



BRECKENRIDGE TOWN COUNCIL WORK SESSION

Tuesday, September 25, 2012; 3:00 PM

Town Hall Auditorium

ESTIMATED TIMES: *The times indicated are intended only as a guide. They are at the discretion of the Mayor, depending on the length of the discussion, and are subject to change.*

3:00-3:15pm	I	<u>PLANNING COMMISSION DECISIONS</u>	2
3:15-3:45pm	II	<u>LEGISLATIVE REVIEW*</u>	
		Unlicensed Ski Instructor Ordinance	15
		Harris Landmarking Ordinance	19
		Restitution Ordinance Amendment	23
		Alpine Rock Lease	34
		Resolution for Purchase of Hendrix Lode	59
3:45-4:15pm	III	<u>MANAGERS REPORT</u>	
		Public Projects Update	67
		Housing/Childcare Update	
		Committee Reports	68
		Financials	69
	IV	<u>OTHER</u>	
4:15-5:30pm	V	<u>PLANNING MATTERS</u>	
		SustainableBreck Business Update / Single Use Bags	84
6:00-7:15pm	VI	<u>JOINT MEETING</u>	
		Public Art Commission	90

Note: Public hearings are not held during Town Council Work Sessions. The public is invited to attend the Work Session and listen to the Council's discussion. However, the Council is not required to take public comments during Work Sessions. At the discretion of the Council, public comment may be allowed if time permits and, if allowed, public comment may be limited. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item. The public will be excluded from any portion of the Work Session during which an Executive Session is held.

Report of the Town Manager; Report of Mayor and Council members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda.

If time permits at the afternoon work session, the Mayor and Council may discuss these items.

MEMORANDUM

To: Town Council

From: Chris Neubecker, Current Planning Manager

Date: September 19, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the September 18, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF September 18, 2012:

CLASS C APPLICATIONS:

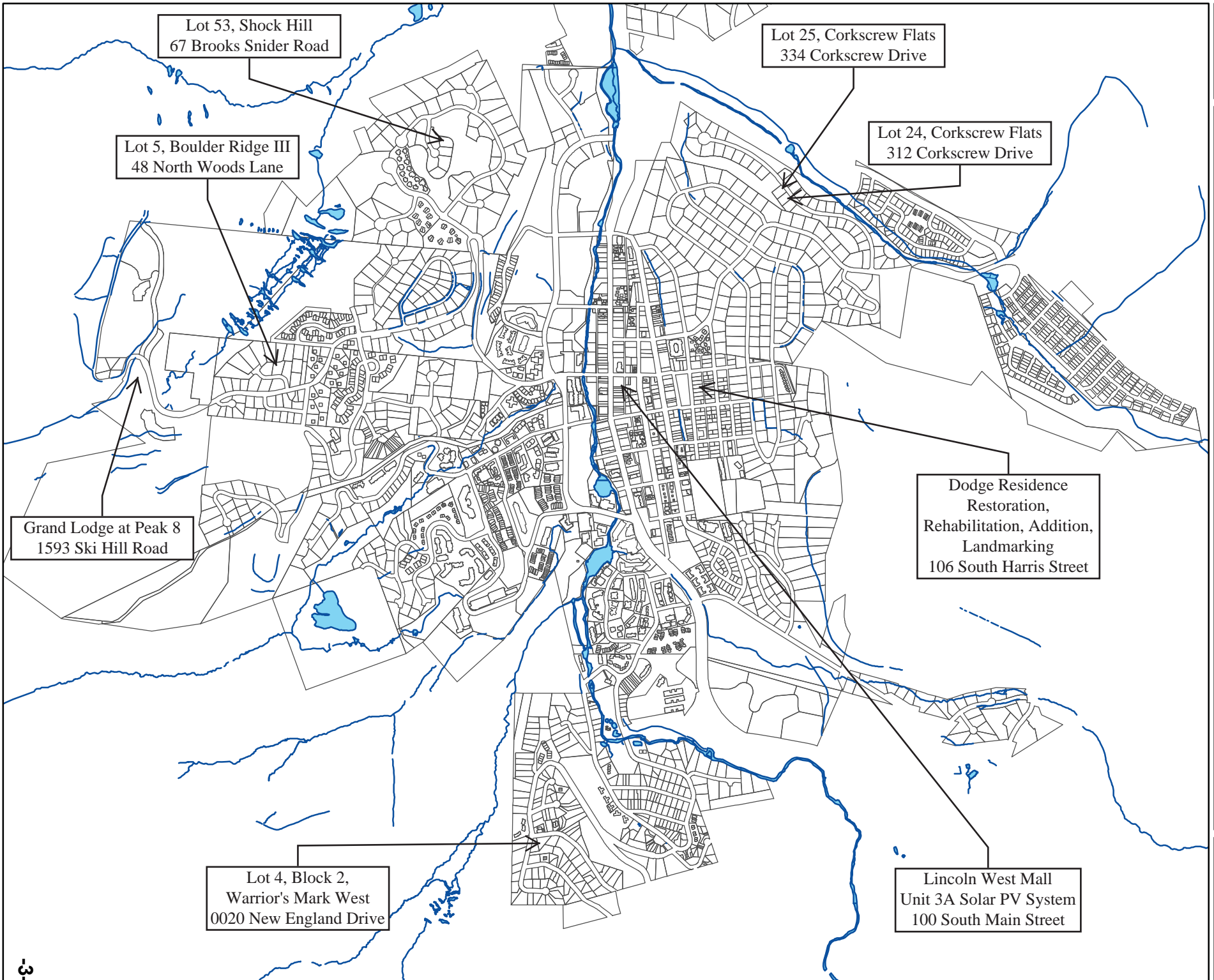
- 1) Lot 4, Block 2, Warrior's Mark West (MGT) PC#2012069; 0020 New England Drive
New duplex residence with a total of 6 bedrooms, 6.5 bathrooms, 4,286 sq. ft. of density and 5,395 sq. ft. of mass for a F.A.R. of 1:3.00. Approved.
- 2) Lot 24, Corkscrew Flats (MGT) PC#2012071; 312 Corkscrew Drive
New single family residence with 4 bedrooms, 3.5 bathrooms, 3,156 sq. ft. of density and 3,821 sq. ft. of mass for a F.A.R. of 1:4.20. Approved.
- 3) Lot 25, Corkscrew Flats (MGT) PC#2012072; 334 Corkscrew Drive
New single family residence with 4 bedrooms, 3.5 bathrooms, 3,259 sq. ft. of density and 3,902 sq. ft. of mass for a F.A.R. of 1:4.20. Approved.
- 4) Lot 5, Boulder Ridge III (MGT) PC#2012073; 48 North Woods Lane
New single family residence with 4 bedrooms, 4.5 bathrooms, 2,889 sq. ft. of density and 3,464 sq. ft. of mass for a F.A.R. of 1:6.30. Approved.
- 5) Lincoln West Mall Unit 3A Solar PV System (CN) PC#2012076; 100 South Main Street
6.46 kilowatt photovoltaic solar electric energy system on the roof of the Lincoln West Mall. Continued to a future Planning Commission Meeting.
- 6) Lot 53, Shock Hill (CN) PC#2012077; 67 Brooks Snider Road
New single family residence with 5 bedrooms, 5 full plus two half baths, 4,937 sq. ft. of density and 5,793 sq. ft. of mass for a F.A.R. of 1:3.75. Approved.

CLASS B APPLICATIONS:

None.

CLASS A APPLICATIONS:

None.



Lot 53, Shock Hill
67 Brooks Snider Road

Lot 5, Boulder Ridge III
48 North Woods Lane

Grand Lodge at Peak 8
1593 Ski Hill Road

Lot 4, Block 2,
Warrior's Mark West
0020 New England Drive

Lot 25, Corkscrew Flats
334 Corkscrew Drive

Lot 24, Corkscrew Flats
312 Corkscrew Drive

Dodge Residence
Restoration,
Rehabilitation, Addition,
Landmarking
106 South Harris Street

Lincoln West Mall
Unit 3A Solar PV System
100 South Main Street



NOT TO SCALE

printed 4/12/2011

Breckenridge South

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PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

ROLL CALL

Kate Christopher Gretchen Dudney Jim Lamb
Dan Schroder Trip Butler Eric Mamula
David Pringle
Gary Gallagher, Town Council Liaison

APPROVAL OF AGENDA

With no changes, the September 18, 2012 Planning Commission meeting agenda was approved unanimously (7-0).

APPROVAL OF MINUTES

With no changes, the September 4, 2012 Planning Commission meeting minutes were approved unanimously (7-0).

CONSENT CALENDAR:

1. Lot 4, Block 2, Warrior’s Mark West (MGT) PC#2012069; 0020 New England Drive
Mr. Mamula: Wanted to make sure that prior to proceeding that there was not an issue with a duplex approved in same neighborhood 9 years ago with someone on the agenda today. Can’t recall exactly what the issue was. Want to make sure we don’t have the same issue here.
Mr. Neubecker responded that the HOA was comfortable with PC moving on with it.
2. Lot 24, Corkscrew Flats (MGT) PC#2012071; 312 Corkscrew Drive
3. Lot 25, Corkscrew Flats (MGT) PC#2012072; 334 Corkscrew Drive
4. Lot 5, Boulder Ridge III (MGT) PC#2012073; 48 North Woods Lane
5. Lincoln West Mall Unit 3A Solar PV System (CN) PC#2012076; 100 South Main Street
Mr. Mamula: Staff question regarding the context of visual impact from Ridge Street. (Mr. Neubecker: The Main Street façade is the most important. Because of the elevation difference, Exchange parking lot, it is going to be visible from the east. If we moved panels west or north, they would still be visible. If Planning Commission feels otherwise we can talk more in a call up hearing.)
Mr. Pringle: Policy states solar panels should not be highly visible from public right-of-way. (Mr. Neubecker: We try to write these policies generally. Due to elevation of Ridge Street, it will be seen. In the historic and conservation districts we try and hide/screen these when possible.) In the larger scope of adding solar gardens, this is a good opportunity to encourage people to put solar in historic district. (Mr. Neubecker: We will encourage using the solar gardens; but solar gardens not guaranteed thing yet; going with site on Stillson first, but the solar panels, they are sold out. Not all property owners will be able to buy into solar gardens.)
Mr. Gallagher: Towns’ position that it could lay off from its own panels, to allow others to buy in, if we had citizens that would care to. My view would be that Breckenridge could give some panels to private citizens to purchase.
Mr. Pringle: I would like to discuss this later; have the Town back off on our panels.
Mr. Mamula: Moving the array further north would potentially make the profile smaller; is that an option? (Mr. Neubecker: That’s a possibility; I don’t know if it would make a difference from the east.) This is a fairly big impact from a relatively busy street in the district; just want to look at every possible way to reduce its visibility. Just curious about potential. (Mr. Neubecker: Let’s see if we have questions on anything else on the agenda.)
6. Lot 53, Shock Hill (CN) PC#2012077; 67 Brooks Snider Road

Mr. Pringle made a motion to call up the Lincoln West Mall Unit 3A Solar PV System, PC#2012076, 100

South Main Street. Mr. Mamula seconded and the motion was approved unanimously (7-0).

With no requests for any other call ups, the remainder of the Consent Calendar was approved as presented.

TOWN COUNCIL REPORT:

Mr. Gallagher:

I think that the Planning Commission has the toughest job in town. Not only do you have to know the code but you have to apply fairness. I just wanted to thank each of you for your hard work; you truly make a difference for our community. Additional thank you to Mr. Mamula after 8 years on council and 7 years on commission, and continues to make this strong panel better. Thank you.

At our last Council Meeting, the Council members reviewed the Planning Commission minutes concerning moving of historic structures; everyone feels that the Planning Commission and Staff are heading in the right direction that there should be a difference between primary and secondary structures. The multipliers should be somewhat similar on the positive and negative side. Council feels that Planning Commission is moving in the right direction. We can discuss it more at our combined meeting. (Mr. Schroder: We appreciate your feedback; it is good for us to know.)

Call Up Hearing for the Lincoln West Mall Unit 3A Solar PV System (CN) PC#2012076; 100 South Main Street:

Mr. Neubecker reviewed solar installation, roof plan, photos, etc. Staff feels like these are in a good location is recommending approval. Mr. Eric Westerhoff, Agent for Applicant, presented and answered questions.

Commissioner Questions / Comments:

Ms. Dudney: Did you do any photos from Ridge Street? (Mr. Neubecker: Yes, I would imagine that they are visible from Ridge Street.)

Mr. Schroder: And the red line (in the photograph) is 8 feet? (Mr. Westerhoff: That is the height of the array. The reason why we want them at 35 degrees is that to put them flat on the roof would cause freeze issues. Snow actually sheets off at this angle. The setbacks are what drove the location.) (Mr. Neubecker: Could the panels move to the north? What would the impact be?) (Mr. Westerhoff: I believe that the engineering would allow it, about 25 feet; it would be then more visible from Lincoln and from down Main Street.)

Mr. Mamula: Would there be much glare? (Mr. Westerhoff: There is rarely glare off of the panels; it is tempered glass like a windshield.)

Mr. Pringle: Could it be canted a little more to the west and get the same solar? Orient more with the barrel vault? (Mr. Westerhoff: We have orientation and tilt angle to consider; we would have to spread the load out, but it's possible. Once we hit magnetic south, we have +/- 20 degrees. If we have an opportunity, we prefer east for morning sun.)

Mr. Lamb: Advantage; would it be possible to go with two sets of racks, lower in height? (Mr. Westerhoff: Yes, it's more expensive but achievable.) If we could get into that 35' setback we could break the arrays into two rows.

Mr. Schroder: Definition in historic preservation; have we surpassed that?

Mr. Lamb: That is the grey area that we are discussing.

Ms. Dudney: On page 52A; may be appropriate if they are designed for minimal impact; so I personally think it is allowable within the code; I agree with the question of "can it be approved upon?"

Mr. Mamula: Did we receive comment from public? (Mr. Neubecker: No. Class C permit applications do not require public notice. Screening or reducing visibility; can it be reduced? Maybe a

small fence or wall could be added to screen from the east? We have primary facades of Main and Lincoln; we've shown that it won't be highly visible from those streets. Potentially visible from Ski Hill Road and Ridge Street. We do not consider it highly visible; it isn't five feet from the edge of the building. Probably the best location as is; maybe you could put it further south, but we feel that it is in a fairly good condition. Preference order in the code doesn't account for every situation. We wrote that ordinance to guide but otherwise we felt that it does meet the code and that they've gone through preference order and it meets code.)

Ms. Christopher: The code allows for it under Policy 5; I would like it half the height and double the rows.

Mr. Mamula: I disagree with Staff on the right-of-way. This is a multiple façade building; it exposes it to a right-of-way. It's a pretty big impact; when this was written it was a big struggle; was written for the residential in historic district. It would be nice to see some options to move it back into the 35 feet setback area. While it might be a Class C, the neighbors should be informed; it would have been nice to have comment from the public.

Mr. Butler: Highly visible from Ridge Street; option of lowering height and doubling rows (except for more holes in the roof), but I agree; it would be nicer to see a lower profile.

Mr. Lamb: I'm struggling with whether or not it is against code or not; the picture from Ridge Street though you can clearly see it. I love solar, and could live with it, but would like it broken into two; might be a good precedent to set. I could live with it the way it is as well.

Mr. Pringle: Historically, how much snow does that roof carry? I don't believe that the code contemplated this type of application; they were thinking flush mounted solar on roofs; we weren't thinking about arrays on the roof. If there is any way that we can minimize the impact; if you could break that up. (Mr. Westerhoff: We'd probably be going from 8' to 5' tall.) We struggle so much with roof lines; I would think this is like a 32"-36" billboard would be worth consideration.

Ms. Dudney: The language in the code does allow it; if we find that we have concerns with the code, then we need to change the code. I would like to see this go forward with the allowance that the Applicant work with the Staff to minimize the impact but not be visible from Lincoln Street.

Mr. Schroder: I would like to see it less than 8 feet as well, but I would mimic what Ms. Dudney said. I would pass it as presented and hope that we look at this code, so that when we get the next one we have a better framework from which to work. (Mr. Neubecker: You could approve, deny or continue this application and get some additional plans to see the options if we split this up into two rows.) (Mr. Millisor, Applicant: We would be willing to continue this application to a later date.)

Mr. Lamb made a Motion to continue the Lincoln West Mall Unit 3A Solar PV System, PC#2012076, 100 South Main Street to the next scheduled Planning Commission meeting. Mr. Mamula seconded and the motion was carried unanimously (7-0).

PRELIMINARY HEARINGS:

1. Dodge Residence Restoration, Rehabilitation, Addition, Landmarking (CN for MM) PC#2012074; 106 South Harris Street

Mr. Neubecker presented on behalf of Mr. Mosher. The Applicant proposes to restore and add a full basement to the historic house, move the historic shed, and build a one-story addition to the south rear portion (existing non-historic portion) of the house. At the last worksession on the project, the Planning Commission was supportive of:

- Removing the attached outhouse (that had once been separate) and providing a new connector in lieu of using the outhouse for a connector.
- Placing the outhouse in the side yard, making it more visible.
- Moving the shed towards the north property line to allow a garage to be built.

- Removing the tree along the alley and mitigating its loss.

At this preliminary review, Staff is identifying negative fifteen (-15) points:

- Policy 5/R (-5 points) for relocating the barn and removing the outhouse to accommodate development.
- Policy 9/R (-9 points) for not meeting three suggested building setbacks.
- Policy 33/R (-1) point for heating the parking area.

A total of positive thirteen (+ 13) points are anticipated at this time:

- Policy 18/R (+2 points) for screening the parking from public view.
- Policy 22/R (+2) points for the Landscaping (part of the plantings are to mitigate the loss of the existing tree off the alley).
- Policy 24/R (+9 points) for the restoration/rehabilitation efforts.

This proposal is for an addition that respects the context of the historic house, but not the historic barn. The historic structures will be repaired and stabilized. Staff believes this proposal is off to a good start, but does not show a strong passing score yet.

Staff welcomed any additional comments from the Commission and suggested the proposal return for another hearing.

Ms. Janet Sutterley, Architect for the Applicant.

Reviewed the points pointing out the connector links, the shed/barn and the work session question which was using the outhouse as the connector. We decided to disconnect the two; we discovered that the outhouse used to be connected to the shed but that they were not originally one building. We would like to switch the outhouse with the spruce tree. We are relocating the shed to the NE corner of the lot, reason was for improved visibility of the shed; the real issue was the sandwiching the shed between two buildings. In moving it to the NE corner we are not changing the context and we are correcting some scale issues; this location works nicely with the shed on the neighboring lot. You can still see it from Harris Street and it will be visible from the alley. The other reason is the shed is really close to the yellow building, so by moving the shed up to NE corner, we are going to see much more of the historic fabric, and we'll see the whole south side and the west side will be restored.

There were two other trees in the front yard; parking couldn't be in the front yard, and Staff decided on the two blue spruce trees to replace the removal of the lodge pole; this is a separate deal than the trees we were already putting in. I am not double dipping on that. The idea is to make the barn look different with vertical siding than the original house, maybe with some logs on the bottom. I'm not going to argue about the negative five points; however, on the restoration points, Staff is recommending + 9 instead of +12 because of changing the historical context of the site. We do feel like we are being double dipped because we are moving the shed. My argument is that we are not changing the context by moving to the corner of the lot.

