donated to the TOWN shall not be used as borrow or fill areas by the ANNEXOR.

## VII

### ZONING AND DESIGN

- A. The parties recognize that it is the intent of ANNEXOR to develop the property in a manner generally consistent with the Zoning Map, Exhibit F, attached hereto, and that the granting of R-1 zoning for not less than 33 single family lots is a condition to annexation of the property. ANNEXOR agrees that the design, improvement, construction, and development of the property will be in accordance with the TOWN'S Zoning and Land Use Ordinance, except as otherwise set forth in the current provisions of the Declaration of Covenants, Conditions and Restrictions for Kapushion Subdivision.
- B. The lands to be dedicated to the TOWN shall be zoned P.

## VIII

### AFFORDABLE HOUSING

- A. ANNEXOR shall designate those five lots identified on Exhibit G (the "Affordable Housing Lots") for owner occupied, affordable housing which shall be subject to the restrictions set forth in the TOWN'S 1995 Affordable Housing Guidelines, a copy of which is attached hereto as Exhibit H, and any amendments thereto. ANNEXOR understands and agrees that these lots shall be deed restricted in the form substantially set forth in Exhibit I.
- B. ANNEXOR agrees to include in the Covenants (as hereinafter defined) the location of and the restrictions on the affordable housing lots.

- C. Subject to the provisions of this subparagraph C, ANNEXOR agrees that, as an incentive to sell the Affordable Housing Lots, it will not sell the last seven of the 28 lots which are not Affordable Housing Lots until the Affordable Housing Lots have been sold. (These seven lots are sometimes referred to as the "Restricted Sale Lots.") If the remaining 21 lots have been sold, the TOWN shall reasonably consider and negotiate in good faith with ANNEXOR to the extent that ANNEXOR has exercised good faith efforts to sell the Affordable Housing Lots, but has been unable to do so for reasons outside of ANNEXOR's control, including but not limited to a lack of qualified applicants, and local economic conditions. At said time, the TOWN will reasonably consider reductions in the number of Restricted Sale Lots as ANNEXOR sells the Affordable Housing Lots.

## IX

## MISCELLANEOUS PROVISIONS

- A. ANNEXOR intends to complete the construction of public improvements in accordance with the schedule set forth in subparagraph K below. ANNEXOR shall use reasonable efforts, to the extent that it is within ANNEXOR'S control, to construct the improvements generally within the times set forth therein. To the extent that ANNEXOR makes cuts in or otherwise disturbs the surface of Butte Avenue in 1995, ANNEXOR shall repair the same no later than October 1, 1995. At all times prior to the completion and acceptance of public improvements, ANNEXOR shall have a letter of credit in a generally standard commercial form as reasonably approved by the TOWN in the amount of 125% of the estimated improvement costs as agreed upon by the TOWN to insure the completion and acceptance of the public improvements. The amount of the letter of credit may be reduced from the amount set forth in this Agreement, after contracts for the construction of the Public Improvements are signed, with the approval of the Town Council.
- B. Dedicated utilities and streets will be accepted upon completion if constructed according to specification and in a workman-like manner as determined by the TOWN. The TOWN will begin snow plowing and utility line maintenance upon acceptance but ANNEXOR will warrant the utilities and streets for defects in materials and installation for two years from the date of acceptance, exclusive of damage caused by the TOWN's plowing or third parties.
- C. All Public Improvements shall be designed by a registered engineer in accordance with generally accepted engineering principles, and applicable municipal, State and Federal practices and law. The TOWN will be provided with all

specifications and bid materials. The TOWN reserves the right to review, comment and/or reject any or all specifications or materials in accordance with the appropriate specifications.

The Public Improvements will be designed and constructed so as to be durable in nature and not require other than normal maintenance. The ANNEXOR shall be responsible for assuring that the Public Improvements are constructed in accordance with said engineering specifications and the approved Final Subdivision Plat. The ANNEXOR and engineer will monitor such installation and onsite conditions so as to assure that the specifications are adequate given field conditions encountered during actual construction. If required, said specifications will be changed to reflect needs dictated by actual conditions not anticipated by preliminary soils testing, and the TOWN will immediately be provided with the new specifications for immediate response.

- D. ANNEXOR will provide the TOWN with one hard copy and one computer disc copy (3 1/2 inch) of all drawings associated with the annexation and subdivision including but not limited to: streets, trails, approved plats and as built utilities. The computer disc copy will be compatible with AutoCAD Release 12.
- E. ANNEXOR agrees to allow snow storage for snow removal from Ruth's Road and Butte Avenue on ANNEXOR's land north of the subdivision in the area designated on the drawings which area shall be accessed by a 60 foot wide gate at the north end of Ruth's Road which ANNEXOR shall construct at their cost. The maintenance, repair and replacement of said gate shall be at the expense of the TOWN, unless such expense is necessitated by the negligent acts of the ANNEXOR, in which case ANNEXOR shall pay the expenses. The TOWN agrees not to create snow piles unreasonably high.
- F. The ANNEXOR has met with the Crested Butte Fire Protection District and either has or will be entering into an agreement regarding impacts and fees, said agreement to be in the form which is attached as Exhibit J.
- G. ANNEXOR agrees at its expense to construct, maintain and replace, as necessary, a fence along the northern boundary of the Property.
- H. The existing USGS reference monument on or near the Property will be reinstalled by ANNEXOR within a reasonable time after completion of the Public Improvements.
- I. The TOWN agrees not to haul snow into the snow storage area west of Lot 9 between the hours of 10:00 p.m. and 5:00 a.m.

J. ANNEXOR agrees that the TOWN shall have the right, but not the obligation, to enforce the following provisions of the Declaration of Covenants, Conditions and Restrictions for Kapushion Subdivision: Articles 1.4, 2.16, 2.24, 2.25, 2.26, 2.27, and 2.28. ANNEXOR further agrees that said Declaration shall not be terminated, or the provisions of Article 1.4, Article 2, or Article 5.1, amended, without the prior written consent of the TOWN.

K. 1. The deadline for completing the Public Improvements, except the paving of Ruth's Road at the sole discretion of the Town, shall be six months after commencement of the work, but in no event later than October 1, 1996, provided that ANNEXOR can delay the completion of the Public Improvements to October 1, 1998, but only if ANNEXOR has not sold any lots prior to October 1, 1996.

2. ANNEXOR has provided a signed letter of credit for 125% of the estimated cost of the Public Improvements as part of ANNEXOR'S submission for Final Annexation. The letter of credit in that amount would be active from the commencement of construction until the Public Improvements are accepted or November 1, 1996, whichever is earlier, (or to October 1, 1998 if ANNEXOR so elects pursuant to subparagraph K(1) above) and if the Public Improvements are accepted by that date, the letter of credit would be reduced to the amount of 15% of the actual cost of constructing the Public Improvements to cover the two year warranty for the Public Improvements, plus \$17,500 for paving Ruth's Road if the Town has requested that Ruth's Road not be paved until the summer after the road base is completed. The letter of credit may be substituted at any time by an escrow account approved by and in the TOWN'S name. The letter of credit may be drawn against by the Town only in such amounts as are reasonably necessary for the Town, in its determination, to complete any unfulfilled obligation of ANNEXOR pursuant to this Agreement to complete the construction of the Public Improvements. If ANNEXOR elects to extend the Public Improvements deadline to October 1, 1998, ANNEXOR shall deliver to the TOWN no later than October 1, 1996, a substitute Letter of Credit that shall be valid through November 1, 1998. Said Letter of Credit shall be subject to reasonable approval by the TOWN.

3. Prior to closing on the sale of any lots in the Property, ANNEXOR will execute a first deed of trust to the Town for 7 of the lots in the Property. None of the seven lots shall be an Affordable Housing Lot, but any or all of said seven lots may also be one of the Restricted Sale Lots. This deed of trust would contain language allowing for its foreclosure by the Town if the Public Improvements are not timely completed according to specifications and the Town becomes involved in causing the Public Improvements to be completed. The deed of



trust would be released upon timely completion and acceptance by the Town of the Public Improvements. If ANNEXOR wanted to sell any of these lots in an arms length transaction before acceptance, ANNEXOR may put the proceeds from the sale into an escrow account approved by and in the TOWN'S name which would replace the Town's deed of trust security in the sold lots, or ANNEXOR could substitute another lot in lieu thereof, subject to the limitations set forth in this subparagraph 3.

4. The Town will delete by code amendment the current annexation requirement prohibiting the sale of lots prior to completion of Public Improvements, and allow the sale of lots to close prior to improvement completion. All sales contracts shall include a notice that upon a closing of the sale of any lot the deadline imposed by the Town for completion of the Public Improvements, is October 1, 1996, with the exception of the paving of Ruth's Road which may be postponed by the TOWN until the start of fall, 1997. ANNEXOR shall place the sales proceeds from closings into an escrow account for the exclusive purpose of constructing the Public Improvements. Commencement of work on the Public Improvements shall not occur until the entire unpaid bid amount for the Public Improvements is available in the account.

5. No building <sup>improvements</sup> ~~permitted~~ within the Property shall be approved until after the Public Improvements, with the exception of the paving of Ruth's Road, at the TOWN'S discretion, are accepted by the Town.

6. The estimated cost of the Public Improvements of \$540,000 includes costs for electric service, telephone service and other utilities. To the extent that ANNEXOR has paid any of those costs prior to the annexation of the Property and provides acceptable evidence of the same to the TOWN, the minimum amount of the sales escrow pursuant to subparagraph 4 above shall be reduced accordingly.

- L. Each lot of the Final Subdivision Plat shall be required to provide a soils report to the TOWN'S chief building official as the basis for designing foundations. ANNEXOR shall notify each lot purchaser of the same in the contract for sale.
- M. At the time of execution of each lot sale contract, ANNEXOR shall obtain an acknowledgement in writing from each purchaser that said purchaser received a copy of the Declaration of Covenants, Conditions and Restrictions for Kapushion Subdivision.

X

GENERAL PROVISIONS

- A. THIS AGREEMENT shall be recorded with the Clerk and Recorder in Gunnison County, Colorado, shall run with the land constituting the Property, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. ANNEXOR shall notify the TOWN of assignments and the names of assignees.
- B. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver of the TOWN'S legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants nor shall this Agreement prohibit the enactment by the TOWN of any fee which is of uniform or general application.
- C. No right or remedy of disconnection of the described Property from the TOWN shall exist other than that provided by Colorado Revised Statutes Section 31-12-119. In the event the Property or any portion thereof is so disconnected at ANNEXOR'S request, the TOWN shall have no obligation to serve the disconnected property, and this Agreement shall be void and of no further force and effect as to such property.
- D. If the annexation of the Property or any portion thereof is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the Property from the TOWN, then this Annexation Agreement and all provisions contained herein shall be null and void and of no further effect. If the referendum challenge fails, then ANNEXOR and the TOWN shall continue to be bound by all the terms and provisions of this Annexation Agreement.
- E. In the event that the annexation of the Property or any portion thereof is voided by final action of any court such action not being associated with a referendum or initiative action, the TOWN and ANNEXOR shall cooperate to cure the legal defect which resulted in disconnection of the Property, and upon such cure this Annexation Agreement shall be deemed to be an agreement to annex the Property to the TOWN pursuant to Colorado Revised Statutes, Section 31-12-121. ANNEXOR shall reapply for annexation as and when the property becomes eligible for annexation as determined by the TOWN.
- F. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the Courts

held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular part, term, or provisions held to be invalid.