Commissioner Questions / Comments:

Mr. Mamula: Would you just walk me through the historic versus the new? (Ms. Sutterley explained.)

Mr. Pringle: Are you going to change the use of the shed by connecting to it? (Ms. Sutterley: Yes, it will become a bedroom and the alley side will remain as a shed.)

Ms. Dudney: Do you agree that the Staff analysis of the double dipping is consistent with other projects before us? (Ms. Sutterley: Yes, in the past 6 months they are following suit.)

Mr. Schroder opened the hearing to Public Comment:

Mr. George Hoff: We are building on the empty lot next door; these are going to be our neighbors. I would like to express our support for this project and say that they have done a good job balancing 3 things. Preserving the history here, people need to be able to develop these properties to make them work with current usage of that land and we are happy that they are trying to mitigate the look of that unfortunate two story building to the south.

There was no further public comment, and the hearing was closed.

Staff had the following questions for the Commission:

1. Did the Commission believe the proposed connectors meet the intent of Priority Policy 80A?
Ms. Dudney: Yes.
Mr. Pringle: Yes.
Mr. Lamb: Yes.
Mr. Schroder: Similar place as the other Commissioners. Yes; as it is presented.
Mr. Butler: Yes.
Mr. Mamula: Yes, I would agree. I think that Ms. Sutterley makes an excellent point about context. There is an exception in the design standards, moving it out of a setback. It would be nice if this was farther down the line; I think the project and the connectors work. I would say the only thing about the whole project that made me question the landscaping was taking the double dip on the trees; good project. I like how it is moving along.
Ms. Christopher: Yes. Regarding the connector element, I would be more comfortable with the connector element with connecting historic to historic. I feel like it connects it in a modern way (if it were a barbell design it would fit better).
2. Did Commission support having two 12-foot tall Engelmann spruce trees planted to replace the loss of the existing 18-inch Lodgepole?
Ms. Dudney: Yes.
Mr. Pringle: Yes.
Mr. Lamb: Yes.
Mr. Schroder: Yes.
Mr. Butler: Yes.
Mr. Mamula: Yes.
Ms. Christopher: Yes.
3. Did the Commission support the height of the new addition with the 43-foot setback from the front of the historic house?
Ms. Dudney: Yes.
Mr. Pringle: Yes.
Mr. Lamb: Yes.
Mr. Schroder: Yes.
Mr. Butler: Yes.
Ms. Christopher: Yes.
4. Did the Commission believe the west elevation of the addition (facing Harris Street) meets the intent of the Historic Standards with regard to the window openings and design?
Ms. Dudney: Yes.
Mr. Pringle: Yes.
Mr. Lamb: Yes.
Mr. Schroder: Yes.
Mr. Butler: Yes.
Mr. Mamula: Yes.
Ms. Christopher: Yes it meets code however the two small windows are a bit modern.
5. Would the Commission support an 18-inch encroachment into the absolute setbacks for both the sides and the rear yard setbacks?

Ms. Dudney: Yes.

Mr. Pringle: Yes. It seems like we are pushing the envelope on everything we can on this; if we can tighten up this stuff, it might be good.

Mr. Lamb: Yes.

Mr. Schroder: Yes.

6. Did the Commission believe moving of the barn will not substantially alter the structure's historic context?

Ms. Dudney: Yes.

Mr. Pringle: Yes. I don't believe that it changes context, but changing the use of the shed might be; if you hadn't put the bedroom/bathroom in there, I would have bit off on no negative points.

Mr. Lamb: Yes.

Mr. Schroder: Yes.

Mr. Butler: Yes.

Mr. Mamula: Yes.

Ms. Christopher: Yes.

7. Would the Commission support assigning negative one (-1) point for heating the parking space off the alley?

Ms. Dudney: Yes.

Mr. Pringle: Yes.

Mr. Lamb: Yes.

Mr. Schroder: Yes.

Mr. Butler: Yes.

Mr. Mamula: Yes.

Ms. Christopher: Yes.

8. Did the Commission support awarding positive two (+2) points for parking at the back of the lot away from public view?

Ms. Dudney: Yes.

Mr. Pringle: Yes.

Mr. Lamb: Yes.

Mr. Schroder: Yes.

Mr. Butler: Yes.

Mr. Mamula: Yes.

Ms. Christopher: Yes.

9. Would the Commission support awarding positive nine (+9) points for the restoration efforts?

Ms. Dudney: Yes; because that is consistent with what we have done and encourage the Applicant to wait the Town's code revision.

Mr. Pringle: Yes.

Mr. Lamb: Yes.

Mr. Schroder: Yes.

Mr. Butler: Yes.

Mr. Mamula: Yes.

Ms. Christopher: Yes.

10. Would the Commission recommend to Town Council that this historic structure be locally landmarked?

Ms. Dudney: Yes.

Mr. Pringle: Yes.

Mr. Lamb: Yes.

Mr. Schroder: Yes.

Mr. Butler: Yes.

Mr. Mamula: Yes.

Ms. Christopher: Yes. Outhouse should be pulled back as far as possible.

2. Grand Lodge at Peak 8 (CN for MM) PC#2012075; 1593 Ski Hill Road

Mr. Neubecker presented on behalf of Mr. Mosher. The Applicant proposes to construct an 80 unit (each with lock-off) interval ownership resort condo-hotel at the base of Peak 8 at the Breckenridge Ski Resort.

Changes From the Previous Submittal

Since the last review, the applicants obtained feedback from the Engineering Department that Skiwatch Drive was too steep to utilize as access for the building. Also, the applicants have addressed the access points for emergency services and support service vehicles with this site plan. This submittal includes a comprehensive set of design development documents indicating preliminary density, mass, room count, parking, architecture, and circulation.

The current drawings show the highest point on the building to be 77-feet, measured to the mean of the roof. Five stories equal 62-feet. With the building shown at 77-feet (about 6 ½ stories tall), negative fifteen (-15) points shall be incurred at final review.

- Did the Commission believe that the submitted plans follow the intent of the Master Plan for stepping the building forms down at the edges and for minimizing visual impacts adjacent to Skiwatch Condos?
- Did the Commission find that the building meets the intent of the Master Plan, to reduce the height and density at the ends of Peak 8?

With this review, we are looking at providing the applicant with feedback for some key issues associated with the site plan. Specifics on the architecture, site drainage, and other policies will be addressed at the next review. We have the following questions for the Planning Commission and welcome any additional feedback.

1. Did the Commission believe that the building height and density are reduced at the ends of the Peak 8 Base as required by the Master Plan?
2. Did the Commission believe that the submitted plans follow the intent of the Master Plan for stepping the building forms down at the edges?
3. Did the Commission believe that the submitted plans follow the intent of the Master Plan for minimizing visual impacts adjacent to Skiwatch Condos?
4. Did the Commission believe the glass connector between the building masses deviates enough from the Master Plan to warrant changing?

Mr. Rob Millisor, Applicant and Mr. Matt Stais, Architect for this Applicant, were present.

Mr. Stais: Thanks to Commission and Staff; our co-applicants from Vail Resorts are here as well as Mr. Millisor. I'd like to review the context and site. Spoke briefly about the stepping of the site and provided site orientation of the subject project. Reviewed the prior entry into the subdivision per the June Meeting, and in the interim discovered that the drive didn't meet grading requirements and reworked the entry. This keeps vehicular traffic away from the ski resort. Also the glass link has been lowered which is one level below the lobby; this was because of Town requirements to change the access, and we feel that it is a stronger design. After discussion with Mr. Neubecker, we broke the building into three 'areas'. The old entrance will now be a roof garden at grade at the second floor level for barbeque, etc., for the guests as an effective break between the buildings. Reviewed the design from the 2005 Master Plan and used it as their 'starting point' and then switched to the amended view study of this year. I had the building stepped down on the ends; that is up for discussion as well.

Addressing the questions from the Staff Report: There is a bit of balancing between the stepping and corner elements; we do have steeply pitched roofs and we feel like we meet the intent; the glass piece is evolving, but we can modulate that to incorporate your suggestions.

Commissioner Questions / Comments:

- Ms. Dudney: In the work session review in June, we had some rather vague sketches, and I need to understand the case for why you believe the edges step down and the height of the project. (Mr. Stais: We tried to work with the existing 2005 Master Plan; we feel like our massing is similar to what was approved in that plan. What makes a 3 ½ story building? The way that the Town counts it, we are over the 5 stories. In Phase 2 there are 5 stories in the middle; Phase 3 is 4 stories in the middle and we had it stepping down; the 4th floor plan shows that it was stepping down on the ends and it kind of wraps around the east side. This is certainly 3 ½ to 4 stories on this side. On the 5th floor there is nothing in Phase 3; to me that is 4 ½ stories.)
- Mr. Schroder: Thanks for your clarification. With respect to Page 97, and minimizing impacts specifically to Skiwatch Condos, do you feel like going from 5 stories to 4 stories at that intersection meeting that note? (Mr. Stais: The letter of the Master Plan, we meet the wording in the Master Plan. I think your question is more about intent; I feel like that has more to do with the building massing and location than the pitch of the roofs. We have tried to pull the buildings away from the ski run for our purposes but also to give some relief to Skiwatch; we also put in an angle to give some relief in that lower portion.)
- Mr. Pringle: Could we look at the massing model in 2005 Master Plan? There seems to be a lot more relief from Skiwatch Condos in these; I think that this (master plan) is more what we anticipated. When we look at your massing models, you have a much bigger building and it is a lot closer to Skiwatch Condos. I think these needs to be addressed; there seems to be a large deviation between the 2005 plan and your plan. (Mr. Stais: I don't think most people would expect there to be landscaping right by the Rocky Mountain Chair; that is the level that this goes to. We are trying to make this more realistic to accommodate more slope slide plaza. We need the room for the guest amenities.) I think that when we went through the Master Plan process we were very sensitive to the Skiwatch Condos.) (Mr. Millisor: The 2005 plan doesn't contemplate a courtyard that would actually work. Our plan is realistic.) (Mr. Stais: The location of 804 is a future and fixed condition.) This is probably a good solution for you but I don't know if it is a good solution for Skiwatch.
- Mr. Butler & Ms. Christopher: Making Phase 1 and Phase 2 more like Phase 3? (Mr. Stais: It's a possibility; I'd have to look at it.) (Mr. Millisor: Our massing did not change from the June meeting; we think that this is a much better design than squeezing the skier experience at the plaza; that's why the design is where it is.)
- Mr. Schroder: How many units are in Phase 1? (Mr. Stais: There are 29 in Phase 1; 22 in the Phase 2 and 29 in Phase 3.)
- Mr. Pringle: What constitutes "guest services" square footage as mass/density in condo-hotel? (Mr. Neubecker: Through the Development Agreement, some of those amenities will not count as density; since that is currently listed in the Master Plan as density; we need to do a revision to the Master Plan.) Why are we making that distinction? (Mr. Neubecker: That is a question for the Town Council. Some of these are non-income producing areas.) I thought that we contemplated those needs and those additional guest services when we approved the Master Plan? Were they not taken out of the density? (Mr. Neubecker: I agree with you, but things have changed; now they are looking at their business model and they have approached the Council to get that changed.) I thought that we contemplated a lot of these things. (Mr. Neubecker: I will let you ask the Applicant that question.)
- Ms. Christopher: Page #108, Elevation #3: What is the distance of the two big roofs? What are the roof line lengths? (Mr. Stais: The very top is 125' in Phase 1 and Phase 2 (south building); north side

Phase 3 is 105' estimated.)

Mr. Schroder opened the hearing to public comment.

Mr. Richard Himmelstein (Lives in One Ski Hill Place and building a home on Peak 8 Circle across the street): If we go back to the 2005 Master Plan and remove Building 804, there are only 2 other buildings there. Part of the fit test is that they've added an extra building. When Mr. Neubecker was explaining the stepping down, One Ski Hill was the flag ship. What he described was that everything was supposed to step down from One Ski Hill. Each of those 3 buildings should only be 3 ½ to 4 stories. If you go to view slide #7/8 (from Architect's presentation), as you're coming from Peak 7 the building that they are building is substantially higher than One Ski Hill Place (3 stories taller). I notice as well in view #4 that you removed Baldy Mountain. The reason why it appears taller is that this grade is much higher than One Ski Hill so it looks massive. (Mr. Himmelstein offered something from his architect which offered a shadow line over Skiwatch Drive because of the proximity of this property to Skiwatch Drive.) For this road to be in the shade all day, it will be treacherous all winter. This proposed lodge does not meet the Master Plan; too much program for the size of the site. The building is big and tall and is only 22 feet off of the road. I don't think that this is what Breckenridge is. It also shadows my property. They have added an extra building to the site. They need to reconfigure this site; maybe even share amenities and move off of that lot line. I did my due diligence before I bought my property, and was assured that the Master Plan would be followed. This clearly does not follow the Master Plan and I'm just hopeful that the Commission will follow it. Do you want me to get into more detail? I also want to say that 3 other owners in our Skiwatch HOA are also opposed to this; we support redevelopment of this site, we just want this one reworked. When I look at One Ski Hill Place, it steps down on all sides, and it doesn't look like this project has any stepping down.

Mr. Roman Nowakowsky (Owns a condo at Skiwatch): The building does not follow the Master Plan in height and just about everything. When Mr. Stais was explaining the height, he missed the two lower floors in saying that there is just 4 ½ floors in Phase 1. I would hope that the Planning Commission takes into consideration the fit called for in the Master Plan.

Ms. Brenda Culhane (Skiwatch owner): I speak for myself and 38 owners of Skiwatch. If you look at the photos, Skiwatch is dwarfed by this massive structure. If you're saying that it is the same as Skiwatch that is unacceptable. I did want to reiterate to stick to the Master Plan which says that the future building could not be more than 3 ½ stories. In effect, there is this huge structure right in front of Skiwatch. Please use good judgment. It isn't that we are against development; you're a great company. The problem is the structure and the density. One Ski Hill place, you can actually hear the smoke stacks of the utilities, so I think we have to take into consideration the noise that will be generated from this project.

Ms. Brooke Roberts (lived in Summit County for 21 years): I am speaking as a community member. I worked with the BRC for many years promoting Breckenridge with Breckenridge Grand Vacations. I see both perspectives and all of my experiences have been positive with Breckenridge Grand Vacations. I do believe that they use quality contractors and employees and give a lot back to the community. These properties bring many visitors to our area and a variety of options with the fractional ownership offerings. The proposed development will provide more economic assistance. I am a little worried about Peak 8 skier congestion. I think that this will add more options for visitors for ski in and ski out properties and with the amenities it will be an amazing experience. Many of my friends have stayed with Grand Vacations. They are team players, and they will work with the other condo project owners. I think that they will make it work. Maybe Skiwatch could have a membership for the amenities in this building.

Mr. Randy Gibbons (lived here since 1992): I think what the Millisors have here is good for the entire community. I think that it's important that these time shares take a bigger role and will bring additional

income to the real estate market. They are outstanding in the community and good for the merchants. It's also great for destination skiers; it will bring in more transfer tax, etc.

Mr. Dick Carlton (Small business owner 30+years): I echo what Brooke and Randy indicate. I also appreciate what the condo owners are saying. I was involved in some of the Master Plan in 2005 and I think we really made a good effort when we put a lot of density up on Peak 8. I trust the Millisor team but we all need to put this in perspective, that we are putting a higher density onto the ski area, which is what we thought that we doing when we worked on the Master Plan.

There was no further public comment, and the hearing was closed.

Commissioner Questions / Comments (Continued):

- Ms. Dudley: I'd like to show what we saw at the last session. The pencil sketch of 3 ½ stories. View #1 of aerial from SE from June 2012; the comparison is page 107 of current Staff report. As one of the public said, it looks significantly denser and no drop off. I think this sketch was done in good faith, but it did not appear as dense as it does today. I see 3 stories on the end by Skiwatch with the level below, and 4 ½ at the peaks at the roof.
- Ms. Christopher: I see that this is a perspective view difference not a difference in height. (Mr. Neubecker: Let's get our comments to the Applicant so that they can take everything into account.)
- Ms. Dudley: To be in compliance with the Master Plan, they need to step down on the southern building.
#1. If you're looking at it from Ski Hill Rd it appears to step down if you assume that Phase 1 is hidden.
#2. I agree with Mr. Mosher's report that the buildings need to step down more at the edges.
#3. I like the glass connector; it bothers me to hear about the icy conditions on Skiwatch Road but the Master Plan created that problem.
- Mr. Pringle: I don't think anyone should take assurances from a work session because they are not advertised or attended by the public. It's more of an introduction to the project.
#1. One Ski Hill was going to be the premier place and everything was to scale back from that; I can't say that this does that. I don't believe that it meets the intent of the plan.
#2. The buildings haven't stepped down enough. There is a long roof line towards the center of these buildings; I think that code says 50' long rooflines should be interrupted.
#3. I think that we were trying to avoid disrespecting existing buildings in the Master Plan; so that we would preserve Skiwatch's views and site as much as possible. They should be able to expect that we will do the best we can to preserve their views as much as we can. I think that was the intent of the Master Plan at the time.
#4. We will wait to see how the glass connector goes.
- Mr. Stais: We are going to now redefine what we call skier services so that it doesn't count against mass, because these buildings have just become so much bigger than what we anticipated and the additional mass that goes with it. However, those buildings are not going to be small. We made that decision a long time ago. To this point, we have achieved that. This just seems to be too much. If we could bring it down a little, how much is public space or guest space; there has to be more work.
- Mr. Lamb: This project is an evolution; there will be more meetings and no decisions made tonight. Our intention up there was to have a base area which will be dense. Our intent was to put density where we have services.
#1. At the bottom of 8 is higher; you have to go pretty low to meet the wording on the Master Plan.
#2. No they do not step down enough.
#3. No one wants anything built next to Skiwatch; everyone has the right to develop

responsibly. I have faith in the Architect and Applicant and it does seem massive to me and we have time to explore options. The circulation opens up some options.

Ms. Christopher: #1. The buildings have not been stepped down; that is not drawing a line across a slice of the picture. In my eyes if the middle building is 4 stories the perimeter buildings have to step down. It needs to be cut down. If we do step it down like the Master Plan, then we are eliminating problems with shadows and view corridors; however I know that the Town is in favor of lots of density here. In the Master Plan it says step down. The roof lines need to be broken up more; like One Ski Hill place as well as tapering off at the ends. The lobby area between the two buildings helps create less density; in favor of glass or roof top garden. I like the terraced courtyard, and maybe hinge the buildings away a little bit more.

Mr. Mamula: You've done a lot of good in the community. All those pictures at the end were drawn in the Master Plan by the ski area. The town just approved them; I know that they are bubbles, but the idea at the time was intensity in the center and less on the outside. It still has to fit; right now I don't think that this is your best effort. You do great stuff. The code calls for a 50' roof line, and these are 125'. The buildings need to step down; the 3D drawings are supposed to show you what the buildings are going to look like, and I think that there are ways to skin this thing. I would love to see a shadow study. The Master Plan did not create shadows on that road. The buildings there are taller than what was predicated by the Master Plan. I think you should do a shadow study to counter Mr. Himmelstein. I can't take off of these drawings what the glass connector adds or doesn't.