- G. All fees recited in this Agreement shall be subject to amendment by the TOWN Council by Ordinance. Any amendment to fees shall be incorporated into this Agreement as if originally set forth herein.
- H. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. There shall be no modification of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.
- I. This Agreement shall not terminate upon annexation of the Property, and shall benefit and bind the parties and their successors and assigns. After annexation, so long as the Property is located within the municipal boundaries of the TOWN, it shall continue to be subject to the ordinances, rules and regulations of the TOWN.
- J. The parties agree that if formal arbitration occurs or a legal or equitable action is brought to interpret, construct or enforce the terms of this Agreement or the documents provided for herein, the substantially prevailing party in such arbitration or action shall be entitled to an award for its attorney's fees, and costs.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to place their hands and seals upon this Annexation Agreement the date and year first above written.

Ruth M. Kapushian  
ANNEXOR

TOWN OF CRESTED BUTTE, COLORADO  
A municipal corporation

By [Signature]  
Mayor

ATTEST:

TOWN CLERK

STATE OF COLORADO  
COUNTY OF GUNNISON

) ss.

The foregoing instrument was acknowledged before me this 22<sup>nd</sup>  
day of March, 1995, by RUTH M. KAPUSHION, Annexor.

Witness my hand and official seal.

Notary Public

My commission expires:

9/4/98

STATE OF COLORADO  
COUNTY OF GUNNISON

) ss.

The foregoing instrument was acknowledged before me this 22<sup>nd</sup>  
day of March, 1995, by JAMES A. SCHMIDT, Mayor and  
KERRY FOLGER, Town Clerk of the Town of Crested Butte.

Witness my hand and official seal.

Notary Public

My commission expires:

9/4/98

EXHIBIT LIST

Exhibit A	Legal Description of ANNEXOR's property
Exhibit B	Utility Easement Agreement
Exhibit C	Additional Butte Avenue ROW
Exhibit D	Storm Drainage Facilities Specifications
Exhibit E	Dedicated Public Lands
Exhibit F	Zoning Map
Exhibit G	Affordable Housing Lots
Exhibit H	Crested Butte 1995 Affordable Housing Guidelines
Exhibit I	Affordable Housing Lots Restrictive Deeds
Exhibit J	Crested Butte Fire Protection District Agreement

~~Exhibit K~~

Exhibit A

A tract of land located in the S 1/2, SE1/4, SECTION 34, T13S, R86W, 6th P.M., Gunnison County, Colorado, described as follows: beginning at a point on the South Line of said Section 34 ( also on the North R-O-W of Butte Ave. in the Town of Crested Butte ) from whence the Southeast Corner of said Section 34 bears S 89° 45' 31" E 1052.82'; thence N 00° 01' 42" W 158.03'; thence N 86° 26' 05" W 818.00'; thence N 00° 01' 42" W 324.23'; thence S 89° 58' 18" W 370.00'; thence S 00° 01' 42" E 301.62'; thence N 86° 26' 05" W 422.99' to the West line of said S1/2, SE1/4; thence S 00° 59' 56" W 250.90' to the S1/4 Corner of said Section 34; thence S 89° 45' 31" E 1604.31' to the point of beginning, containing 10.19 Acres more or less.

# UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT is granted as of this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by R.E. LEE, JR. and BARBARA H. LEE ("Grantors") and RUTH M. KAPLUSHION ("Grantee").

## RECITALS

- A. Grantor is the owner of certain real property located in Gunnison County, State of Colorado more particularly described in Exhibit A attached hereto consisting of a Parcel A (the "Power Line Easement Parcel") and a Parcel B (the "Utility Easement Parcel"), collectively sometimes referred to herein as the "Easement Parcel".
- B. Grantee is the owner of certain real property located in Gunnison County, State of Colorado and more particularly described on Exhibit B attached hereto (the "Benefitted Property").
- C. The Benefitted Property is under consideration for annexation to the Town of Crested Butte.
- D. Grantor and Grantee desire to establish certain agreements for the installation of utilities by Grantee within the Easement Parcel.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration as recited herein, Grantor hereby grants and establishes the non-exclusive, perpetual easements provided herein, and Grantor and Grantee hereby agree as follows:

1. Grantor hereby grants and conveys to Grantee, subject to its rights hereinafter reserved, a perpetual, non-exclusive easement over and across the Power Line Easement Parcel for the purpose of the installation of power poles and power lines, but not to include any major transmission lines.
2. Grantor hereby grants and conveys to Grantee, subject to its rights hereinafter reserved, a perpetual, non-exclusive easement over and across the Utility Easement Parcel for the purpose of the installation of water lines and underground power lines.
3. As partial consideration for the grant of this easement, an affiliate of Grantee has granted to Grantor a Fishing License Agreement of even date herewith.
4. The easements provided for herein shall be appurtenant to and for the benefit of the Benefitted Property, and Grantee, Gunnison County Rural Electric Association, and the Town of Crested Butte shall have the right to enter upon the Easement Parcel for the purpose of constructing, operating, maintaining, repairing, and replacing all of the utility lines and all fixtures and devices used or useful in the operation of said lines as contemplated by this easement. Grantee shall also have the right to use so much of the adjoining property of Grantor as is reasonably required for the power pole guy anchors.
5. Grantor hereby reserves the right to use the Easement Parcel for any and all purposes not inconsistent with the rights of Grantee as provided for herein, provided that Grantor shall not place any

buildings within the Utility Easement Parcel, and shall only locate such buildings within the Power Line Easement Parcel that do not interfere with the overhead power lines.

6. Grantee shall repair and restore the surface of the Easement Parcel substantially to its original condition.

7. Grantor hereby warrants that it has fee title to the Easement Parcel.

8. In case of the permanent abandonment of the utilities within the Easement Parcel, all right, privilege and interest granted herein shall terminate with respect to such easement so abandoned.