Mr. Butler: I think that the intent from the Master Plan shows a difference experience. Your views are going to be blocked for certain, but the real conundrum is the building right next to you. I think you must step down the buildings, and I don't have a lot of problem with the glass connector.

Mr. Schroder: The end doesn't meet the original plan; they just don't step down enough at the edges. The visual impacts to Skiwatch are the tragedy of the project; up until now you've had this bonus. And now you have the developer who has the right to develop his property; so recognizing the previous pushes to work on minimizing the damage and as far as the connector eliminate, I like it and it breaks up these masses. It does reflect natural materials, and the glass actually gives us views of real natural views.

OTHER MATTERS:

Mr. Neubecker: We are continuing to work on a possible fieldtrip to Steamboat Springs on Wednesday, October 17, 2012 looking at base development. We could potentially go to Aspen to see Historic District on another trip.

ADJOURNMENT:

The meeting was adjourned at 10:24 p.m.

Dan Schroder, Chair



MEMORANDUM

To: Mayor and Town Council
From: Shannon Haynes, Chief of Police
Greg Morrison, Assistant Chief of Police
Date: September 10, 2013
Subject: Unlawful Acts on National Forest System Land Ordinance

Summary

The Breckenridge Ski Resort currently has a lease with the U.S. Forest Service that provides exclusive rights to offer ski lessons and other services on U.S. Forest System land. The Breckenridge Police Department is occasionally called to the base of the ski area when it is determined that persons are unlawfully offering ski instruction lessons. Violations are usually detected by ski area employees and enforcement action is handled by the U.S. Forest Service Law Enforcement Officers (LEOs) who have extensive response times or who, at times, do not respond at all. Breckenridge Police Officers are usually called to stand by until either a Forest Service LEO arrives or, if the LEO is unavailable; officers identify all persons involved and write reports to be forwarded to the USFS LEOs for later enforcement action. Violators are written into U.S. Federal Court in Grand Junction. Should a case go to court, all witnesses would need to attend court in Grand Junction. This Ordinance makes the same activity that is illegal under federal law, illegal under Town Code. With the passage of this ordinance, Breckenridge Police Officers will be empowered to take immediate enforcement action instead of waiting for the USFS LEOs. The cases will be written into Breckenridge Municipal Court. This proposed change will increase effectiveness and efficiency in addressing illegal ski instruction and is supported by the Breckenridge Ski Resort.

Background

Persons who are ski instructors at other areas or individuals who represent themselves as “ski instructors” offer to give ski lessons at the Breckenridge Ski Area. In the cases that have come to our attention, the “ski instructor” has usually advertised “ski lessons” on Craig’s list or similar on-line websites. “Ski instructors” and clients make arrangements on the internet, and then generally meet at the base of the ski mountain, within town limits, to exchange payment. The “ski instructor” then takes the clients up onto the hill for lessons. All the base areas of the ski area where the transactions take place and the base of all lifts where the ski area actually starts are within our Town limits.

The Ski Area's permit from the U.S. Forest Service gives them exclusive use of the ski area to offer ski lessons. Under federal law no one other than the permitted ski area can offer ski lessons. The ski area monitors Craig's list and other on-line WebPages for these offers and several times per year catch an offender. On several occasions we have assisted with contacting the "ski instructor" at the time of the transaction, identified the parties involved, completed a report and forwarded it to the US Forest Service. The USFS generally takes federal enforcement action later as the LEOs are normally not available to respond immediately.

During the 2011/2012 ski season, a "ski instructor" not affiliated with the ski area, sold ski lessons on the internet. The "ski instructor" met his clients at the base of the mountain within the town limits, received cash payment and then took 8 novice skiers up a chair lift to an intermediate part of the mountain. The ski patrol had to be called to carry the "skiers" down the mountain on snow mobiles as they could not ski at all and were way over their heads on intermediate runs.

It is very difficult to get a USFS LEO to respond to enforce the federal code. USFS LEOs generally cover a number of counties and numerous ski areas. As a result their response times tend to be slow.

Proposed Ordinance

The proposed ordinance would make this activity illegal under Town Code. This would give Breckenridge Officers the authority to issue municipal summonses into municipal court and quickly handle these situations. Should a case go to court, all witnesses, including ski area employees and Breckenridge Police Officers, would attend court in Breckenridge instead of Grand Junction. This is a true public safety issue as it is dangerous for novice skiers to be taken up the mountain with non-approved ski instructors who may or may not be familiar with the mountain.

Tim Berry has drafted the attached ordinance and staff recommends its approval.

1 ***FOR WORKSESSION/FIRST READING – AUG. 28***

2
3 Additions To The Current Breckenridge Town Code Are
4 Indicated By **Bold + Db1 Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2012

9
10 AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE BRECKENRIDGE
11 TOWN CODE BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE
12 OF “UNLAWFUL ACTS ON NATIONAL FOREST SERVICE LAND”

13
14 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN
15 OF BRECKENRIDGE, COLORADO:

16
17 Section 1. Chapter 3H of Title 6 of the Breckenridge Town Code is amended by the
18 addition of a new Section 6-3H-10, which shall read in its entirety as follows:

19
20 **6-3H-10: UNLAWFUL ACTS ON NATIONAL FOREST SERVICE LAND:**

21
22 **A. It is unlawful and a misdemeanor offense for any person to offer to**
23 **conduct or perform any kind of work activity or service on National Forest**
24 **System land unless such person is authorized to conduct such work activity**
25 **or service by federal law, regulation, or special-use authorization.**

26
27 **B. As used in this Section “National Forest System land” has the meaning**
28 **provided in 36 C.F.R. Section 212.1.**

29
30 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
31 various secondary codes adopted by reference therein, shall continue in full force and effect.

32
33 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
34 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
35 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
36 thereof.

37
38 Section 4. The Town Council hereby finds, determines and declares that it has the power
39 to adopt this ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning municipal police
40 powers); (ii) Section 31-15-401, C.R.S.(concerning municipal police powers); (iii) the authority
41 granted to home rule municipalities by Article XX of the Colorado Constitution; and (iv) the
42 powers contained in the Breckenridge Town Charter.

1 Section 4. The Town Council hereby finds, determines and declares that it has the power
2 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
3 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
4

5 Section 5. This ordinance shall be published and become effective as provided by
6 Section 5.9 of the Breckenridge Town Charter.
7

8 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
9 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
10 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
11 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
12 Town.
13

14 TOWN OF BRECKENRIDGE, a Colorado
15 municipal corporation
16

17
18
19 By _____
20 John G. Warner, Mayor
21

22 ATTEST:
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25

26 _____
27 Town Clerk
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MEMORANDUM

TO: Town Council

FROM: Chris Neubecker, Current Planning Manager

DATE: September 18, 2012

SUBJECT: First Reading: Council Bill No. 29
Harris Residence Landmarking
Lot 7 and 8, Block 5, Abbetts Addition, 206 S. French Street

Enclosed with this memo is an ordinance for first reading to designate a local landmark. The property is located at 206 S. French Street. This historic home is owned by Tony and Annie Harris. The property is planned for a full historic restoration, full basement and foundation, with an addition at the rear of the home. The historic barn on the property will also be fully restored and placed on a foundation.

Planning Commission approved the restoration and addition to this building during their meeting on June 19, 2012. At that time the Planning Commission recommended that the Town Council designate this property as a local landmark, based on the following criteria:

- A. The property is at least 50 years old.
- B.
 - 1. The property exemplifies specific elements of architectural style or period.
 - 2. The property is of a style particularly associated with the Breckenridge area.
 - 3. The property is a significant historic remodel.
- C.
 - 1. The property retains original design features, materials and/or character.
 - 2. The structure is on its original location or is in the same historic context after having been moved.
 - 3. The structure has been accurately reconstructed or restored based on documentation.

Staff supports the proposed landmarking. We will be available during the work session to answer any questions on this project.

1 ***FOR WORKSESSION/FIRST READING – SEPT. 25***

2
3 COUNCIL BILL NO. 29

4
5 Series 2012

6
7 AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK
8 UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE
9 (Lots 7 and 8, Block 5, Abbetts Addition)

10
11 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
12 COLORADO:

13
14 Section 1. Findings. The Town Council of the Town of Breckenridge finds and
15 determines as follows:

16
17 A. Anthony Harris and Ann Harris own the hereinafter described real property.
18 Such real property is located within the corporate limits of the Town of Breckenridge,
19 County of Summit and State of Colorado.

20
21 B. Anthony Harris and Ann Harris filed an application with the Town pursuant
22 to Chapter 11 of Title 9 of the Breckenridge Town Code seeking to have the Town
23 designate the hereinafter described real property as a landmark (“**Application**”).
24

25 C. The Town followed all of procedural requirements of Chapter 11 of Title 9 of
26 the Breckenridge Town Code in connection with the processing of the Application.
27

28 D. The improvements located on hereinafter described real property are more
29 than fifty (50) years old.
30

31 E. The hereinafter described real property meets the “architectural” designation
32 criteria for a landmark as set forth in Section 9-11-4(A)(1)(a) of the Breckenridge Town
33 Code because the property:
34

- 35 (i) exemplifies specific elements of architectural style or period;
36 (ii) is of a style particularly associated with the Breckenridge area; and
37 (iii) is a significant historic remodel.
38

39 F. The hereinafter described real property meets the “physical integrity” criteria
40 for a landmark as set forth in Section 9-11-4(A)(3) of the Breckenridge Town Code
41 because:
42

- 43 (i) the property retains original design features, materials and/or character;
44 (ii) the structure on the property is on its original location or is in the same
45 historic context after having been moved; and

1 (iii) the structure on the property has been accurately reconstructed or restored
2 based on documentation.
3

4 G. In accordance with the requirements of Section 9-11-3(B)(3) of the
5 Breckenridge Town Code, on June 19, 2012 the Application was reviewed by the
6 Breckenridge Planning Commission. On such date the Planning Commission
7 recommended to the Town Council that the Application be granted.
8

9 H. The Application meets the applicable requirements of Chapter 11 of Title 9 of
10 the Breckenridge Town Code, and should be granted without conditions.
11

12 I. Section 9-11-3(B)(4) of the Breckenridge Town Code requires that final
13 approval of an application for landmark designation under Chapter 11 of Title 9 of the
14 Breckenridge Town Code be made by ordinance duly adopted by the Town Council.
15

16 Section 2. Designation of Property as Landmark. The following described real
17 property:
18

19 Lots 7 and 8, Block 5, Abbett Addition to the Town of Breckenridge, as shown on
20 the filed plat thereof; commonly known and described as 206 South French Street,
21 Breckenridge, Colorado
22

23 is designated as a landmark pursuant to Chapter 11 of Title 9 of the Breckenridge Town
24 Code.
25

26 Section 3. Police Power Finding. The Town Council finds, determines, and declares that
27 this ordinance is necessary and proper to provide for the safety, preserve the health, promote the
28 prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and
29 the inhabitants thereof.
30

31 Section 4. Town Authority. The Town Council finds, determines, and declares that it has
32 the power to adopt this ordinance pursuant to the authority granted to home rule municipalities
33 by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
34 Charter.
35

36 Section 5. Effective Date. This ordinance shall be published and become effective as
37 provided by Section 5.9 of the Breckenridge Town Charter.
38

39 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
40 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
41 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
42 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
43 Town.
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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: New "Restitution Ordinance"

DATE: September 18, 2012 (for September 25th meeting)

A defendant who is convicted or who pleads "no contest" in the Town's Municipal Court is usually required to pay "restitution" to the victim of the crime. The term "restitution" means the payment by the defendant of the direct financial losses suffered by the victim of the crime. Restitution has several purposes, including the obvious one of compensating the victim for monetary losses suffered as a result of the defendant's criminal conduct. In addition, requiring restitution is recognized as a deterrent to future criminal conduct.

The Town's current restitution ordinance has not been amended in many years and needs to be updated to reflect more modern practices and procedures.

Enclosed with this memo is an ordinance completely rewriting the Town Code with respect to restitution in the Municipal Court. The ordinance is modeled after the current state restitution statute, although I have deleted certain portions of the state statute that are not applicable to municipal court proceedings, and I have added a provision requiring a defendant to reimburse the Town for expenses incurred in connection with the defendant's arrest, booking, incarceration, care while incarcerated, including the cost of the stay at the detoxification center (if applicable). I have also made a few conforming amendments to the Town Code required by the adoption of the new Restitution Ordinance.

The Town's current restitution provision (such as it is) is shown in strikethrough on lines 21-25 of the enclosed ordinance. You will see that the revised restitution provisions are much more comprehensive than the Town's current restitution rules.

The centerpiece provisions of the new ordinance are Subsections D and E on page 5 which provide:

- D. Every order of conviction of a municipal ordinance offense shall include consideration of restitution. Each such order shall include one or more of the following:
 - 1. An order of a specific amount of restitution be paid by the defendant;

2. An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety-one days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined;
 3. An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or
 4. Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.
- E. Every order of restitution shall include an order that the defendant repay to the Town all money paid by the Town in connection with the defendant's arrest or incarceration.

The new Restitution Ordinance has been reviewed by the Police Chief and the Municipal Prosecutor, and we all recommend its adoption to you. We believe that the updated ordinance is important and clarifies the standards and procedures to be followed by the Municipal Judge when he considers restitution in the Municipal Court.

1 **FOR WORKSESSION/FIRST READING – DEC. 14**

2
3 Additions To The Current Breckenridge Town Code Are
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2012

9
10 AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE CONCERNING
11 RESTITUTION TO BE AWARDED TO VICTIMS OF CRIMES

12
13 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
14 COLORADO:

15
16 Section 1. Section 1-4-3 of the Breckenridge Town Code is amended to read in its
17 entirety as follows:

18
19 1-4-3: RESTITUTION:

20
21 ~~A defendant who has been adjudged guilty or against whom a judgment has been entered for~~
22 ~~violating any ordinance of the town may be required, so far as possible and upon such reasonable~~
23 ~~terms as the municipal court may impose, to make restitution or reparation to any aggrieved~~
24 ~~person for any actual damage or loss caused by the offense or infraction for which the conviction~~
25 ~~or judgment of liability was had.~~

26
27 **A. The Town Council finds and declares that:**

- 28
- 29 **1. Crime victims endure undue suffering and hardship resulting from physical**
- 30 **injury, emotional and psychological injury, or loss of property;**
- 31
- 32 **2. Persons found guilty of causing such suffering and hardship should be under**
- 33 **a moral and legal obligation to make full restitution to those harmed by their**
- 34 **misconduct;**
- 35
- 36 **3. The payment of restitution by criminal offenders to their victims is a**
- 37 **mechanism for the rehabilitation of offenders;**
- 38
- 39 **4. Restitution is recognized as a deterrent to future criminality;**
- 40

RESTITUTION ORDINANCE

- 1 **5. An effective criminal justice system requires timely restitution to victims of**
2 **crime and to members of the immediate families of such victims in order to**
3 **lessen the financial burdens inflicted upon them, to compensate them for**
4 **their suffering and hardship, and to preserve the individual dignity of**
5 **victims;**
6
7 **6. The purposes of this Section is to provide for and collect full restitution for**
8 **victims of those municipal ordinance offenses that are under the jurisdiction**
9 **of the Town’s municipal court in the most expeditious manner.**

10
11 **B. It is the intent of the Town Council that restitution be ordered, collected, and**
12 **disbursed to the victims of crime and their immediate families. Such restitution will**
13 **aid the offender in reintegration as a productive member of society. This Section**
14 **shall be liberally construed to accomplish all such purposes.**

15
16 **C. As used in this Section, unless the context otherwise requires:**

- 17
18 **1. “Conviction” means a verdict of guilty by a judge or jury or a plea of guilty**
19 **or nolo contendere that is accepted by the municipal court for any municipal**
20 **ordinance offense. “Conviction” also includes having received a deferred**
21 **judgment and sentence; except that a person shall not be deemed to have**
22 **been convicted if the person has successfully completed a deferred sentence.**
23
24 **2. “Money advanced by a governmental agency for a service animal” means**
25 **costs incurred by a peace officer, law enforcement agency, fire department,**
26 **fire protection district, or governmental search and rescue agency for the**
27 **veterinary treatment and disposal of a service animal that was harmed while**
28 **aiding in official duties and for the training of an animal to become a service**
29 **animal to replace a service animal that was harmed while aiding in official**
30 **duties, as applicable.**
31
32 **3. “Money paid by the Town in connection with the defendant’s arrest or**
33 **incarceration” means all money paid by the Town to the Summit County**
34 **Sheriff, or any other person or governmental entity, in connection with the**
35 **defendant’s arrest, booking, incarceration, care while incarcerated, or**
36 **safekeeping in a detoxification center or otherwise. Such term also includes,**
37 **all money paid by the Town for the care and treatment of a defendant’s**
38 **animal, and the care of a defendant’s property.**
39
40 **4. “Municipal court” or “court” means the municipal court of the Town of**
41 **Breckenridge.**
42
43 **5. “Municipal ordinance offense” means a violation of this Code, or any code**

RESTITUTION ORDINANCE

1 adopted by reference in this Code, for which a penalty is provided.

2
3 **6. “Person” means any public or private corporation, firm, partnership, limited**
4 **liability entity of any kind, association, organization, municipality, county,**
5 **special district, state, or other governmental entity, or any other group acting**
6 **as a unit, as well as a natural person.**

7
8 **7. “Proximately caused” means a cause which in the natural and probable**
9 **sequence produced the claimed injury and without which the claimed injury**
10 **would not have been sustained.**

11
12 **8. (a) “Restitution” means any pecuniary loss suffered by a victim and includes**
13 **but is not limited to all out-of-pocket expenses, interest, loss of use of money,**
14 **anticipated future expenses, rewards paid by victims, money advanced by**
15 **law enforcement agencies, money advanced by a governmental agency for a**
16 **service animal, adjustment expenses, and other losses or injuries proximately**
17 **caused by an offender’s conduct and that can be reasonably calculated and**
18 **recompensed in money. “Restitution” does not include damages for physical**
19 **or mental pain and suffering, loss of consortium, loss of enjoyment of life,**
20 **loss of future earnings, or punitive damages.**

21
22 **(b) “Restitution” may also include extraordinary direct public and all private**
23 **investigative costs.**

24
25 **(c) “Restitution” shall also include all costs incurred by a government agency**
26 **or private entity to:**

27
28 **i. Remove, clean up, or remediate a place used to manufacture or**
29 **attempt to manufacture a controlled substance or which contains a**
30 **controlled substance or which contains chemicals, supplies, or**
31 **equipment used or intended to be used in the manufacturing of a**
32 **controlled substance;**

33
34 **ii. Store, preserve, or test evidence of a controlled substance violation; or**

35
36 **iii. Sell and provide for the care of and provision for an animal disposed**
37 **of under any applicable animal cruelty law.**

38
39 **Costs under this subsection shall include, but are not limited to, overtime**
40 **wages for peace officers or other government employees, the operating**
41 **expenses for any equipment utilized, and the costs of any property designed**
42 **for one-time use, such as protective clothing.**

43
RESTITUTION ORDINANCE

1 (d) If a loss claimed is not specifically mentioned in this Section it must be a
2 loss that was proximately caused by the defendant's conduct.