9. The terms and provisions of this Utility Easement Agreement shall run with the land and shall be binding upon and inure to the benefit of any heirs, successors and assigns of Grantor and Grantee.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Utility Easement Agreement the day and year first above written.

GRANTORS:

GRANTEE:

R.E. Lee, Jr.

Ruth M. Kapushion

Barbara H. Lee

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by R. E. Lee.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

Notary Public





## EXHIBIT A

## PARCEL A

## POWERLINE EASEMENT (20' WIDE)

A 20' wide utility easement located in Lot 4 of "Trapper's Crossing at Crested Butte" in the Northeast 1/4 of the Northwest 1/4 of Section 3, T14S, R86W, 6th. P.M., Gunnison County, Colorado.

Said 20' wide utility easement being 10' on each side of the following described centerline:

Beginning at the intersection of the East property line of Lot 4 in "Trapper's Crossing at Crested Butte" as recorded under Reception #417941 in the Gunnison County Courthouse and the centerline of the Alley of Block 6 of the Town of Crested Butte extended west, whence the North 1/4 Corner of said Section 3 bears N 00°41'06"W 191.53'; Thence along said centerline N63°31'50"W 456.28'. Said easement shall also include areas necessary for power pole guy anchors.

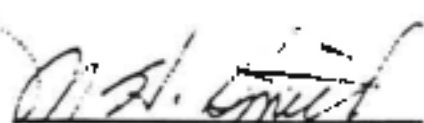
## PARCEL B

## UTILITY EASEMENT (20' WIDE, OVER EXISTING UTILITY EASEMENT, FOR WATERLINE AND POSSIBLY UNDERGROUND POWERLINE)

A 20' wide utility easement located in Lot 4 of "Trapper's Crossing at Crested Butte" in the Northeast 1/4 of the Northwest 1/4 of Section 3, T14S, R86W, 6th. P.M., Gunnison County, Colorado.

Said 20' wide utility easement being 20' west of the following described line:

Beginning at the intersection of the East property line of Lot 4 in "Trapper's Crossing at Crested Butte" as recorded under Reception #417941 in the Gunnison County Courthouse and the south line of the Alley of Block 6 of the Town of Crested Butte extended west, thence along said East property line N 00°41'06"W 199.53' to the North 1/4 Corner of said Section 3.

  
M.H. Smith

L.S. 10738

Commencing from the SW Corner SE1/4 SECTION 34, T13S, R86W, SIXTH P.M., Thence N 00 Degrees 59 Minutes 56 Seconds W a distance of 245.43 feet, Thence S 86 Degrees 26 Minutes 05 Seconds E a distance of 422.99 feet, Thence N 00 Degrees 01 Minutes 42 Seconds W a distance of 301.62 feet, Thence N 89 Degrees 58 Minutes 18 Seconds E a distance of 370.00 feet, Thence S 00 Degrees 01 Minutes 42 Seconds E a distance of 324.23 feet, Thence S 86 Degrees 26 Minutes 05 Seconds E a distance of 818.00 feet, Thence S 00 Degrees 01 Minutes 42 Seconds E a distance of 157.98 feet, Thence S 89 Degrees 45 Minutes 31 Seconds W a distance of 1604.31 feet to the point of origin.



# DEL-MONT CONSULTANTS, INC.

ENGINEERING SURVEYING

542 Main St. • P.O. Box 466 • Montrose, CO 81402 • (303) 249-2251 • Fax (303) 249-2342

## ADDITIONAL RIGHT-OF-WAY TO BE DEDICATED TO THE TOWN OF CRESTED BUTTE

A Strip of Land in the SE 1/4 of Section 34, T13S, R86W, 6th. P.M., Gunnison County, Colorado, described as follows:

Beginning at a point on the South boundary of said SE 1/4 whence the Southeast Corner of said Section 34 bears S 89°45'31" E 772.33 FT.; thence N 89°45'31" W 280.49 FT. along said South boundary; thence N 00°01'42" W 13.03 FT.; thence N 89°58'42" E 280.49 FT.; thence S 00°01'42" E 14.35 FT. to the point of beginning containing 0.088 Acres more or less.

M.H. Smith  
R.L.S. 10738

EXHIBIT A  
BK PG  
762 104  
D  
JTH  
VLM

KAPUSHION SUBDIVISION  
DRAINAGE REPORT

December 16, 1994

Contents

Narrative (2 pages)  
Figure 1  
Calculations

Prepared For: Wayne Meredith, Tina Kapushion & Antonette Kapushion  
P.O. Box 343  
Crested Butte, CO 81224

Prepared By: Del-Mont Consultants, Inc.  
P.O. Box 486  
Montrose, CO 81402

DM #94003



KAPUSHION SUBDIVISION  
DRAINAGE REPORT

## GENERAL

Location

The Kapushion Subdivision is a proposed 33-lot development on the north edge of the Town of Crested Butte. It is bounded by Butte Avenue on the south and the Slate River on the north.

This report addresses the local runoff patterns and required drainage structures in and around the subdivision. An evaluation of the Slate River floodplain is contained in a separate document entitled Kapushion Subdivision Floodplain Analysis dated November 1, 1994.

Drainage Plan

The Town of Crested Butte generally drains in a northeasterly direction, and is bisected by Coal Creek, which flows from the southwest corner to the northeast corner of the Town. A 13-block, 44-acre area north of Coal Creek drains northerly along 1st, 2nd and 3rd Streets, across Butte Avenue, and onto the Kapushion property. An old railroad grade paralleling Butte Avenue about 200 feet to the north has historically intercepted runoff, causing some ponding during major storm events before discharging to Coal Creek to the east. The railroad no longer exists, but portions of the trackbed have been retained as a bike/hike trail as part of the subdivision. Any historical drainage structures crossing the railroad have been rendered inoperable.

Design Criteria

This plan addresses conveyance structures between lots and across the railroad grade so as to pass the design flood for up to a 100 year event without flooding building sites within the subdivision. The Butte Avenue profile creates three discharge points onto the Kapushion property. Outfalls at these points will include curb cuts discharging to v-bottom open channels between lots, drained by culverts under the railroad grade. The culverts are located in the two naturally depressed areas marking the historical flow paths. The west culvert drains the 1st Street Outfall (A), and the east culvert drains the 2nd and 3rd Street Outfalls (B and C, respectively). During major storm events, limited ponding at culvert entrances will be allowed within the area between the building pad and the railroad grade. Based on existing site topography, reasonable guidelines for establishing maximum ponding depths are as follows:

	<u>Maximum Flood Stage</u>	
	<u>25 year</u>	<u>100 year</u>
West Culvert (Outfall A)	8872.5	8873.0
East Culvert (Outfalls B and C)	8873.5	8874.0

## HYDROLOGY

The Rational Method was used to determine quantities of runoff. From topographic mapping of the Town of Crested Butte, drainage areas were determined for each of the three outfalls as shown on Figure 1. Times of concentration were calculated using SCS TR-55 procedures. A runoff coefficient of  $C = 0.7$  was used for the developed areas of town. Design discharges are as follows:

Outfall	25 year (cfs)	100 year (cfs)
A	29.2	37.9
B	22.1	28.4
C	14.7	19.2

## HYDRAULICS

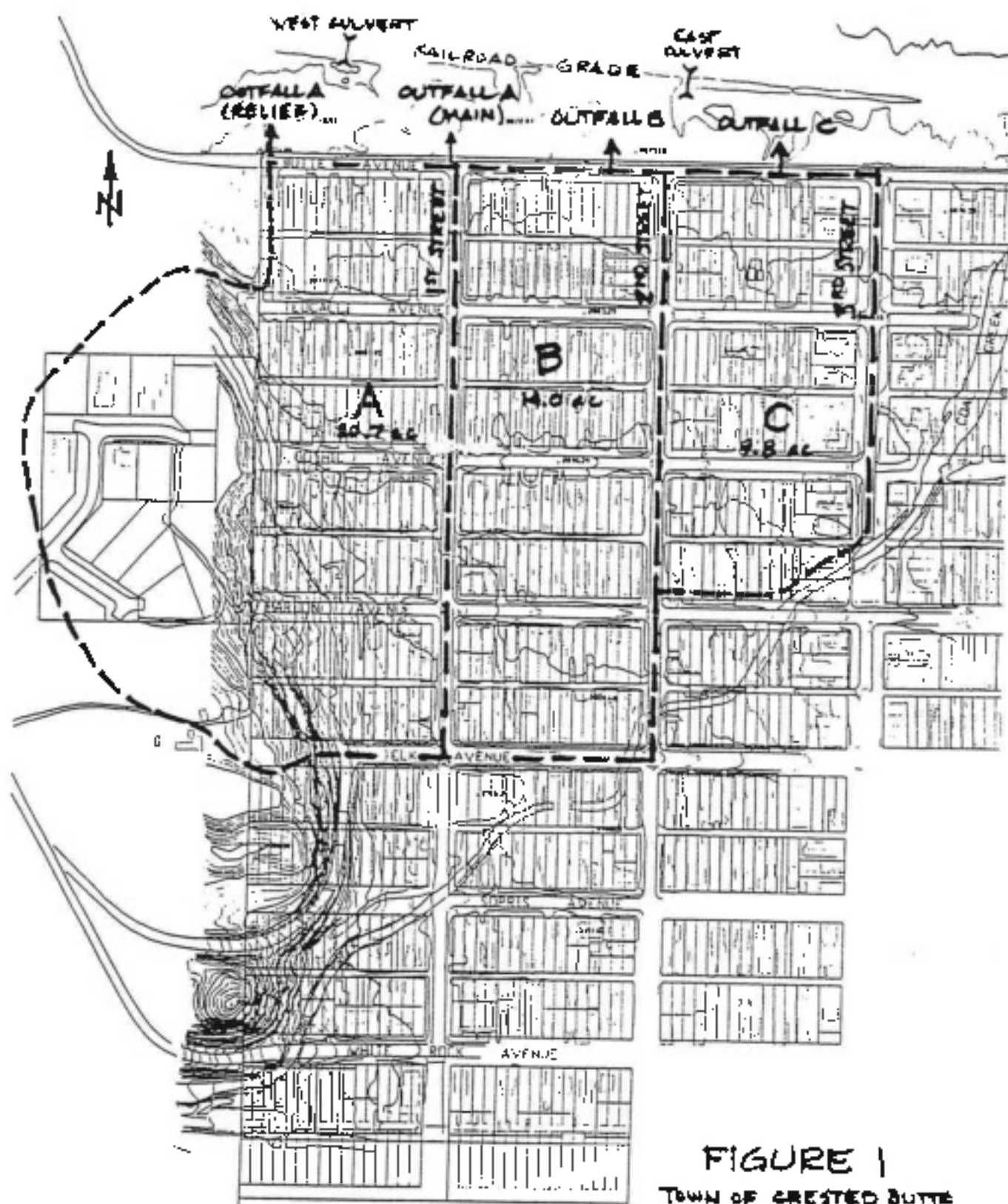
### Channels

Mannings equation was used to calculate required channel dimensions. A roughness coefficient of  $n = 0.03$  was chosen in anticipation of a fairly well maintained vegetative lining, and slopes in the range of 1 to 3 per cent. Sideslopes are 3:1 or flatter and topwidths are 10 feet or less.