3
4 9. "Service animal" means any animal, the services of which are used to aid the
5 performance of official duties by a peace officer, law enforcement agency,
6 fire department, fire protection district, or governmental search and rescue
7 agency.

8
9 10. (a) "Victim" means any person aggrieved by the conduct of an offender and
10 includes but is not limited to the following:

11
12 i. Any person against whom any municipal ordinance offense has been
13 perpetrated or attempted;

14
15 ii. Any person harmed by an offender's criminal conduct in the course of
16 a scheme, conspiracy, or pattern of criminal activity;

17
18 iii. Any person who has suffered losses because of a contractual
19 relationship with, including but not limited to an insurer, or because
20 of liability under Section 14-6-110, C.R.S., for a person described in
21 subsection (i) or (ii) of this subsection (a);

22
23 iv. Any victim compensation board that has paid a victim compensation
24 claim;

25
26 v. If any person described in subsection (i) or (ii) of this subsection (a) is
27 deceased or incapacitated, the person's spouse, parent, legal guardian,
28 natural or adopted child, child living with the victim, sibling,
29 grandparent, significant other, as defined in Section 24-4.1-302(4),
30 C.R.S., or other lawful representative;

31
32 vi. Any person who had to expend resources for the purposes described
33 in subsection 7(c) of this Section.

34
35 (b) "Victim" shall not include a person who is accountable for the crime or a
36 crime arising from the same conduct, criminal episode, or plan under this
37 Code.

1 (c) Any “victim” under the age of eighteen is considered incapacitated,
2 unless that person is legally emancipated or the court orders otherwise.

3
4 (d) It is the intent of the Town Council that this definition of the term
5 “victim” shall apply to this Section and shall not be applied to any other
6 municipal ordinance that refers to the term “victim”.

7
8 D. Every order of conviction of a municipal ordinance offense shall include
9 consideration of restitution. Each such order shall include one or more of the
10 following:

- 11 1. An order of a specific amount of restitution be paid by the defendant;
- 12
- 13
- 14 2. An order that the defendant is obligated to pay restitution, but that the
15 specific amount of restitution shall be determined within the ninety-one days
16 immediately following the order of conviction, unless good cause is shown for
17 extending the time period by which the restitution amount shall be
18 determined;
- 19
- 20 3. An order, in addition to or in place of a specific amount of restitution, that
21 the defendant pay restitution covering the actual costs of specific future
22 treatment of any victim of the crime; or
- 23
- 24 4. Contain a specific finding that no victim of the crime suffered a pecuniary
25 loss and therefore no order for the payment of restitution is being entered.
- 26

27 E. Every order of restitution shall include an order that the defendant repay to the
28 Town all money paid by the Town in connection with the defendant’s arrest or
29 incarceration.

30
31 F. The municipal court shall base its order for restitution upon information presented
32 to the court by the prosecuting attorney, who shall compile such information
33 through victim impact statements or other means to determine the amount of
34 restitution and the identities of the victims. Further, the prosecuting attorney shall
35 present this information to the court prior to the order of conviction or within
36 ninety-one days, if it is not available prior to the order of conviction. The court may
37 extend this date if it finds that there are extenuating circumstances affecting the
38 prosecuting attorney’s ability to determine restitution.

39
40 G. Any order for restitution may be:
41

1 **1. Increased if additional victims or additional losses not known to the judge or**
2 **the prosecuting attorney at the time the order of restitution was entered are**
3 **later discovered and the final amount of restitution due has not been set by**
4 **the court; or**

5
6 **2. Decreased:**

7
8 **a. With the consent of the prosecuting attorney and the victim or victims**
9 **to whom the restitution is owed; or**

10
11 **b. If the defendant has otherwise compensated the victim or victims for**
12 **the pecuniary losses suffered.**

13
14 **H. If more than one defendant owes restitution to the same victim for the same**
15 **pecuniary loss, the orders for restitution shall be joint and several obligations of the**
16 **defendants.**

17
18 **I. Any amount paid to a victim under an order of restitution shall be set off against**
19 **any amount later recovered as compensatory damages by such victim in any federal**
20 **or state civil proceeding.**

21
22 **J. When a person's means of identification or financial information was used without**
23 **that person's authorization in connection with a conviction for any crime, the**
24 **municipal court may issue such orders as are necessary to correct a public record**
25 **that contains false information resulting from any violation of such laws.**

26
27 **K. (1) Notwithstanding the provisions of Section D of this Section, the municipal court**
28 **shall order restitution concerning only the portion of the victim's pecuniary loss for**
29 **which the victim cannot be compensated under a policy of insurance, self-**
30 **insurance, an indemnity agreement, or a risk management fund.**

31
32 **(2) The court, in determining the restitution amount, shall consider whether the**
33 **defendant or the vehicle driven by the defendant at the time of the offense was**
34 **covered by:**

35
36 **a. A complying policy of insurance or certificate of self-insurance as**
37 **required by the laws of the State of Colorado;**

38
39 **b. Self-insurance, including but not limited to, insurance coverage**
40 **pursuant to the provisions of part 15 of article 30 of title 24, C.R.S.; or**
41

1 c Any other insurance or indemnity agreement that would indemnify
2 the defendant for any damages sustained by the victim.

3
4 (3)(a) Except as otherwise provided in this subsection (a), the municipal court may
5 not award restitution to a victim concerning a pecuniary loss for which the victim
6 has received or is entitled to receive benefits or reimbursement under a policy of
7 insurance or other indemnity agreement.

8
9 (b) The municipal court may award a victim restitution for a deductible amount
10 under his or her policy of insurance.

11
12 (c) Nothing in this subsection (d) shall prohibit a nonowner driver or passenger in
13 the vehicle from being awarded restitution if the driver or passenger was not
14 covered by his or her own medical payments coverage policy.

15
16 (d) Nothing in this Section shall be construed to limit or abrogate the rights and
17 immunities set forth in the “Colorado Governmental Immunity Act”, Article 10 of
18 Title 24, C.R.S.

19
20 L. The prosecuting attorney must establish by a preponderance of the evidence the
21 amount of restitution owed.

22
23 M. The municipal court may not order restitution without a hearing at which the
24 prosecution must prove the amount of the victim’s loss and its causal link to the
25 defendant’s conduct, and at which the defendant may contest those matters.

26
27 N. A victim’s confidential medical and mental health records in the possession of the
28 prosecuting attorney as part of a victim’s impact statement or for restitution
29 purposes shall not be provided to the defendant without an in-camera review of the
30 records by the municipal judge. To obtain an in-camera review of a victim’s
31 confidential medical or mental health records a defendant must show:

- 32
33 1. that his or her request is not speculative; and
34 2. that an evidentiary hypothesis warrants in-camera review because such
35 documents would tend to disprove all or part of the prosecuting attorney’s
36 restitution request on the basis that the requested amounts were not
37 proximately caused by the defendant’s conduct, or that such documents are
38 otherwise relevant to the criminal allegations pending against the defendant.

39
40 An in-camera review conducted under this Section means a review conducted solely
41 by the municipal judge in his or her chambers.

42
43 Section 2. Section 6-3-4 of the Breckenridge Town Code is repealed.

RESTITUTION ORDINANCE

1
2 Section 3. Section 6-3D-10(B) of the Breckenridge Town Code is repealed.

3
4 Section 4. Section 9-1-6(D)(6) of the Breckenridge Town Code is amended to read in its
5 entirety as follows:

6
7 Upon conviction for any violation of this chapter the ~~court shall require restitution~~
8 ~~pursuant to section 1-4-3 of this code if appropriate~~ **the requirements of Section**
9 **1-4-3 of this Code concerning restitution shall apply.**

10
11 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the
12 various secondary codes adopted by reference therein, shall continue in full force and effect.

13
14 Section 6. The Town Council hereby finds, determines and declares that this ordinance is
15 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
16 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
17 thereof.

18
19 Section 7. The Town Council hereby finds, determines and declares that it has the power
20 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
21 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

22
23 Section 8. This ordinance shall be published and become effective as provided by
24 Section 5.9 of the Breckenridge Town Charter.

25
26 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
27 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
28 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
29 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
30 Town.

31
32 TOWN OF BRECKENRIDGE, a Colorado
33 municipal corporation

34
35
36
37 By _____
38 John G. Warner, Mayor
39
40

RESTITUTION ORDINANCE

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ATTEST:

Town Clerk

Memorandum

TO: Town Council
FROM: Tom Daugherty, Public Works Director
DATE: September 19, 2012
RE: Draft Alpine Rock Lease

As you know the Town is purchasing the Alpine Rock Property next to the McCain Property. As part of that purchase the Town is leasing a five acre parcel back to Alpine Rock, Inc. so that they can continue to operate their concrete plant. The ordinance and lease are attached for first reading by the Council. I have outlined the main points of the lease below.

1. The lease is for approximately five acres of land with a term of five years.
2. The material from Block 11 that was moved into the area of the concrete plant is approximately 100,000 tons of material and we will receive royalties of \$1/ton for two years and then escalate to \$2/ton for years three through five. Alpine Rock pays the royalties once the material is sold; this is in addition to sales tax we receive for the sales.
3. As long as Alpine Rock is exclusively selling material that the Town receives royalties on, there will be no charge for the lease other than royalties.
4. If Alpine Rock wants to bring outside materials onto the site to sell, the lease will be renegotiated to incorporate a lease payment or other compensation for use of the site.
5. Alpine Rock will assign the mining permit for the site to the Town of Breckenridge. The Town can use Alpine Rock's permit to further mine the site if the Town so desires for water storage or other purposes. The Town will be responsible for reclaiming the site once the mining has ended so we can shape it according to planned final uses.

We will plan to execute this lease with Alpine Rock as part of the closing on the property. Staff will be at the work session to answer any questions.

1 ***FOR WORKSESSION/FIRST READING – SEPT. 25***

2
3 COUNCIL BILL NO. _____

4
5 Series 2012

6
7 AN ORDINANCE APPROVING A LEASE WITH ALPINE ROCK COMPANY, A
8 COLORADO CORPORATION d/b/a APC CONCRETE

9
10 WHEREAS, the Town of Breckenridge intends to acquire certain real property from
11 Alpine Rock Company, a Colorado corporation d/b/a APC Concrete (“**Alpine Rock**”); and

12
13 WHEREAS, as part of the acquisition the Town has agreed to lease back to Alpine Rock
14 a portion of the land to be acquired by the Town; and

15
16 WHEREAS, a proposed Lease between the Town and Alpine Rock has been prepared by
17 the Town Attorney and reviewed by the Town Council; and

18
19 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

20
21 The council may lease, for such time as council shall determine, any real or
22 personal property to or from any person, firm, corporation, public and private,
23 governmental or otherwise.

24
25 and;

26
27 WHEREAS, the term of the proposed Lease with Alpine Rock exceeds one year in
28 length; and

29
30 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
31 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

32
33 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
34 BRECKENRIDGE, COLORADO:

35
36 Section 1. The proposed Lease between the Town and Alpine Rock Company, a
37 Colorado corporation d/b/a APC Concrete, a copy of which is marked **Exhibit “A”**, attached
38 hereto and incorporated herein by reference, is approved, and the Town Manager is authorized,
39 empowered, and directed to execute such Lease for and on behalf of the Town of Breckenridge.

40
41 Section 2. The Town Council finds, determines, and declares that it has the power to
42 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
43 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

1 ***DRAFT August 23, 2012 DRAFT***

2
3 **LEASE**

4
5 THIS LEASE (“Lease”) is dated [REDACTED], 2012, and is between the
6 TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“Landlord”) and ALPINE
7 ROCK COMPANY, a Colorado corporation d/b/a APC CONCRETE (“Tenant”).
8

9 **ARTICLE 1 – DEFINITIONS**

10 1.1 Definitions. As used in this Lease the following terms have the following
11 meanings, unless the context clearly requires otherwise:

- ADDITIONAL RENT:** Any amount due to Landlord from Tenant under this Lease that is not specifically identified as “Royalty”, “rent” or “periodic rent.”
- DAY:** Unless otherwise indicated, a calendar day (and not a business day).
- EFFECTIVE DATE:** The date of this Lease.
- FINANCIAL SERVICES MANAGER:** The Financial Services Manager of the Town of Breckenridge, or such person’s designee.
- HAZARDOUS MATERIALS:** Any chemical, material, substance, or waste:

(i) exposure to which is prohibited, limited, or regulated by any federal, state, county, regional or local authority, or other governmental authority of any nature; or

(ii) that, even if not so regulated, may or could pose a hazard to the health or safety of the occupants of the Leased Premises including, without limitation, any petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances defined as “hazardous substances”, “hazardous materials”, “hazardous wastes” or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.

LEASE

Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules, regulations, and precautions.

- LEASE YEAR:** The five twelve- month periods described in Section 2.4.
- LEASED PREMISES:** Landlord’s real property as described on **Exhibit “A”**.
- PROCESSED MATERIALS:** Any material processed by Tenant on the Leased Premises (including, without limitation, asphalt and concrete) during the Term of this Lease.
- RECLAMATION PLAN:** The Reclamation Plan for the Leased Premises approved by the State of Colorado.
- ROYALTY:** The royalty due to Landlord from Tenant pursuant to Article 4.
- STOCKPILED MATERIALS:** The approximately 100,000 tons of material, as of the Effective Date, located partly on the Leased Premises and partly on adjacent property owned by Landlord. The location of the Stockpiled Material will be agreed upon by Landlord and Tenant, and memorialized in a writing prior to the Effective Date.
- TAXES:** All personal property and real property taxes levied, assessed, or imposed by any taxing authority arising out of Tenant’s occupancy and use of the Leased Premises pursuant to this Lease.
- TERM:** The term of this Lease as described in Section 2.3.
- TOWN MANAGER:** The Town Manager of the Town of Breckenridge, or such person’s designee.
- WILL/WILL NOT:** “Will” or “will not” indicate a mandatory obligation to act or to refrain from acting as

LEASE

specifically indicated in the context of the sentence in which such word is used.

ARTICLE 2 - BASIC LEASE PROVISIONS

2.1 Leased Premises. In consideration of Tenant’s payment of the Royalty, and the keeping of the other promises, covenants, and conditions required of Tenant by this Lease, Landlord leases the Leased Premises to Tenant, and Tenant leases the Leased Premises from Landlord, for the Term and upon the conditions of this Lease.

2.2 Use Of Leased Premises.

(a) Tenant will use the Leased Premises only to operate and maintain one asphalt batch plant and one concrete batch plant. Such allowed uses include, without limitation, the following: wash ponds, storage of materials, washing and crushing operations, recycling, reclamation, weighing, material sales, grading, and maintenance activities. Tenant will not use the Leased Premises for any other purpose without Landlord’s prior written consent.

(b) Tenant may not process any material on the Leased Premises that is not part of the Stockpiled Material, or add material to the Stockpiled Material, without:

- (i) Landlord’s prior written consent;
- (ii) an agreement between Landlord and Tenant for the payment of a periodic rent to Landlord; and
- (iii) an executed amendment to this Lease describing the agreed periodic rent.

2.3 Term. The term of this Lease begins at 12:01 A.M., local time, on [redacted], 2012 and ends, unless sooner terminated as hereafter provided, at 11:59 P.M., local time, on [redacted], 2017.

2.4 Lease Years.

(a) The First Lease Year commences on the Effective Date and ends on [redacted], 2013;

(b) The Second Lease Year commences on [redacted], 2013 and ends on [redacted], 2014;

(c) The Third Lease Year commences on [redacted], 2014 and ends on [redacted], 2015;

(d) The Fourth Lease Year commences on [redacted], 2015 and ends on [redacted], 2016; and

1 (e) The Fifth Lease Year commences on [REDACTED], 2016 and ends on
2 [REDACTED], 2017.

3 2.5 Surrender of Leased Premises.

4 (a) Upon the expiration or earlier termination of this Lease Tenant will surrender
5 the Leased Premises to Landlord in good condition, ordinary wear and tear excepted. Not later
6 than the last day of the Term, Tenant will remove its personal property and fixtures (including,
7 but not limited to, trade fixtures) from the Leased Premises. The cost of such removal will be
8 borne by Tenant, and Tenant will repair all injury or damage done to the Leased Premises in
9 connection with the installation or removal of Tenant's personal property and trade fixtures. All
10 of Tenant's fixtures (including, but not limited to trade fixtures) that are so attached to the
11 Leased Premises that they cannot be removed without material injury to the Leased Premises
12 will, at Landlord's option, become the property of Landlord upon installation and remain with
13 the Leased Premises upon surrender.

14 (b) Landlord may retain or dispose of any personal property, fixtures (including,
15 but not limited to, trade fixtures), alterations or improvements left remaining by Tenant at or
16 upon the Leased Premises following the expiration or earlier termination of this Lease, and
17 Landlord is not accountable to Tenant for any damages for the loss or destruction thereof, or for
18 any part of the proceeds of sale, if any, realized by Landlord. Tenant waives all claims against
19 Landlord for any damages suffered by Tenant resulting from Landlord's retention or disposition
20 of such personal property, fixtures (including, but not limited to, trade fixtures), alterations or
21 improvements. Tenant is liable to Landlord for Landlord's costs for storing, removing and
22 disposing of any such personal property, fixtures (including trade fixtures) or alterations.

23 **ARTICLE 3 – RENT; PAYMENT OF SUMS DUE TO LANDLORD**

24 3.1 Rent. So long as Tenant uses the Leased Premises only to process the
25 Stockpiled Material there will be no periodic rent paid by Tenant. If Landlord and Tenant agree
26 that Tenant can process other material on the Leased Premises as provided in Section 2.2(b),
27 Tenant will then pay the agreed periodic rent.

28 3.2 Interest On Past Due Amounts. Tenant will pay interest to Landlord on any sum
29 due to Landlord under this Lease that is 30 days or more past due at the rate of 12% per annum
30 from the date due until the date such payment is fully paid.

31 3.3 Place And Manner Of Payments. All sums payable to Landlord under this Lease
32 will be made to:

33 Town of Breckenridge
34 Clerk & Finance Division
35 Attn: Accounts Receivable
36 P. O. Box 168
37 Breckenridge, CO 80424

LEASE

1
2 or at such other place as the Town Manager may designate by written notice provided to Tenant
3 in accordance with Section 18.2 of this Lease. All sums will be made in legal tender of the
4 United States. Any check given to Landlord will be received subject to collection, and Tenant
5 agrees to pay any charges, fees or costs incurred by Landlord for the collection, including
6 reasonable attorney's fees.
7

8 3.4 Landlord's Lien and Security Interest. Landlord has a first security interest and a
9 lien for all Royalty, rent and other sums of money becoming due under this Lease from Tenant
10 upon all goods, wares, equipment, fixtures, furniture, inventory and other personal property of
11 Tenant situated in or located upon the Leased Premises, and such property may not be removed
12 from the Leased Premises without the express written consent of Landlord until all arrearages in
13 rent, Royalty, and other sums of money then due to Landlord hereunder have first been paid.
14 Upon the occurrence of any event of default by Tenant, Landlord may foreclose the security
15 interest and lien in the manner provided by law. Landlord may file a financing statement (and
16 necessary extensions, renewals, or replacements thereof throughout the Term) in a form legally
17 sufficient to perfect its security interest and lien granted pursuant to this Section. Tenant will
18 execute such documents as may be required during the Term to maintain the validity and priority
19 of the security interest and lien provided for in this Section.

20 **ARTICLE 4 - ROYALTY**

21 4.1 Royalty.

22 (a) Tenant will pay to Landlord a Royalty in the following amounts:

23 (i) During the First Lease Year and the Second Lease Year, a Royalty of
24 \$1.00 per ton for all Processed Materials processed by Tenant on the Leased Premises.

25 (ii) During the Third Lease Year, the Fourth Lease Year, and the Fifth Lease
26 Year, a Royalty of \$2.00 per ton for all Processed Materials processed by Tenant on the
27 Leased Premises.

28 (b) For purposes of computing royalties under this Section, each cubic yard of
29 ready mix concrete will be deemed to include 1½ tons of aggregate.

30 4.2 Due Date. Tenant will pay the Royalty to Landlord in arrears and without
31 demand not later than the 10th day of each month during the Term.

32 4.3 Books Of Account And Auditing.

33 (a) Tenant will keep true and complete records and accounts of all Processed
34 Materials processed on the Leased Premises. Concurrently with the payment of each Royalty
35 Tenant will furnish to Landlord a true and accurate statement of the total amount of Processed

1 Materials processed on the Leased Premises during the period covered by the Royalty payment.
2 Such statement will be certified to be true and correct by Tenant.

3 (b) The Financial Services Manager has access during normal business hours to
4 Tenant's books and records which relate to the amount of Royalty due to Landlord under this
5 Lease, and for no other purpose except as provided by law. Tenant will keep and preserve such
6 records for three years.

7 (c) The Financial Services Manager has the right at any time to audit Tenant's
8 books and records which relate to the amount of Royalty due to Landlord under this Lease.
9 Tenant, upon request, will make all such documents available for examination at Tenant's main
10 business office located at 14802 West 44th Avenue, Golden Colorado, or at such other location as
11 may be mutually acceptable to Landlord and Tenant.

12 (d) If Landlord determines after an audit that the amount of the Royalty due to
13 Landlord under this Lease has, for any reason, been understated by Tenant by more than 5%,
14 Tenant will pay to Landlord the cost of such audit (not to exceed the amount of the deficiency)
15 and the amount of any Royalty deficiency, plus interest on such deficiency at 12% per annum
16 from the date due. Landlord's right to perform such an audit will expire three years after a
17 Royalty payment and accompanying statement have been delivered to Landlord.

18 (e) If the audit conducted by the Financial Services Manager shows that the
19 amount of the Royalty due to Town under this Lease has been understated by Tenant more than
20 5%, Tenant will have the right to have an independent audit conducted at its expense. Such audit
21 will be completed within 90 days from the date Tenant is notified of the results of the Financial
22 Services Manager's audit. The Financial Services Manager and the independent auditor will
23 attempt to reconcile any discrepancies between the two audits.

24 (f) If the audit reflects that there has been an overpayment of Royalty from
25 Tenant to Landlord, such overpayment will be refunded by Landlord to Tenant or credited
26 against the next Royalty payment due at the option of Tenant.

27 (g) Tenant expressly agrees that Financial Services Manager may inspect any
28 sales tax return or report and accompanying schedules and data that Tenant may file with any
29 taxing entity pursuant to the any applicable sales or use tax law, and Tenant waives any claim of
30 confidentiality that it may have in connection therewith.

31 4.4 Rent Provisions Applicable to Royalty. Any provision of this Lease pertaining to
32 non-payment of rent is also applicable to non-payment of Royalty.

33 **ARTICLE 5 – EARLY TERMINATION**

34 5.1 Tenant's Right of Early Termination. Notwithstanding the stated Term of this
35 Lease, Tenant may terminate this Lease, without being liable for breach of this Lease, upon not

1 less than 60 days' prior written notice to Landlord. Tenant's notice must specify the date of its
2 early termination of this Lease.

3 5.2 Landlord's Right of Early Termination. Notwithstanding the stated Term of this
4 Lease, Landlord may terminate this Lease, without being liable for breach of this Lease, upon not
5 less than 60 days' prior written notice to Tenant. Landlord's notice must specify the date of its
6 early termination of this Lease.

7 5.3 Article 6 Applies To Early Termination. Upon the early termination of this Lease
8 pursuant to this Article the provisions of Article 6 of this Lease concerning the remaining
9 Stockpiled Material will apply.

10 **ARTICLE 6 - STOCKPILED MATERIAL**

11 6.1 Stockpiled Material May Be Kept In Place. If any of the Stockpiled Material is
12 located outside of the Leased Premises, but on other property owned by Landlord, as of the
13 Effective Date the Stockpiled Material may be kept in such location until it is moved to the
14 Leased Premises for processing.

15 6.2 Tenant May Not Add to Stockpiled Material. Tenant may not add material to the
16 Stockpiled Material without an agreement with Landlord for the payment of periodic rent as
17 described in Section 2.2(b).

18 6.3 Disposition of Stockpiled Material Upon Expiration of Lease. Upon the expiration
19 of this Lease any remaining Stockpiled Material will be left in place and will become Landlord's
20 property, unless Landlord determines in its sole discretion that it does not want the remaining
21 Stockpiled Material. If Landlord does not want the remaining Stockpiled Material, Landlord
22 must notify Tenant not later than 30 days after the expiration of this Lease, and Tenant will then,
23 at its expense, remove the remaining Stockpiled Material within 20 days after receipt of
24 Landlord's notice.

25 6.4 Disposition of Stockpiled Material Upon Tenant's Early Termination of Lease.
26 Upon Tenant's early termination of this Lease as provided in Section 5.1 any remaining
27 Stockpiled Material will be left in place and will become Landlord's property, unless Landlord
28 determines in its sole discretion that it does not want the remaining Stockpiled Material. If
29 Landlord does not want the remaining Stockpiled Material, Landlord must notify Tenant not later
30 than 30 days after the effective date of Tenant's early termination of this Lease, and Tenant will
31 then remove with remaining Stockpiled Material within 20 days after receipt of Landlord's
32 notice.

33 6.5 Disposition of Stockpiled Material Upon Landlord's Early Termination of Lease.
34 Upon Landlord's early termination of this Lease as provided in Section 5.2 any remaining
35 Stockpiled Material will be left in place and will become Landlord's property (subject to
36 Landlord's obligation to pay Tenant as provided in Section 6.6), unless Landlord determines in
37 its sole discretion that it does not want the remaining Stockpiled Material. If Landlord does not

1 want the remaining Stockpiled Material, Landlord must notify Tenant not later than 30 days after
2 the effective date of Landlord's early termination of this Lease, and Tenant will then remove
3 with remaining Stockpiled Material within 20 days after receipt of Landlord's notice.

4 6.6 Landlord's Payment to Tenant If Landlord Keeps Stockpiled Materials. If
5 Landlord determines to keep the remaining Stockpiled Material pursuant to Section 6.5 Landlord
6 will compensate Tenant for the remaining Stockpiled Material (only) by paying to Tenant an
7 amount equal to:

8 (a) Tenant's actual cost (if any) of hauling the remaining Stockpiled Material to
9 the Leased Premises; **plus**

10 (b) Tenant's actual cost (if any) of crushing the remaining Stockpiled Material.

11 Landlord's payment obligation under this Section is limited to the actual costs spent by Tenant in
12 hauling and crushing the remaining Stockpiled Material kept by Landlord; Landlord's payment
13 obligation does not include any profit for Tenant. Tenant will provide Landlord with verifiable
14 documentation supporting its claim for actual costs incurred in hauling and crushing the
15 remaining Stockpiled Material.

16 **ARTICLE 7 – RECLAMATION PLAN**

17 7.1 Reclamation Plan. Upon:

18 (a) the expiration, or

19 (b) the earlier termination of this Lease pursuant to Article 5,

20 Landlord will perform all reclamation required by Reclamation Plan.

21 **ARTICLE 8 - LANDLORD'S DISCLAIMERS AND EXCULPATORY PROVISIONS**

22 8.1 "As Is" Condition of Leased Premises. Tenant acknowledges that it is familiar
23 with the condition of the Leased Premises. The Leased Premises are leased by Landlord to
24 Tenant, and accepted by Tenant, in "AS IS" condition. Tenant's act of taking possession of the
25 Leased Premises pursuant to this Lease is conclusive evidence that Tenant accepted the Leased
26 Premises in then "AS IS" condition, and that the Leased Premises were in satisfactory condition
27 and working order at the time of commencement of Tenant's possession.

28 8.2 Delay In Delivery of Possession of Leased Premises. Landlord is not liable to
29 Tenant for any delay in delivery of possession of the Leased Premises to Tenant.

30 8.3 Landlord Not Liable For Costs to Prepare Leased Premises For Use By Tenant.
31 Landlord is not responsible for any work required to be done, or any costs or expenses associated
32 with, the preparation of the Leased Premises for Tenant's use. Without limiting the generality of

1 the preceding sentence, Landlord will not pay for the construction or improvement of a road to
2 and from the Leased Premises, or for any site improvements to the Leased Premises.

3 8.4 Landlord's Non-liability. As a material part of the consideration to be received by
4 Landlord under this Lease, Tenant assumes all risk of damage to property or injury to persons in
5 or upon the Leased Premises from any cause other than Landlord's gross negligence or
6 intentional act, and Tenant hereby waives all claims in respect thereof against Landlord.

7 8.5 Limitation of Remedies. IN NO EVENT WILL LANDLORD BE LIABLE FOR ANY
8 INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF
9 ANTICIPATED PROFITS, REVENUE OR SAVINGS, BUSINESS INTERRUPTION, OR ANY SIMILAR
10 CLAIM ARISING FROM LANDLORD'S BREACH OF THIS LEASE, EVEN IF LANDLORD HAS BEEN
11 ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES
12 NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

13 ARTICLE 9 -TENANT'S AFFIRMATIVE OBLIGATIONS

14 9.1 Tenant Liable For Costs to Prepare Leased Premises For Use By Tenant. Tenant
15 is responsible for all work required to be done, and costs incurred in connection with, the
16 preparation of the Leased Premises for Tenant's use.

17 9.2 Required Licenses. Throughout the Term Tenant will obtain and maintain in full
18 force and effect:

- 19 (a) a Town of Breckenridge Business and Occupational License Tax license; and
20 (b) a Town of Breckenridge Sales Tax License.

21 9.3 Utilities. Tenant will initiate, contract for, and obtain in its name, all utility
22 services required on the Leased Premises, including, but not limited to, water, gas, electricity,
23 telephone and internet, and Tenant will pay all charges for such services as they become due.
24 Landlord is not liable for any personal injury or property damage resulting from the negligent
25 operation or faulty installation of utility services provided for use on the Leased Premises, nor is
26 Landlord liable for any injury or damage suffered by Tenant as a result of the failure to make
27 necessary repairs to the utility facilities. Tenant is liable for any injury or damages to the
28 equipment or service lines of the utility suppliers that are located on the Leased Premises,
29 resulting from the negligent or deliberate acts of Tenant, or its members, agents or visitors. In
30 particular, Tenant is liable for any loss or damage due to freezing, stoppage, or blockage of water
31 pipes or plumbing fixtures on the Leased Premises.

32 9.4 Taxes.

33 (a) Possessory Interests. Pursuant to Section 39-3-105, C.R.S., all real or
34 personal property owned by Landlord is exempt from taxation. However, the parties

1 acknowledge that Tenant’s occupancy and use of the Leased Premises pursuant to this Lease
2 may be deemed to be a “taxable possessory interest” pursuant to Section 39-1-103(17)(a), C.R.S.

3 (b) Tenant To Pay Taxes. Tenant will pay all Taxes lawfully assessed arising
4 from its occupancy and use of the Leased Premises pursuant to this Lease, and Tenant will
5 indemnify and defend Landlord from any such Taxes. Tenant will pay all Taxes in a timely
6 manner. Upon Landlord’s written request Tenant will provide to Landlord a photostatic copy of
7 the receipt(s) or cancelled check(s) showing payment of the Taxes. Tenant may pay any Taxes in
8 installments if permitted by law.

9 (c) Tenant’s Right to Contest Taxes. If Tenant is liable for the payment of any
10 Taxes arising from Tenant’s occupancy and use of the Leased Premises pursuant to this Lease,
11 Tenant may, at its sole expense, contest such Taxes by the commencement and prosecution, in
12 good faith and with due diligence, of appropriate legal proceedings. Tenant will make timely
13 payment of such Taxes if Tenant loses the contest. Tenant will advise Landlord prior to
14 instituting any such contest and will as a condition of exercising such right provide Landlord
15 such reasonable assurance as it may request that such contest will be in compliance with the
16 provisions of this Section. Landlord, at Tenant’s sole cost and expense, will reasonably cooperate
17 with Tenant in any such contest; may join in the contest; and will execute and deliver such
18 documents and instruments as may be necessary or appropriate for prosecuting an effective
19 contest.

20 9.5 Maintenance And Snow Plowing.

21 (a) Tenant will, at its expense, keep and maintain the Leased Premises in as good
22 and sanitary a condition and state of repair as existed at the commencement of the Term.

23 (b) Tenant will, at its expense, provide all required maintenance and snow
24 plowing necessary to allow the Premises to be used by Tenant for the uses described in Section
25 2.2.

26 9.6 Signs. Tenant will not post, place, affix, erect, or display any sign within or
27 outside of the Leased Premises without Landlord’s prior approval. In considering Tenant’s
28 request to place a sign within or outside of the Leased Premises, Landlord acts in its capacity as
29 landlord of the Leased Premises, and not in its governmental capacity. Landlord may remove any
30 sign placed within or outside of the Leased Premises in violation of the portions of this Section.
31 In addition to obtaining Landlord’s discretionary permission as described above, Tenant must
32 also obtain any required sign permit from Landlord acting in its governmental capacity. Tenant
33 will maintain all signs located within or outside of the Leased Premises in good, clean, and
34 attractive condition. Tenant will remove all signs placed by it within or outside of the Leased
35 Premises at the expiration or earlier termination of this Lease, and repair any damage or injury
36 caused thereby. If not so removed by Tenant, Landlord may remove such sign(s) at Tenant’s
37 expense.

1 9.7 Inspection And Entry. Landlord and Landlord’s authorized representatives may
2 enter the Leased Premises at all times during reasonable hours to inspect the Leased Premises.
3 Tenant further agrees that Landlord may go upon the Leased Premises at all times and:

4 (a) make any necessary repairs to the Leased Premises and perform any work
5 therein that may be necessary to comply with any laws, ordinances, rules or regulations of any
6 public authority or that Landlord may deem necessary to prevent waste or deterioration of the
7 Leased Premises;

8 (b) post any notice provided for by law; or

9 (c) otherwise protect any and all rights of Landlord,

10 all without any liability to Tenant for damages or any abatement of rent or Royalty.

11 Nothing in this Section implies or creates any duty on the part of Landlord to do any work that
12 under any provision of this Lease Tenant is or may be required to do, nor will it constitute a
13 waiver of Tenant’s default in failing to do such work. No reasonable exercise by Landlord of any
14 rights herein reserved will entitle Tenant to any damage or compensation of any kind from
15 Landlord for any injury, loss, damage, or inconvenience occasioned thereby, or to any abatement
16 of rent or Royalty.

17 9.8 Compliance With Laws. Tenant will, at its expense, comply with all laws,
18 ordinances, orders, and regulations of all governmental authorities with respect to the use of the
19 Leased Premises, including, but not limited to, the Town of Breckenridge “Noise Ordinance”
20 (Chapter 8 of Title 5 of the Breckenridge Town Code), as amended from time to time throughout
21 the Term. A judgment of any court or the admission of Tenant in any action or proceeding
22 against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law,
23 ordinance, requirement or order in the use of the Leased Premises will be conclusive of the fact
24 as between Landlord and Tenant.

25 9.9 Compliance With Air Quality Laws. Without limiting the generality of Section
26 9.8, Tenant will comply with all applicable federal, state, and local air quality laws, rules and
27 regulations in connection with its operations at the Leased Premises.

28 **ARTICLE 10 - TENANT’S NEGATIVE OBLIGATIONS**

29 10.1 Alterations. Tenant will not make any change, improvement, alteration, or
30 addition to the Leased Premises without the prior written consent of Landlord. Any permanent
31 change, improvement, alteration, or addition made by Tenant to the Leased Premises will
32 become the property of Landlord; will be considered as part of the Leased Premises; and will not
33 be removed from the Leased Premises by Tenant upon the expiration or earlier termination of
34 this Lease unless removal is ordered by Landlord. Tenant will not make any change,
35 improvement, alteration or addition to the Leased Premises without first having obtained a
36 “Development Permit” from Landlord, acting in Landlord’s governmental capacity.

1 10.2 Assignment And Subletting. Tenant will not assign, sublet, license, pledge,
2 encumber, or allow any other person or entity to occupy or use any or all of the Leased Premises
3 without first obtaining Landlord's prior written consent. Any assignment, sublease, license,
4 pledge or encumbrance without Landlord's prior written consent is voidable by Landlord and, at
5 Landlord's election, will constitute a default under this Lease. No consent by Landlord to any of
6 the above acts will constitute a further waiver of the provisions of this Section.

7 If Landlord consents to an assignment, sublease, or license Tenant may be required, as a
8 condition of granting consent, to pay Landlord's reasonable costs incurred in considering the
9 proposed assignment, sublease, or license including, but not limited to, legal fees and credit
10 checks.

11 10.3 Assignment By Operation of Law. Neither this Lease nor any interest in this
12 Lease is assignable or transferable by operation of law. If:
13

14 (a) any proceeding under the Bankruptcy Code, or any amendment thereto, is
15 commenced by or against Tenant;

16 (b) Tenant is adjudged insolvent;

17 (c) Tenant makes any assignment for the benefit of creditors;

18 (d) a post-judgment writ of attachment or execution is levied on the leasehold
19 estate created by this Lease and not released or satisfied within 30 days thereafter; or

20 (e) a receiver is appointed for Tenant with authority to take possession or control
21 of the Leased Premises or the business conducted therein by Tenant,

22 then this Lease, at the option of Landlord, will immediately terminate and will not be treated as
23 an asset of Tenant.

24 10.4 Waste or Nuisance. Tenant will not commit, or permit to be committed on the
25 Leased Premises, any waste, any public or private nuisance, or any other act or thing prohibited
26 by law.

27 10.5 Liens. Tenant will not permit any lien to be filed against the Leased Premises
28 including, but not limited to, a lien arising out of any work performed, materials furnished, or
29 obligations incurred by Tenant. Prior to commencing the construction of any improvements upon
30 the Leased Premises, Tenant will post and keep posted notice of Landlord's non-liability of the
31 Leased Premises pursuant to Section 38-22-105, C.R.S.