Outfall A has a main channel in line with the west gutter of 1st Street and a relief channel at the far west end of the development. Under major storm conditions, the depth of flow in the valley pan crossing Butte Avenue will exceed available depth resulting in a portion of the flow spilling to the west in the street. Therefore, a relief channel has been provided at the west end of Butte Avenue with a capacity of about 50% of the 100 year runoff. The main channel will be located in a side lot alleyway designed to facilitate snow removal. The main channel and relief channel join at the west culvert located behind Lots 2 and 3. Likewise, the 2nd and 3rd Street outfall channels join at the east culvert behind Lots 25 and 26.

### Culverts

The culvert outlets were designed using Federal Highway Administration, HDS No. 5, Hydraulic Design of Highway Culverts. A free discharge condition will exist at the outlet end of the proposed culverts, so inlet control procedures were used. For both culverts the available headwater depth is shallow (no more than 0.5 feet above top of pipe) due to ponding limitations, requiring three 24" barrels at each location. End sections should be used for minimal head losses at the culvert entrance.





Del-Mont Consultants, Inc.  
P. O. Box 486  
MONTROSE, COLORADO 81402  
Phone 249-2251

Job Kapushian Subd 98307  
SHEET NO. 1 OF 7  
CALCULATED BY JR DATE 9/29/94  
CHECKED BY \_\_\_\_\_ DATE \_\_\_\_\_  
SCALE \_\_\_\_\_

BK 1-5  
762 108

# Town Runoff calculations to Rutte Avenue

	Area (Ac)	Runoff Coeff.	Tc (min)
Drainage Area A (1 <sup>st</sup> Street)	20.7	.60	24
Drainage Area B (2 <sup>nd</sup> Street)	14.0	.70	26
Drainage Area C (3 <sup>rd</sup> Street)	9.8	.70	28

	Intensity (in/hr)				Q-CIA Discharge (cfs)			
	2 yr	5 yr	25 yr	100 yr	2 yr	5 yr	25 yr	100 yr
Outfall A	1.24	<del>1.20</del> 1.35	2.35	3.05	15.4	19.9	29.2	37.9
Outfall B	1.18	1.52	2.75	2.90	11.6	14.9	22.1	28.4
Outfall C	1.12	1.45	2.15	2.80	7.7	9.9	14.7	19.2

# Worksheet 3: Time of concentration ( $T_c$ ) or travel time ( $T_t$ )

2 OF 1

BK PB  
762 109

Project Kopushion Subd. By WJL Date 9/29/94  
 Location Town Run off Checked \_\_\_\_\_ Date \_\_\_\_\_  
 Circle one: Present Developed \_\_\_\_\_  
 Circle one:  $T_c$   $T_t$  through subarea \_\_\_\_\_

NOTES: Space for as many as two segments per flow type can be used for each worksheet.

Include a map, schematic, or description of flow segments.

## Sheet flow (Applicable to $T_c$ only)

Segment ID

1. Surface description (table 3-1) .....
2. Manning's roughness coeff.,  $n$  (table 3-1) ..
3. Flow length,  $L$  (total  $L \leq 300$  ft) ..... ft
4. Two-yr 24-hr rainfall,  $P_2$  ..... in
5. Land slope,  $s$  ..... ft/ft
6.  $T_c = \frac{0.007 (nL)^{0.8}}{P_2^{0.5} s^{0.4}}$  Compute  $T_c$  ..... hr

Outfall A	Outfall B	Outfall C
Zone Grass	Short Grass	Short Grass
.24	.15	.15
30.0	100	100
1.5	1.5	1.5
.32	.02	.02
.28	+	.12
		= .24

## Shallow concentrated flow

Segment ID

7. Surface description (paved or unpaved) .....
8. Flow length,  $L$  ..... ft
9. Watercourse slope,  $s$  ..... ft/ft
10. Average velocity,  $V$  (figure 3-1) ..... ft/s
11.  $T_c = \frac{L}{3600 V}$  Compute  $T_c$  ..... hr

1 <sup>st</sup> St.	2 <sup>nd</sup> St.	3 <sup>rd</sup> St.
P	C	C
1520	1800	1800
.030	.017	.013
3.5	2.6	1.8
.12	-	.19
		= .22

## Channel flow

Segment ID

12. Cross sectional flow area,  $a$  ..... ft<sup>2</sup>
13. Wetted perimeter,  $p_w$  ..... ft
14. Hydraulic radius,  $r = \frac{a}{p_w}$  Compute  $r$  ..... ft
15. Channel slope,  $s$  ..... ft/ft
16. Manning's roughness coeff.,  $n$  .....
17.  $V = \frac{1.49 r^{2/3} s^{1/2}}{n}$  Compute  $V$  ..... ft/s
18. Flow length,  $L$  ..... ft
19.  $T_c = \frac{L}{3600 V}$  Compute  $T_c$  ..... hr
20. Watershed or subarea  $T_c$  or  $T_t$  (add  $T_c$  in steps 5, 11, and 19) ..... hr