32

1 **ARTICLE 11 - INSURANCE**

2
3 11.1 Tenant's Liability Insurance. Tenant will, at its expense, maintain public liability
4 insurance covering Tenant's operations on the Leased Premises with minimum combined single
5 limits of not less than \$1,000,000. Tenant's liability insurance policy will be endorsed to include
6 Landlord as an additional insured.
7

8 11.2 Worker's Compensation Insurance. Tenant will maintain at all times throughout
9 the Term worker's compensation insurance as required by Colorado law insuring the payment of
10 compensation to all its employees engaged in the performance of work at the Leased Premises.

11 11.3 Additional Insurance Provisions. Every insurance policy required by this Section
12 will be primary insurance, and any insurance carried by Landlord, its officers, or its employees,
13 or carried by or provided through any insurance pool of which Landlord is a member, will be
14 excess and not contributory insurance to that provided by Tenant. Tenant is solely responsible
15 for any deductible losses under its required insurance policies.

16 11.4 Insurance Criteria. Insurance policies required by this Lease will:

17 (a) be issued by insurance companies licensed to do business in the State of
18 Colorado with general policyholder's ratings of at least A and a financial rating of at least XI in
19 the most current *Best's Insurance Reports* available at the time such insurance is to be procured;
20 and

21 (b) provide that the insurance cannot be cancelled or materially changed in the
22 scope or amount of coverage unless 30 days' advance notice is given to Landlord.

23 (c) Evidence of Insurance. Prior to the commencement of this Lease, and on each
24 subsequent renewal or replacement of the required insurance policies, Tenant will give to
25 Landlord a certificate of insurance evidencing compliance with the requirements of this Section.
26 All required insurance policies will be renewed or replaced and maintained by Tenant throughout
27 the Term to assure continuous coverage. If Tenant fails to give the required insurance certificate
28 within 10 days after notice or demand for it, such action will constitute a default under this
29 Lease, and Landlord may then proceed as provided in Article 14 of this Lease, and/or Landlord
30 may obtain and pay for that insurance and receive reimbursement from Tenant, together with
31 interest thereon at the rate of 12% per annum.

32 **ARTICLE 12 - INDEMNIFICATION**

33 12.1 Indemnification By Tenant. Tenant will indemnify and defend Landlord, its
34 officers, employees, insurers, and self-insurance pool, from all liability, claims, and demands, on
35 account of injury, loss, or damage, including, without limitation, claims arising from bodily
36 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any
37 kind whatsoever, arising out of or in any manner connected with this Lease or Tenant's use or
38 possession of the Leased Premises pursuant to this Lease, except to the extent that such liability,

1 claim, or demand arises through the gross negligence or intentional wrongful act of Landlord, its
2 officers, employees, or agents, or Landlord's breach of this Lease. If indemnification is required
3 under this Section, Tenant will investigate, handle, respond to, and to provide defense for and
4 defend against, any such liability, claims, or demands at its expense, and bear all other costs and
5 expenses related thereto, including court costs and attorney fees.

6 12.2 Survival. The obligations of this Article will survive the expiration or termination
7 of this Lease.

8 **ARTICLE 13 - EMINENT DOMAIN**

9 13.1 Eminent Domain.

10 (a) Definitions. The terms "**eminent domain**," "**condemnation**", and "**taken**"
11 and related terms as used in this Section include any taking for public or quasi-public use and
12 private purchases in place of condemnation by any authority authorized by applicable law to
13 exercise the power of eminent domain.

14 (b) Entire Taking. If the entire Leased Premises are taken by eminent domain,
15 this Lease will automatically end on the earlier of:

16 (i) the date title vests; or

17 (ii) the date Tenant is dispossessed by the condemning authority.

18 (c) Partial Taking. If the taking of a part of the Leased Premises materially
19 interferes with Tenant's ability to continue its business operations in substantially the same
20 manner then Tenant may terminate this Lease on the earlier of:

21 (i) the date when title vests;

22 (ii) the date Tenant is dispossessed by the condemning authority; or

23 (iii) 60 days following notice to Tenant of the date when vesting or dispossession is to
24 occur.

25 Rent and Royalty will be paid to the date of the termination. If the taking of a part of the Leased
26 Premises does not materially interfere with Tenant's ability to continue its business operations in
27 substantially the same manner, then this Lease will terminate only as to part of the Leased
28 Premises taken, and the rent and Royalty will abate in proportion to the part of the Leased
29 Premises taken.

30
31 (d) Awards and Damages. Any compensation or damages paid by a condemning
32 authority will be divided between Landlord and Tenant as follows:

- 1 (i) Tenant is entitled to that portion of the compensation or damages that represents
2 the amount of Tenant's moving expenses, business dislocation damages, Tenant's personal
3 property and fixtures, and the unamortized costs of leasehold improvements paid for by Tenant;
4 and
- 5 (ii) the balance of such compensation or damages belongs to Landlord.

6 **ARTICLE 14 - DEFAULT**

7 14.1 Default By Tenant. The occurrence of any one or more of the following events
8 will constitute a default and breach of the Lease by Tenant:

9 (a) The vacating or abandonment of the Leased Premises by Tenant.

10 (b) The failure by Tenant to make any payment of Royalty, rent, or any other
11 payment required to be made by Tenant hereunder, as and when due, when such failure will
12 continue for a period of 10 days after service of written notice thereof by Landlord to Tenant.

13 (c) The failure by Tenant to observe or perform any of the other covenants,
14 conditions, or provisions of this Lease to be observed or performed by Tenant, or to obey rules
15 promulgated by Landlord, within 10 days after service of written notice thereof by Landlord to
16 Tenant. In the event of a non-monetary default that is not capable of being corrected within 10
17 days, Tenant will not be default if it commences correcting the default within 10 days of service
18 of a demand for compliance notice and thereafter corrects the default with due diligence.

19 (d) The making by Tenant of any general assignment or general arrangement for
20 the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged
21 bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy;
22 the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets
23 located at the Leased Premises or of Tenant's interest in this Lease; or the attachment, execution
24 or other judicial seizure of substantially all of Tenant's interest in this Lease.

25 14.2 Landlord's Remedies Upon Default. If Tenant is in default under this Lease,
26 Landlord has all of the remedies provided for in such circumstances by Colorado law.

27 14.3 Default By Landlord. Landlord will be in default under this Lease if Landlord
28 fails to comply with any of the terms, provisions, or covenants of this Lease within 10 days
29 following service of written notice thereof by Tenant. In the event of a non-monetary default that
30 is not capable of being corrected within 10 days, Landlord will not be default if Landlord
31 commences correcting the default within 10 days of receipt of notification thereof and thereafter
32 corrects the default with due diligence.

33 14.4 Tenant's Remedies Upon Default. If Landlord is in default under this Lease,
34 Tenant has all of the remedies provided for in such circumstances by Colorado law.

1 **ARTICLE 15 - NONDISTURBANCE**

2 15.1 Quiet Enjoyment. Subject to the terms and conditions of this Lease, Landlord
3 covenants that so long as the Royalty and any rent for the Leased Premises is paid as and when
4 due, and there is no default in any of the other covenants, conditions, or provisions of this Lease
5 to be performed, observed or kept by Tenant, Tenant will peaceably and quietly hold and enjoy
6 the Leased Premises for the entire Term.

7 **ARTICLE 16 - LANDLORD’S RULES**

8 16.1 Rules. Tenant will faithfully observe and comply with any rules and regulations
9 promulgated by Landlord with respect to the Leased Premises. Landlord’s rules and regulations
10 must be reasonable, and may not unilaterally change or significantly alter the material terms and
11 conditions of this Lease. The rules and regulations, and any amendments thereto, will be binding
12 upon Tenant upon delivery to Tenant.

13 **ARTICLE 17 - HAZARDOUS MATERIALS**

14 17.1 Hazardous Materials - Prohibited. Tenant will full comply with all statutes, laws,
15 ordinances, rules, regulations, and precautions now or hereafter mandated or advised by any
16 federal, state, local, or other governmental agency with respect to the use, generation, storage, or
17 disposal of Hazardous Materials. Tenant will not cause, or allow anyone else to cause, any
18 Hazardous Materials to be used, generated, stored, or disposed of on or about the Leased
19 Premises without the prior written consent of Landlord, which consent may be revoked at any
20 time. Tenant’s indemnification of Landlord pursuant to this Lease extends to all liability,
21 including all foreseeable and unforeseeable consequential damages, directly or indirectly arising
22 out of the use, generation, storage, or disposal of Hazardous Materials at the Leased Premises by
23 Tenant, or any person claiming under Tenant, including, without limitation, the cost of any
24 required or necessary repair, cleanup, or detoxification and the preparation of any closure or
25 other required plans, whether such action is required or necessary prior to or following the
26 termination of this Lease, to the full extent that such action is attributable, directly or indirectly,
27 to the use, generation, storage, or disposal of Hazardous Materials by Tenant or any person
28 claiming under Tenant; provided, however, the written consent by Landlord to the use,
29 generation, storage, or disposal of Hazardous Materials will excuse Tenant from Tenant’s
30 obligation of indemnification. In the event Tenant is in breach of the covenants herein, after
31 notice to Tenant and the expiration of the earlier of:

32 (a) the cure period provided in Section 14.1(c);

33 (b) the cure period permitted under applicable law, regulation, or order,

34 then Landlord may, in its sole discretion, declare a default under this Lease and/or cause the
35 Leased Premises to be freed from the Hazardous Material and the cost thereof will be deemed
36 additional rent hereunder and will immediately be due and payable from Tenant. The obligations
37 of Tenant under this Section will survive the expiration or termination of this Lease.

1 **ARTICLE 18 - MISCELLANEOUS**

2 18.1 Attorneys Fees/Costs. If any action is brought in a court of law by either party to
3 this Lease concerning the enforcement, interpretation, or construction of this Lease, the
4 prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as
5 costs, including expert witness' fees, incurred in the prosecution or defense of such action.

6 18.2 Notices. All notices required or permitted under this Lease must be given by
7 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
8 carrier delivery, or by telecopies, directed as follows:

9 If intended for Town to:

10
11 Town of Breckenridge
12 P.O. Box 168
13 150 Ski Hill Road
14 Breckenridge, Colorado 80424
15 Attn: Town Manager
16 Telecopier number: (970)547-3104
17 Telephone number: (970)453-2251
18

19 with a copy in each case (that will not constitute notice) to:

20
21 Timothy H. Berry, Esq.
22 Timothy H. Berry, P.C.
23 131 West 5th Street
24 P. O. Box 2
25 Leadville, Colorado 80461
26 Telecopier number: (719)486-3039
27 Telephone number: (719)486-1889
28

29 If intended for Tenant to:

30
31 Alpine Rock Company
32 14802 West 44th Avenue
33 Golden, Colorado 80403
34
35 Telecopier number: (303)279-6216
36 Telephone number: (303)279-6611
37

38 Any notice delivered by mail in accordance with this Section will be effective on the third
39 business day after having been deposited in any post office or postal box regularly maintained by
40 the United States postal service. Any notice delivered by telecopier in accordance with this
41 Section will be effective upon receipt if concurrently with sending by telecopier receipt is

1 confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt
2 requested, on the same day to the intended recipient. Any notice delivered by hand or
3 commercial carrier will be effective upon actual receipt. Either party, by notice given as provided
4 above, may change the address to which future notices may be sent. The provisions of this
5 Section does not apply to any notice or demand that is required to be served in a particular
6 manner by applicable law; any such notice or demand will be served as required by law
7 notwithstanding the provisions of this Section. E-mail is not a valid way to give notice under this
8 Lease.

9
10 18.3 Complete Agreement. It is understood and agreed that this Lease contains the
11 complete and final expression of the agreement between the parties, and there are no promises,
12 representations, or inducements except as are herein provided. All negotiations, considerations,
13 representations, and understandings between the parties related to this Lease are contained
14 herein.

15 18.4 Amendment. This Lease may not be modified except by a written Lease signed by
16 both Landlord and Tenant. Oral modifications of this Lease are not permitted.

17 18.5 Captions. The headings of the sections and paragraphs contained in this Lease are
18 for convenience only and do not define, limit, or construe the contents of the articles, sections
19 and paragraphs.

20 18.6 Waiver. The failure of either party to exercise any of such party's rights under
21 this Lease is not a waiver of those rights. A party waives only those rights specified in writing
22 and signed by the party waiving such rights.

23 18.7 Severability. If any provision of this Lease is held to be invalid, illegal, or
24 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions
25 contained in this Lease and the application hereof will not in any way be affected or impaired
26 thereby.

27 18.8 Force Majeure. Neither party will be liable to the other for any failure, delay, or
28 interruption in the performance of any of the terms, covenants, or conditions of this Lease due to
29 causes beyond the control of that party including, without limitation, strikes, boycotts, labor
30 dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of
31 superior governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage
32 or any other circumstance for which such party is not responsible or that is not in its power to
33 control.

34 18.9 Advances By Landlord For Tenant. If Tenant fails to do anything required to be
35 done by it under the terms of this Lease (other than a failure to make the payments to Landlord
36 herein required) Landlord may, at is sole option, but without any obligation to do so, do or
37 perform such act or thing on behalf of Tenant, and in doing so Landlord will not be deemed to be
38 a volunteer; provided, however, that before exercising its rights under this Section Landlord must
39 give notice to Tenant as provided in Section 18.2, and afford Tenant not less than five days from

1 the giving of such notice within which to do or perform the act required by Tenant. Upon
2 notification to Tenant of the costs incurred by Landlord Tenant will promptly pay to Landlord
3 the full amount of costs and/or expenses incurred by Landlord pursuant to this Section, together
4 with interest thereon at the rate of 12% per annum.

5 18.10 Governmental Immunity. Landlord is relying on, and does not waive or intend to
6 waive by any provision of this Lease, the monetary limitations (presently \$150,000 per person
7 and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the
8 Act, as from time to time amended, or any other limitation, right, immunity or protection
9 otherwise available to Landlord, its officers, or its employees.

10 18.11 No Adverse Construction Based On Authorship. Each of the parties stipulate and
11 agree that it had the opportunity to participate in the drafting of this Lease. This Lease is not to
12 be construed against either party by virtue of such party having drafted this Lease.

13 18.12 Landlord's Consent. Except as otherwise expressly provided to the contrary in
14 this Lease, wherever in this Lease it is provided that some act requires Landlord's prior consent,
15 such consent may be granted, withheld, or conditionally approved in Landlord's sole and
16 absolute discretion.

17 18.13 Authority. The individual executing this Lease on behalf of Tenant represents
18 and warrants to Landlord that he or she has all requisite power and authority to bind Tenant and
19 to cause Tenant to fully perform its obligations under this Lease.

20 18.14 Third Parties. There are no third party beneficiaries of this Lease.

21 18.15 Lease Not To Be Recorded. This Lease **MAY NOT BE RECORDED** with the
22 Clerk and Recorder of Summit County, Colorado.

23 18.16 Time of Essence. Time is of the essence of this Lease.

24 18.17 Governing Laws; Venue; Waiver of Jury Trial. The laws of the State of Colorado
25 (without regard to its conflict of laws principles) will govern the interpretation, validity,
26 performance, and enforcement of this Lease. Any litigation brought to interpret or enforce this
27 Lease must be commenced in the state courts of Summit County, Colorado. **BOTH PARTIES**
28 **WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS**
29 **AGREEMENT.**

30 18.18 Non-Discrimination; Compliance With Applicable Laws. Tenant:

31 (a) will not discriminate against any employee or applicant for employment to
32 work at the Leased Premises because of race, color, creed, sex, sexual orientation, religion,
33 national origin, or disability;

1 (b) will insure that applicants who are to work at the Leased Premises are
2 employed and that employees are treated during employment without regard to their race, color,
3 creed, sex, sexual orientation, religion, national origin, or disability;

4 (c) will in all solicitations or advertisements for employees to be engaged in the
5 performance of work at the Leased Premises state that all qualified applicants will receive
6 consideration for employment without regard to race, color, creed, sex, sexual orientation,
7 religion, national original or disability; and

8 (d) will comply with all applicable federal, state, and local laws, rules and
9 regulations. Without limiting the generality of the foregoing, Tenant will comply with the
10 applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public
11 Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory
12 agency. The indemnification and termination provisions of this Lease apply to Tenant's failure to
13 comply with all applicable laws or regulations.

14 18.19 No Partnership. Landlord is not a partner, associate, or joint venturer of Tenant in
15 the conduct of Tenant's business at the Leased Premises. Tenant is an independent contractor
16 without the right or authority to impose tort or contractual liability upon Landlord.

17 18.20 Survival. All unperformed agreements and obligations contained in this Lease
18 will survive the expiration or earlier termination of the Lease, and after the expiration or earlier
19 termination of this Lease the parties will continue to be bound by this Lease until all of their
20 respective obligations hereunder have been performed or satisfied.

21 18.21 Binding Effect. The covenants, conditions, and obligations herein contained
22 extend to, bind, and inure to the benefit of, not only the parties hereto, but their respective
23 successors and permitted assigns.

24 18.22 Annual Appropriation. Notwithstanding anything herein contained to the
25 contrary, Landlord's financial obligations under this Lease are subject to an annual appropriation
26 being made by the Town Council of the Town of Breckenridge, Colorado in an amount sufficient
27 to allow Landlord to perform its obligations hereunder. If sufficient funds are not appropriated,
28 this Lease may be terminated by either party without penalty. Landlord's obligations hereunder
29 do not constitute a general obligation indebtedness or multiple year direct or indirect debt or
30 other financial obligation whatsoever within the meaning of the Constitution or laws of the State
31 of Colorado.

32 18.23 Incorporation of Exhibit. The attached **Exhibit "A"** is incorporated into this
33 Lease by reference.

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LANDLORD:

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Timothy J. Gagen, Town Manager

ATTEST:

Town Clerk

TENANT:

ALPINE ROCK COMPANY, a Colorado
corporation d/b/a APC CONCRETE

By: _____

Title: _____

Exhibit "A"

LEGAL DESCRIPTION OF LEASED PREMISES

[TO BE INSERTED]

Exhibit "A"

MEMO

TO: Town Council
FROM: Town Attorney
RE: Hendrix Lode Claim Resolution
DATE: September 18, 2012 (for September 25th meeting)

At the last Council meeting the Council authorized the staff to work with the County to purchase the Hendrix Lode from the Gertrude E. Young Trust for \$65,000.

A standard Option Agreement for the property has been prepared, and has been signed by all parties, including the Town Manager.

It is necessary for the Town Council to ratify the Town Manager's signature on the Option Agreement. A proposed resolution to do that, as well as to approve the Option Agreement, is included with this memo.

I will be happy to discuss this matter with you on Tuesday.