.40	+	.43
		= .46

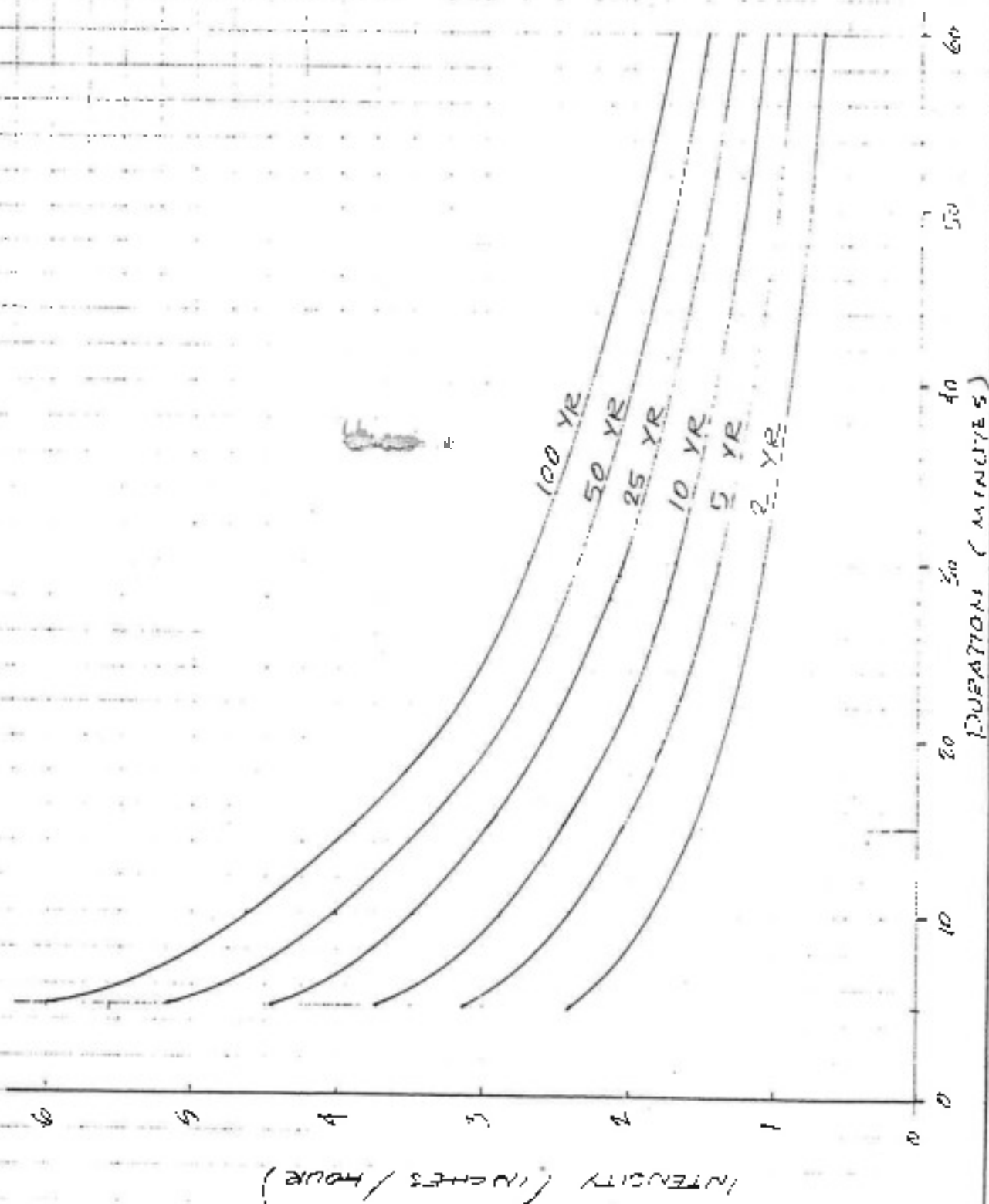
24 min 26 min 28 min

Del-Mont Consultants, Inc.  
P. O. Box 486  
MONTROSE, COLORADO 81402  
Phone 249-2251

CS Kepushion Subd 94003  
SHEET NO 3 OF 7  
CALCULATED BY JR DATE 9/23/94  
CHECKED BY \_\_\_\_\_ DATE \_\_\_\_\_  
SCALE \_\_\_\_\_

BK 742  
PG 110

INTENSITY - DURATION - FREQUENCY CURVES  
CRESTED BUTTE, COLORADO



# INTENSITY-DURATION-FREQUENCY CURVES CRESTED BUTTE, COLORADO

Ref: NOAA ATLAS 2, Vol. III - COLORADO, 1973

ii) Calculations for estimating 1-hr rainfall values  
(Table 11):

For Region 2 -

$$Y_2 = -0.011 + 0.942 \left[ X_1 \left( \frac{X_1}{X_2} \right) \right] = 1.68"$$

$$Y_{100} = 0.494 + 0.755 \left[ X_2 \left( \frac{X_2}{X_4} \right) \right] = 1.71"$$

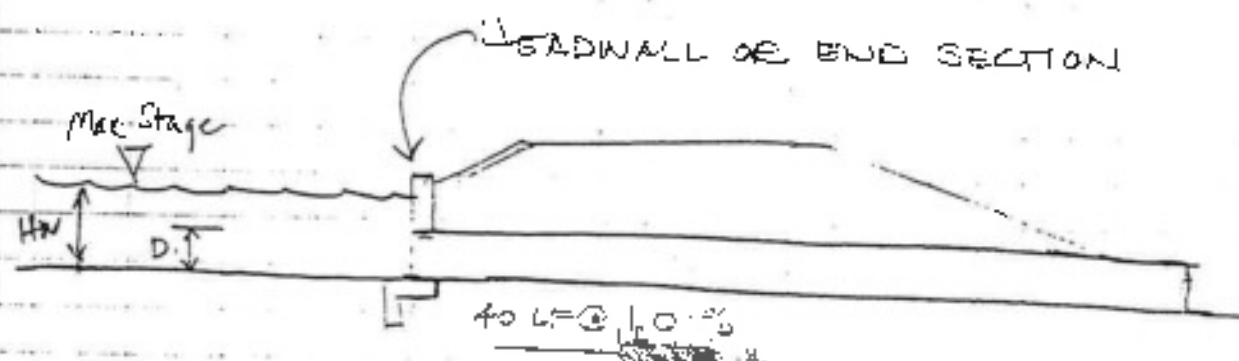
where

$X_1$  = 2 yr 6 hr value from precip-freq. maps = 1.05"  
 $X_2$  = 2 yr 24 hr " " " " = 1.50"  
 $X_3$  = 10 yr 6 hr " " " " = 2.25"  
 $X_4$  = 100 yr 24 hr " " " " = 3.15"