1 ***FOR WORKSESSION/ADOPTION – SEPT. 25***

2
3 A RESOLUTION

4
5 SERIES 2012

6
7 A RESOLUTION RATIFYING AND APPROVING A REAL ESTATE OPTION
8 AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE, THE BOARD OF COUNTY
9 COMMISSIONERS OF SUMMIT COUNTY, AND THE GERTRUDE E. YOUNG TRUST
10 (Hendrix Lode, M.S. #3845)

11
12 WHEREAS, the Town of Breckenridge and the Board of County Commissioners of
13 Summit County (“**County**”) desire to enter into an Option Agreement granting to the Town and
14 the County the right and option to acquire the interest of The Gertrude E. Young Trust in the
15 Hendrix Lode, M.S.# 3845 in Summit County, Colorado; and

16
17 WHEREAS, an Option Agreement between the Town, the County, and The Gertrude E.
18 Young Trust has been prepared, a copy of which is marked **Exhibit “A”**, attached hereto, and
19 incorporated herein by reference (“**Agreement**”); and

20
21 WHEREAS, the Town Council has reviewed the proposed Agreement, and finds and
22 determines that it would be in the best interests of the Town and its residents for the Town to
23 enter into the Agreement; and

24
25 WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a
26 resolution may be used to approve a contract; and

27
28 WHEREAS, the Agreement has previously been executed by the Town Manager on
29 behalf of the Town, and it necessary and appropriate for the Town Council to ratify the previous
30 execution of the Agreement by the Town Manager.

31
32 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
33 BRECKENRIDGE, COLORADO, as follows:

34
35 Section 1. The Option Agreement between the Town, the County, and The Gertrude E.
36 Young Trust (**Exhibit “A”** hereto) is approved, and the Town Manager’s previous execution of
37 such Option Agreement for and on behalf of the Town of Breckenridge is ratified, confirmed and
38 approved.

39
40 Section 2. At such time as the Town Manager is advised by the Town Attorney that it is
41 appropriate to do so, the Town Manager is authorized, empowered, and directed to give notice of
42 the exercise of the option granted to the Town by the Agreement prior to the deadline provided
43 for in the Agreement, and thereafter to take all necessary and appropriate action to close the
44 purchase of the real property contemplated by the Agreement. In connection therewith, the Town
45 Manager has full power and authority to do and perform all matters and things necessary to the

1 purchase and acquisition of the property described in the Agreement, including but not limited,
2 to the following:

- 3
- 4 1. The making, execution, and acknowledgment of extension
5 agreements, settlement statements, closing agreements and
6 other usual and customary closing documents; and
7
- 8 2. The performance of all other things necessary to the
9 acquisition of the subject property by the Town.

10
11 Section 3. This resolution is effective upon adoption.

12
13 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2012.

14
15 TOWN OF BRECKENRIDGE

16
17
18
19 By: _____
20 John G. Warner, Mayor

21
22 ATTEST:

23
24
25
26
27 _____
28 Town Clerk

29
30 APPROVED IN FORM

31
32
33
34 _____
35 Town Attorney date

OPTION AGREEMENT

Date: September 14, 2012

SELLER: Gertrude E. Young Trust
Gertrude E. Young, Trustee
10046 E. Hummingbird Lane
Apache Junction, AZ 85118-4625

c/o Steve West
100 South Ridge Street, Suite 204
Po Box 588
Breckenridge, CO 80424
swest@westbrown.com

PURCHASER: Board of County Commissioners of Summit County, Colorado (undivided 50% interest)
P.O. Box 68
Breckenridge, CO 80424

Town of Breckenridge (undivided 50% interest)
P.O. Box 168
Breckenridge, CO 80424

(Collectively referred to as "**Purchaser**")

In consideration of the sum of \$100.00 (one hundred dollars) paid to Seller, the receipt and sufficiency of which are hereby acknowledged, Seller hereby gives and grants to Purchaser the exclusive option to purchase the following real estate located in Section 29 of Township 6 South, Range 77 West, Summit County, Colorado, to wit:

The Hendrix Lode, M.S. #3845

together with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other appurtenances thereto, all improvements thereon and all attached fixtures thereon in their present condition and free of encumbrances, except as herein provided (collectively the "Property").

If Purchaser decides to purchase the Property, Purchaser must notify Seller on or before **September 28, 2012** (Notification Date) which notice must be in writing and sent by email with read receipt, registered or certified mail, or delivered personally. Such notice shall be effective when mailed or delivered to Seller at the address set forth above. The total purchase price of the Property shall be \$65,000.00 which shall be paid as follows:

\$100.00 in the form of a check provided with this Option Agreement and as part payment of purchase price.

\$500.00 in the form of a check, as an earnest money deposit and part payment of purchase price. Said earnest money payment will be deposited in escrow with a title company with offices in Summit County chosen by Seller when purchase notice is given and shall be paid to Seller at the time of closing.

\$64,400.00 plus closing costs customarily split equally between Seller and Purchaser; to be paid by Purchaser at closing in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller's check, and cashier's check (Good Funds).

If the Option is not exercised on or before the Notification Date, the option money paid hereunder will not be refunded to the Purchaser, but shall be retained by the Seller, and all obligations of both the Purchaser and the Seller arising under this Option Agreement shall terminate.

In the event the option is exercised, the Property will be transferred and the closing will take place upon the following terms and conditions:

1. The purchase price shall include all minerals appurtenant to the Property and owned by Seller.
2. Seller will furnish to Purchaser, at Seller's expense, a current commitment for owner's title insurance policy in an amount equal to the purchase price on or before seven (7) days after Purchaser notifies Seller of its intent to purchase the Property. Copies of all documents referred to in the title commitment shall be provided to Purchaser, at Seller's cost, along with the commitment. Purchaser shall have the right to inspect the title commitment and provide Seller written notice of unmerchantability of title or of any other unsatisfactory title condition shown by the title documents prior to closing. If any unsatisfactory title condition is not corrected prior to closing, then Purchaser shall have the option to terminate this contract and demand and receive the return of all monies paid hereunder.
3. Seller will furnish, at Seller's expense, an ALTA title insurance policy to Purchaser at closing or as soon thereafter as possible pursuant to the title commitment accepted by Purchaser. Such title policy shall have owner's extended coverage (title insurance with standard exceptions deleted and including gap coverage) at Seller's expense, provided, however, this paragraph shall not require Seller to procure a new survey of the Property.
4. The date of closing shall be on or before **October 31, 2012**. The location, date and time of closing shall be designated by Seller and Purchaser upon mutual agreement. The title company's costs of performing the closing shall be split equally between Purchaser and Seller.
5. Seller shall convey merchantable title to the Property by a good and sufficient special warranty deed, free and clear of all taxes and encumbrances, except as provided for in Paragraph 7 below. If title is not merchantable, or if the Property should be damaged prior to closing, the Purchaser may elect to demand and receive the return of all monies paid hereunder. In the event Purchaser demands and receives the return of all monies paid hereunder pursuant to this paragraph number 5, all obligations of both Purchaser and Seller as set forth in this Option Agreement shall terminate.
6. Any real estate commission due upon the sale of the Property to Purchaser shall be paid by Seller. Purchaser represents to Seller that it is not a party to a contract which requires the payment of any real estate commission upon sale of the Property to Purchaser.
7. At the time of closing on the Property, Seller shall warrant that the Property is free and clear of any liens, encumbrances and other matters, except for easements, rights-of-way, restrictions and mineral reservations accepted by Purchaser pursuant to Paragraph 2 above, and except for taxes and assessments for the year of closing. Taxes, as determined by the current levy and assessment, assessments, and all pre-paid items shall be apportioned to the date of closing when the deed and possession of the Property shall be delivered to Purchaser.

8. During the term of this Contract the Purchaser, its agents, employees, contractors, and engineers, shall have the right from time to time to enter upon the Property at their risk for the purpose of inspecting the same and conducting surveys, engineering studies, borings, soil tests, investigations, feasibility studies and the like. Within a reasonable time after such entries Purchaser shall, to the extent practicable, restore the Property to its prior condition. The Purchaser agrees to indemnify and save the Seller harmless from all claims arising by reason of such entries.
9. Seller represents that Seller has no knowledge of any hazardous materials or environmental contamination on the Property. Purchase is subject to a Phase I environmental assessment satisfactory to Purchaser of hazardous substances and conditions being completed by Purchaser or its agent at Purchaser's expense prior to closing, and a finding that there are no hazardous substances or conditions on the Property. If notice is not provided to Seller by Purchaser on or before five days prior to closing then this provision shall be deemed to have been met.
10. In the event of a default hereunder by Purchaser, all obligations of both Purchaser and Seller arising under this Option Agreement shall terminate and Seller shall be entitled to keep the option money without accounting to Purchaser therefor, and if the option to purchase has been exercised by Purchaser and the Earnest Money has been deposited in escrow, the title company holding such escrow shall deliver such Earnest Money to Seller and Seller shall be entitled to keep and retain such Earnest Money without accounting to Purchaser therefor. In the event Seller defaults under the terms and conditions hereof, Purchaser may demand and receive the return of the option money and earnest money paid hereunder, or Purchaser may elect to treat this contract as being in full force and effect and Purchaser shall have the right to an action for specific performance of this contract or damages, or both. In the event a civil action is filed regarding the terms of this contract, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney's fees.
11. This option proposal shall expire unless accepted in writing by Seller, as evidenced by Seller's signature below, and Purchaser receives notice of such acceptance on or before **September 19, 2012**. Signatures by telefax or electronic signatures are acceptable for all purposes. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.
12. Seller shall not be obligated to cure any unsatisfactory title condition or environmental condition pertaining to the Property that is identified by Purchaser pursuant to Paragraphs 2 or 9 above. Purchaser's remedy for any such unsatisfactory condition that is not cured by Seller shall be the termination of this Option Agreement as provided for herein.

[Signatures on Following Pages]

PURCHASER
Board of County Commissioners of Summit County, Colorado

By: *[Signature]*
Gary Martinez, County Manager
Date: 9/14/12

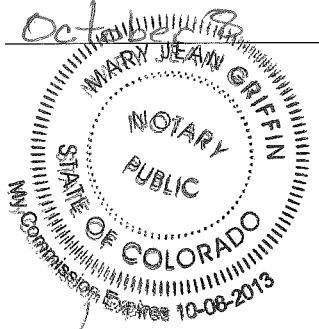
Approved as
to form

STATE OF COLORADO)
)
County of Summit)

[Signature]
Legal

The foregoing instrument was acknowledged before me this 14 day of September, 2012, Gary Martinez, as County Manager of Summit County, Colorado.

My commission expires October 9, 2013. Witness my hand and official seal.



Mary Jean Griffin
Notary Public

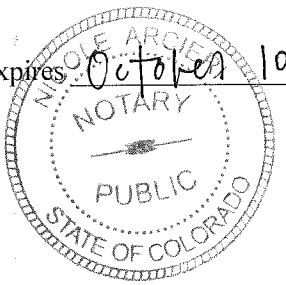
Town of Breckenridge

By: *[Signature]*
Timothy J. Gagen, Town Manager
Date: 9/14/12

STATE OF COLORADO)
)
County of Summit)

The foregoing instrument was acknowledged before me this 14 day of September, 2012, by Timothy J. Gagen as Town Manager of the Town of Breckenridge.

My commission expires October 10, 2015. Witness my hand and official seal.



[Signature]
Notary Public

SELLER

Gertrude E Young Trust

By: Stephen C. West as Attorney-in-Fact
for Gertrude E Young, Trustee

STATE OF Colorado)
County of Summit)

The foregoing instrument was acknowledged before me this 17th day of September, 2012, by Gertrude E. Young Stephen C. West, as Attorney-in-Fact for Gertrude E. Young, Trustee of the Gertrude E. Young Trust.

My commission expires 3-31-2015, . Witness my hand and official seal.

Ann M. Wallace
Notary Public



Memorandum

TO: TOWN COUNCIL
FROM: Dale Stein, Assistant Town Engineer
DATE: September 19, 2012
RE: Public Projects Update

Cucumber Gulch Restoration

Work has begun this week on Phase 1, Stage 1 of the Cucumber Gulch Restoration. The Contractor mobilized equipment and materials on Monday and began the construction operation with the installation of initial erosion control measures yesterday. The Contractor is now working on the repairs and improvements to the rock stilling basin at the end of the existing 60 inch culvert. Once Stage 1 has been completed, the Contractor will construct an access to the Spreader Pond area and begin excavation and restoration of the pond. Staff will continue to monitor the work on a daily basis and will provide an update on the construction progress at the September 25th work session.

Riverwalk Center and Tiger Dredge Lot Master Plan

Staff will be meeting with the consultant, Semple Brown, on September 20th to review project schedule. Council will be updated at the work session on important dates and milestones for the project.

Harris Street Building Renovation

Staff is currently working with our project architect, Anderson Hallas, finalizing the project scope and schedule for the remaining programming and design phases. During the recent weeks a full topographic survey and a hands-on foundation investigation was completed in anticipation of an October 2012 start of the project design phase. Staff will provide further details of the design and construction schedule to Town Council at the September 25th work session.

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: September 19, 2012
SUBJECT: Committee Reports for 9-25-2012 Council Packet

The following committee reports were submitted by Town Employees and/or the Town Manager:

Liquor Licensing Authority	September 18, 2012	Mistaya Pierpont
<ul style="list-style-type: none">• All consent items were approved off of the agenda, including a modification of premises for Quandary Grille to extend their currently licensed premises to include the Main Street Station plaza/common area for the Celtic Festival on Sept. 29, 2012.• Detective Blank and the Liquor License Authority had a discussion regarding what type of background information they would like to receive on applicants and establishments and when they would like Detective Blank to provide them with information related to liquor violations.		

Committees	Representative	Report Status
CAST	Mayor Warner	Verbal Report
CDOT	Tim Gagen	No Meeting/Report
CML	Tim Gagen	No Meeting/Report
I-70 Coalition	Tim Gagen	No Meeting/Report
Mayors, Managers & Commissions Meeting	Mayor Warner	Verbal Report
Summit Leadership Forum	Tim Gagen	No Meeting/Report
Liquor Licensing Authority*	Mistaya Pierpont	Included
Wildfire Council	Matt Thompson	No Meeting/Report
Public Art Commission*	Jenn Cram	No Meeting/Report
Summit Stage Advisory Board*	James Phelps	No Meeting/Report
Police Advisory Committee	Chief Haynes	No Meeting/Report
Housing/Childcare Committee	Laurie Best	Verbal Report
CMC Advisory Committee	Tim Gagen	No Meeting/Report

Note: Reports provided by the Mayor and Council Members are listed in the council agenda.

* Minutes to some meetings are provided in the Manager's Newsletter.

INTEROFFICE MEMORANDUM

TO: TIM GAGEN, TOWN MANAGER; RICK HOLMAN, ASSISTANT TOWN MANAGER
FROM: FINANCE DIVISION
SUBJECT: AUGUST 2012 FINANCIAL VARIANCE HIGHLIGHTS MEMO
DATE: 9/18/2012

This report highlights variations between budget and actual figures for the Town of Breckenridge for the first eight months of 2012.

Fund Updates/New Items of Note:

Excise Fund: Revenue is at 103% of YTD budget and Expense (transfers) are at 100% of YTD budget

Items of Note:

- Sales Tax slightly ahead of budget at 103% (\$262k over budget)
- Accommodation Tax revenues at 109% of budget (\$97k over budget)
- RETT collections at 106% of YTD budget (\$101k over budget)
- Public Service Franchise Tax below budget by \$91k (timing).

General Fund Revenue: 104% of YTD budget (109% net of transfers)

General Fund Expenses: 99% of YTD budget

All Funds Net of Transfers:

- Revenue: 97% of budget. Primarily due to Affordable Housing.
 - Settlement for Valley Brook from the Summit Housing Authority expected by the end of September.
 - Utility Fund revenue at 119% of YTD budget. Water restrictions over past two months resulted in 2012 utility billing of \$615k vs. 5 year historical average of \$452k. PIF's continue to exceed budget (\$154k).
- Expense: 86% of budget. Primarily due to Capital, Utility Fund, and Affordable Housing (see below for more info)

Variations Explained in Prior Months:

General Fund Revenue:

- Municipal Court Program ahead of budget by 45% (\$71k), primarily due to traffic and penal fines (related to ski pass violations).
- Transit Services received a grant of \$113k which contributed to the favorable variation.
- Public Safety Admin/Records at 48% of budget-timing. Grant of \$32k budgeted in January, not yet received.
- Public Safety Community Service at 153% of YTD budget due to pay parking and parking ticket revenues.
- Planning Services Admin at 220% of YTD budget-ahead of budget in all fee categories and ahead of prior year.

General Fund Revenue (continued):

- Building Services Admin Program at 117% of budget (\$59k over budgeted revenue) due to permits and plan check fees.
- PW Admin over budget by \$70k due to County Road and Bridge levy (timing)
- Recreation Programs 29% over budget primarily due to Summer Recreation Fees.

General Fund Expenses:

- Public Safety Communication at 67% of budget due to timing of Summit County Communications invoice.
- Facilities Admin over budget due to timing: Liability Insurance premium paid in January to take advantage of discount, budgeted over 12 months.
- Recreation Operation Programs under budget by 7% primarily due to electric and gas.

All Funds Net of Transfers:

Utility Fund:

- Revenue: see above
- Expense: (all of 2012) expense variance is due to Major System Improvement budgeted expenses of \$2 million for the pump back project for which no expenditures have been made.

Capital Fund:

- Revenue: under budget due to County contribution budgeted for PW building, now scheduled for 2013.
- Expense: the budget for expenditures in the Capital Fund is reflected at 100% as the expenditures in the Capital Fund do not follow a particular trend.

Marketing Fund:

- Revenue: Accommodations tax revenue ahead of budget (see Excise fund report)
- Expense: over budget due to USGCC. Fund balance was appropriated for this purpose.

Golf Fund:

- Revenue: over budget \$106k due to greens fees (\$42k) and cart fees (\$68k).

Housing Fund:

- Revenue: under budget due to Valley Brook sales-settlement from Summit Housing Authority forthcoming.
- Expenses: under budget due to capital expenditures.

Open Space Fund:

- Revenue: over budget primarily due to a \$108k Forest Restoration Grant received from Colorado State University
- Expense: variance due to Cucumber Gulch land acquisition. Reimbursement of \$400k from County received in April.

Garage Fund:

- Revenue: over budget due to grants.
- Expenditures: over budget due to equipment purchases (timing).