From Table 12:

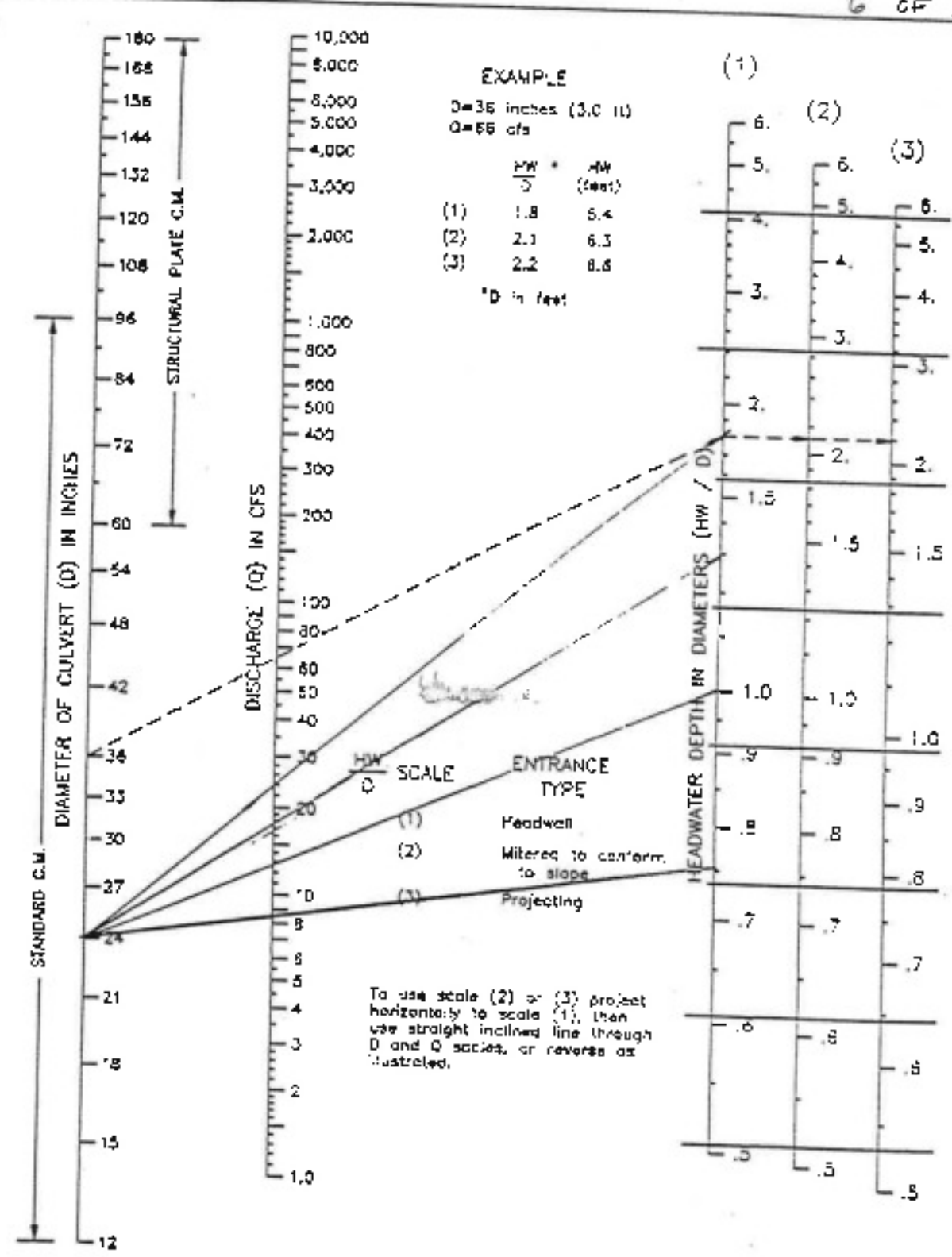
	<u>5 min</u> (.29 x 1-hr)	<u>10 min</u> (.45 x 1-hr)	<u>15 min</u> (.57 x 1-hr)	<u>30 min</u> (.79 x 1-hr)	<u>1-hr</u> (Fig 6)
2 yr	.20	.31	.39	.54	0.68
5 yr	.26	.40	.51	.70	0.89
10 yr	.31	.48	.61	.85	1.07
25 yr	.37	.58	.74	1.02	1.29
50 yr	.43	.67	.85	1.18	1.49
100 yr	.50	.77	.97	1.35	1.71

See attached FUND nomograph



WZ, 214

[illegible][illegible]



Source: Federal Highway Administration, HCS No. 5, *Hydraulic Design of Highway Culverts*.

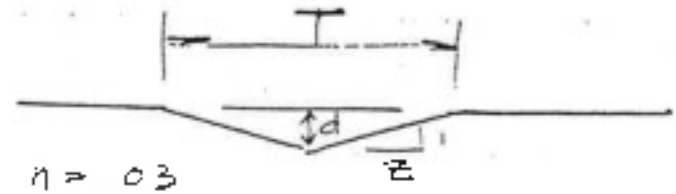
# Headwater Depth for Corrugated Metal Pipe Culverts with Inlet Control

Storm Water Management Criteria Manual

Date  
 NCV 1992  
 Figure  
 HCS5C2

# CHANNEL SPRING

$$Q = A \frac{1.49}{n} R^{2/3} S^{1/2}$$



CHANNEL	100 YEAR Q (cfs)	T (ft)	d (ft)	Z	S (%)	CAPACITY Q (cfs)
A (main)	37.9	10	1.5	3	1.60	37.3
A (relief)		9	1.5	3.3	.72	22.6
B	28.4	10	1.6	3.3	.88	27.7
C	19.2	9	1.5	3	1.36	31.1