Information Technology Fund:

- Expense: variance due to purchases of equipment

Special Projects Fund:

- Expense: variance due to Grants to Other Organizations not yet paid out

**TOWN OF BRECKENRIDGE
EXCISE TAX FUND
CURRENT YEAR TO PRIOR YEAR COMPARISON
FOR THE 8 MONTHS ENDING AUGUST 31, 2012**

67% OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2011 vs. 2012 ACTUAL % VARIANCE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
TAX REVENUE										
SALES TAX	7,352,543	12,706,676	58%	95%	7,740,350	7,478,723	261,627	103%	13,684,401	57%
ACCOMMODATIONS TAX	1,120,372	1,790,093	63%	93%	1,208,174	1,111,093	97,081	109%	1,668,701	72%
CIGARETTE TAX	32,452	51,304	63%	99%	32,854	28,031	4,823	117%	44,003	75%
TELEPHONE FRANCHISE TAX	12,677	25,282	50%	109%	11,608	11,768	(160)	99%	23,500	49%
PUBLIC SERVICE FRANCHISE TAX	340,190	592,916	57%	109%	312,305	403,178	(90,873)	77%	524,299	60%
CABLEVISION FRANCHISE TAX	78,140	154,971	50%	96%	81,024	108,417	(27,393)	75%	163,200	50%
MEDICAL MARIJUANA TAX	0	0	0%	0%	33,951	43,720	(9,769)	78%	57,996	59%
REAL ESTATE TRANSFER TAX	2,400,115	3,411,973	70%	130%	1,841,579	1,740,139	101,440	106%	2,800,001	66%
INVESTMENT INCOME	14,038	22,714	62%	95%	14,826	11,416	3,410	130%	17,124	87%
TOTAL FUND REVENUE	11,350,528	18,755,928	61%	99%	11,276,671	10,936,485	340,186	103%	18,983,225	59%
EXCISE TAX DEBT SERVICE										
COP FEES	1,300	1,950	67%	200%	650	0	650	0%	1,300	50%
2005 COP'S PRINCIPAL	0	165,000	0%	0%	0	0	-	0%	170,000	0%
2005 COP'S INTEREST	68,506	137,013	50%	106%	64,794	64,794	(0)	100%	129,588	50%
2007 COP'S PRINCIPAL	0	135,000	0%	0%	0	0	-	0%	140,000	0%
2007 COP'S INTEREST	66,433	132,865	50%	104%	63,733	63,733	(1)	100%	127,466	50%
TOTAL EXCISE TAX DEBT SERVICE	136,239	571,828	24%	95%	129,176	128,527	(649)	101%	568,354	23%
TRANSFERS										
TRANSFER TO GENERAL FUND	6,908,064	10,362,096	67%	92%	7,547,280	7,547,288	(8)	100%	11,320,932	67%
TRANSFER TO GOLF FUND	166,664	249,996	67%	82%	203,336	203,336	-	100%	305,004	67%
TRANSFERS TO CAPITAL FUND	940,664	1,835,996	51%	61%	1,539,664	1,539,664	-	100%	2,309,496	67%
TRANSFER TO MARKETING	279,179	336,762	83%	92%	302,043	279,862	22,181	108%	420,312	72%
TRFS TO AFFORDABLE HSG FUND	1,720,712	2,581,068	67%	100%	1,715,864	1,715,864	-	100%	2,573,796	67%
TRFS TO SPECIAL PROJECTS FUND	263,336	395,004	67%	102%	259,336	259,336	-	100%	389,004	67%
TOTAL TRANSFERS	10,278,619	15,760,922	65%	113%	11,567,523	11,545,350	(22,173)	100%	17,318,544	67%
TOTAL FUND EXPENDITURES	10,414,857	16,332,749	64%	112%	11,696,700	11,673,877	(22,823)	100%	17,886,898	65%
NET REVENUE OVER EXPENDITURES	935,671	2,423,179			(420,029)	(737,392)	363,009		1,096,327	

**TOWN OF BRECKENRIDGE
GENERAL FUND
CURRENT YEAR TO PRIOR YEAR COMPARISON
FOR THE 8 MONTHS ENDING AUGUST 31, 2012**

67% OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR				CURRENT YEAR						
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	2011 ACTUAL/ 2012 ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT	
REVENUE											
MUNICIPAL COURT PROGRAM	202,059	281,167	72%	89%	228,255	157,744	70,511	145%	223,237	102%	
ADMINISTRATIVE MGT PROGRAM	716	716	100%	0%	0	0	-	0%	0	N/A	
SPECIAL EVENTS/COMM PROGRAM	447,966	550,204	81%	104%	429,800	400,440	29,360	107%	478,102	90%	
TOWN CLERK ADMIN PROGRAM	32,770	46,167	71%	90%	36,539	17,647	18,892	207%	26,996	135%	
FINANCE ADMINISTRATION PROGRAM	247	309	80%	-48%	-520	436	(956)	-119%	504	-103%	
TRANSIT ADMIN PROGRAM	15,000	15,000	100%	21%	72,746	47,000	25,746	155%	47,000	155%	
TRANSIT SERVICES PROGRAM	398,083	558,208	71%	91%	436,449	298,974	137,475	146%	597,069	73%	
PUBLIC SAFETY ADMIN/RECORDS	27,555	49,480	56%	106%	26,054	53,762	(27,708)	48%	66,755	39%	
PUBLIC SAFETY COMMNTY SVC PROG	507,686	599,507	85%	105%	483,635	316,065	167,570	153%	485,604	100%	
PLANNING SERVICES ADMIN PROGRAM	76,894	113,794	68%	54%	143,527	65,145	78,382	220%	90,479	159%	
ARTS DISTRICT	33,897	40,240	84%	83%	40,768	18,347	22,421	222%	29,700	137%	
BUILDING SERVICES ADMIN PROGRAM	698,665	882,764	79%	172%	405,047	345,690	59,357	117%	450,008	90%	
PUBLIC WORKS ADMIN PROGRAM	448,269	589,246	76%	118%	380,396	309,904	70,492	123%	474,005	80%	
STREETS PROGRAM	24,555	39,191	63%	62%	39,697	22,806	16,891	174%	35,096	113%	
PARKS PROGRAM	18,075	19,537	93%	0%	0	0	-	0%	0	N/A	
FACILITIES ADMIN PROGRAM	66,184	79,754	83%	97%	68,159	50,840	17,319	134%	85,648	80%	
ENGINEERING ADMIN PROGRAM	3,544	4,408	80%	270%	1,315	1,810	(495)	73%	2,101	63%	
RECREATION PROGRAM	325,090	405,097	80%	92%	352,307	274,114	78,193	129%	392,291	90%	
RECREATION OPERATIONS PROGRAM	962,590	1,509,776	64%	102%	940,529	969,858	(29,329)	97%	1,473,517	64%	
NORDIC CENTER OPERATIONS	109,808	184,554	59%	91%	121,218	128,684	(7,466)	94%	161,260	75%	
ICE RINK OPERATIONS PROGRAM	408,661	632,324	65%	106%	384,739	431,700	(46,961)	89%	644,896	60%	
GENERAL REVENUE	11,153,739	15,699,173	71%	100%	11,180,439	11,209,311	(28,872)	100%	15,362,323	73%	
TOTAL REVENUE	15,972,054	22,310,674	72%	101%	15,770,912	15,120,277	650,635	104%	21,126,591	75%	

**TOWN OF BRECKENRIDGE
GENERAL FUND
CURRENT YEAR TO PRIOR YEAR COMPARISON
FOR THE 8 MONTHS ENDING AUGUST 31, 2012**

67% OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR				CURRENT YEAR						
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	2011 ACTUAL/ 2012 ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT	
EXPENDITURES											
LAW & POLICY MAKING PROGRAM	68,672	119,782	57%	87%	79,123	84,225	5,102	94%	139,008	57%	
MUNICIPAL COURT PROGRAM	119,965	192,266	62%	105%	114,290	145,226	30,936	79%	217,390	53%	
ADVICE & LITIGATION PROGRAM	87,175	135,796	64%	85%	103,154	170,550	67,396	60%	227,725	45%	
ADMINISTRATIVE MGT PROGRAM	353,814	522,688	68%	77%	458,263	381,930	(76,333)	120%	552,743	83%	
HUMAN RESOURCES ADMIN PROGRAM	249,243	384,621	65%	85%	292,728	286,305	(6,423)	102%	446,638	66%	
SPECIAL EVENTS/COMM PROGRAM	733,457	1,014,423	72%	100%	731,929	754,844	22,915	97%	1,007,246	73%	
TOWN CLERK ADMIN PROGRAM	174,119	263,137	66%	98%	178,226	198,853	20,627	90%	302,814	59%	
FINANCE ADMINISTRATION PROGRAM	184,421	291,978	63%	97%	189,913	207,639	17,726	91%	312,110	61%	
ACCOUNTING PROGRAM	222,647	328,426	68%	79%	282,350	249,726	(32,624)	113%	382,192	74%	
TRANSIT ADMIN PROGRAM	118,727	175,852	68%	69%	171,392	177,415	6,023	97%	226,410	76%	
TRANSIT SERVICES PROGRAM	1,179,055	1,726,062	68%	84%	1,410,605	1,443,814	33,209	98%	2,176,353	65%	
PUBLIC SAFETY ADMIN/RECORDS	592,295	867,299	68%	92%	640,574	594,382	(46,192)	108%	933,233	69%	
PUBLIC SAFETY COMMUNICATN PROG	213,441	305,632	70%	134%	159,370	237,453	78,083	67%	322,231	49%	
PUBLIC SAFETY PATROL SVCS PROG	1,026,451	1,534,062	67%	96%	1,071,865	1,107,977	36,112	97%	1,701,026	63%	
PUBLIC SAFETY COMMNTY SVC PROG	263,166	424,249	62%	95%	276,833	310,975	34,142	89%	491,178	56%	
PLANNING SERVICES ADMIN PROGRAM	692,634	1,041,952	66%	92%	751,534	745,464	(6,070)	101%	1,151,247	65%	
ARTS DISTRICT	23,038	40,820	56%	79%	29,145	19,195	(9,950)	152%	29,697	98%	
BUILDING SERVICES ADMIN PROGRAM	246,605	372,846	66%	90%	272,843	271,877	(966)	100%	412,601	66%	
PUBLIC WORKS ADMIN PROGRAM	315,771	494,526	64%	113%	280,176	253,764	(26,412)	110%	384,614	73%	
STREETS PROGRAM	1,086,709	1,805,824	60%	105%	1,032,093	1,004,385	(27,708)	103%	1,503,145	69%	
PARKS PROGRAM	720,570	1,128,348	64%	92%	784,914	751,006	(33,908)	105%	1,180,840	66%	
FACILITIES ADMIN PROGRAM	806,811	1,291,306	62%	91%	882,123	788,137	(93,986)	112%	1,359,657	65%	
ENGINEERING ADMIN PROGRAM	196,957	303,897	65%	77%	255,312	265,374	10,062	96%	406,940	63%	
CONTINGENCIES	121,500	126,350	96%	56%	215,781	258,664	42,883	83%	277,996	78%	
RECREATION ADMIN PROGRAM	399,358	608,784	66%	97%	410,867	431,074	20,207	95%	646,618	64%	
RECREATION PROGRAM	430,550	634,441	68%	84%	509,652	461,731	(47,921)	110%	703,815	72%	
RECREATION OPERATIONS PROGRAM	1,070,547	1,658,585	65%	101%	1,059,250	1,142,491	83,241	93%	1,816,321	58%	
NORDIC CENTER OPERATIONS	143,460	245,589	58%	97%	147,197	164,338	17,141	90%	253,673	58%	
ICE RINK OPERATIONS PROGRAM	633,321	967,765	65%	94%	671,361	673,051	1,690	100%	1,057,364	63%	
LONG TERM DEBT	210,136	419,997	50%	101%	208,669	206,545	(2,124)	101%	415,312	50%	
GENERAL EXPENDITURES	2,867	662,307	0%	3359%	85	0	(85)	0%	0	N/A	
COMMITTEES	9,522	30,979	31%	236%	4,033	24,984	20,951	16%	55,751	7%	
TOTAL EXPENDITURES	12,697,005	20,121,620	63%	93%	13,675,651	13,813,394	137,743	99%	21,093,888	65%	
REVENUE LESS EXPENDITURES	3,275,048	2,189,054			2,095,261	1,306,883	788,378		32,703		

**TOWN OF BRECKENRIDGE
ALL FUNDS, NET OF TRANSFERS
CURRENT YEAR TO PRIOR YEAR COMPARISON
FOR THE 8 MONTHS ENDING AUGUST 31, 2012**

67% OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2011 ACTUAL/ 2012 ACTUAL % CHANGE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/ (UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
REVENUE										
1 GENERAL FUND	8,787,854	11,534,374	76%	111%	7,940,584	7,288,565	652,019	109%	9,379,023	85%
2 UTILITY FUND	2,223,837	3,271,842	68%	99%	2,241,482	1,885,514	355,968	119%	2,961,582	76%
3 CAPITAL FUND	107,544	265,285	41%	29%	371,264	477,912	(106,648)	78%	716,868	52%
4 MARKETING FUND	1,247,655	2,008,761	62%	95%	1,319,296	1,200,494	118,802	110%	2,022,929	65%
5 GOLF COURSE FUND	1,700,227	2,630,466	65%	95%	1,798,676	1,692,907	105,769	106%	2,031,201	89%
6 EXCISE TAX FUND	11,350,529	18,755,928	61%	101%	11,276,671	10,936,485	340,186	103%	18,983,225	59%
7 HOUSING FUND	408,823	730,318	56%	118%	347,641	3,004,493	(2,656,852)	12%	3,256,311	11%
8 OPEN SPACE ACQUISITION FUND	1,164,639	1,860,502	63%	90%	1,293,573	1,195,123	98,450	108%	1,828,710	71%
9 CONSERVATION TRUST FUND	18,842	36,467	52%	28%	68,060	15,600	52,460	436%	33,024	206%
10 GARAGE SERVICES FUND	86,359	115,725	75%	37%	234,284	57,808	176,476	405%	81,494	287%
11 INFORMATION TECHNOLOGY FUND	-	-	0%	0%	-	-	-	0%	-	0%
12 FACILITIES MAINTENANCE FUND	-	-	0%	0%	-	-	-	0%	-	N/A
13 SPECIAL PROJECTS FUND	-	-	0%	0%	75	-	75	0%	-	N/A
TOTAL REVENUE	27,096,309	41,209,670	66%	99%	26,891,605	27,754,901	(863,296)	97%	41,294,367	65%
EXPENDITURES										
1 GENERAL FUND	10,721,192	16,491,104	65%	92%	11,634,539	11,778,940	144,401	99%	18,037,933	65%
2 UTILITY FUND	1,334,743	2,728,137	49%	104%	1,284,771	3,087,531	1,802,760	42%	4,628,564	28%
3 CAPITAL FUND	420,583	1,403,261	30%	23%	1,855,390	2,989,500	1,134,110	62%	2,989,500	62%
4 MARKETING FUND	1,806,198	2,309,298	78%	95%	1,896,060	1,798,788	(97,272)	105%	2,521,638	75%
5 GOLF COURSE FUND	1,197,791	1,819,079	66%	95%	1,258,255	1,306,852	48,597	96%	2,273,056	55%
6 EXCISE TAX FUND	136,239	571,828	24%	105%	129,176	128,527	(649)	101%	568,354	23%
7 HOUSING FUND	1,885,348	2,741,831	69%	204%	925,981	2,217,978	1,291,997	42%	3,294,336	28%
8 OPEN SPACE ACQUISITION FUND	2,445,418	3,230,897	76%	154%	1,584,780	1,108,570	(476,210)	143%	1,688,050	94%
9 CONSERVATION TRUST FUND	0	0	0%	0%	0	0	-	0%	0	N/A
10 GARAGE SERVICES FUND	1,149,258	1,661,682	69%	85%	1,344,950	1,166,309	(178,641)	115%	1,784,688	75%
11 INFORMATION TECHNOLOGY FUND	561,027	951,032	59%	82%	683,069	576,829	(106,240)	118%	780,242	88%
12 FACILITIES MAINTENANCE FUND	51,000	51,000	100%	75%	67,620	45,504	(22,116)	149%	76,815	N/A
13 SPECIAL PROJECTS FUND	223,279	329,716	68%	44%	508,154	617,500	109,346	82%	740,000	69%
TOTAL EXPENDITURES	21,932,077	34,288,864	64%	106%	23,172,746	26,822,828	3,650,082	86%	39,383,176	59%
Revenue Less Expenditures	5,164,233	6,920,806			3,718,859	932,073	2,786,786		1,911,191	

**TOWN OF BRECKENRIDGE
ALL FUNDS
CURRENT YEAR TO PRIOR YEAR COMPARISON
FOR THE 8 MONTHS ENDING AUGUST 31, 2012**

67% OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2011 ACTUAL/ 2012 ACTUAL % CHANGE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL AS A % OF BUDGET	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
REVENUE										
1 GENERAL FUND	15,972,054	22,310,674	72%	101%	15,772,296	15,120,277	652,019	104%	21,126,591	75%
2 UTILITY FUND	2,223,837	3,271,842	68%	99%	2,241,482	1,885,514	355,968	119%	2,961,582	76%
3 CAPITAL FUND	1,048,208	2,101,281	50%	55%	1,910,936	2,017,584	(106,648)	95%	3,026,380	63%
4 MARKETING FUND	1,526,834	2,345,522	65%	94%	1,621,340	1,480,356	140,984	110%	2,443,241	66%
5 GOLF COURSE FUND	1,866,891	2,880,462	65%	93%	2,002,012	1,894,914	107,098	106%	2,336,196	86%
6 EXCISE TAX FUND	11,350,529	18,755,928	61%	101%	11,276,671	10,936,485	340,186	103%	18,983,225	59%
7 HOUSING FUND	2,129,535	3,311,386	64%	103%	2,063,505	4,720,357	(2,656,852)	44%	5,830,107	35%
8 OPEN SPACE ACQUISITION FUND	1,164,639	1,860,502	63%	90%	1,293,573	1,195,123	98,450	108%	1,828,710	71%
9 CONSERVATION TRUST FUND	18,842	36,467	52%	28%	68,060	15,600	52,460	436%	33,024	206%
10 GARAGE SERVICES FUND	1,461,671	2,178,693	67%	88%	1,669,444	1,492,968	176,476	112%	2,234,234	75%
11 INFORMATION TECHNOLOGY FUND	590,976	886,464	67%	102%	582,184	582,184	-	100%	873,276	67%
12 FACILITIES MAINTENANCE FUND	176,728	265,092	67%	97%	182,320	182,320	-	100%	273,480	67%
13 SPECIAL PROJECTS FUND	263,336	395,004	67%	102%	259,411	259,336	75	100%	389,004	67%
TOTAL REVENUE	39,794,080	60,599,320	66%	103%	40,943,232	41,783,018	(839,786)	98%	62,339,050	66%
EXPENDITURES										
1 GENERAL FUND	12,701,896	20,121,266	63%	93%	13,676,616	13,813,394	136,778	99%	21,093,888	65%
2 UTILITY FUND	1,687,663	3,257,517	52%	103%	1,636,803	3,439,563	1,802,760	48%	5,156,612	32%
3 CAPITAL FUND	420,583	1,403,261	30%	23%	1,855,390	2,989,500	1,134,110	62%	2,989,500	62%
4 MARKETING FUND	1,813,078	2,319,618	78%	95%	1,902,876	1,805,604	(97,272)	105%	2,806,862	68%
5 GOLF COURSE FUND	1,235,591	2,535,239	49%	95%	1,299,103	1,348,209	49,106	96%	2,334,329	56%
6 EXCISE TAX FUND	10,414,857	16,332,749	64%	89%	11,696,700	11,673,877	(22,823)	100%	17,886,898	65%
7 HOUSING FUND	1,885,348	2,741,831	69%	204%	925,981	2,217,978	1,291,997	42%	8,392,210	11%
8 OPEN SPACE ACQUISITION FUND	2,451,882	3,240,593	76%	154%	1,593,124	1,100,250	(492,874)	145%	2,625,896	61%
9 CONSERVATION TRUST FUND	29,336	0	0%	45%	65,340	24,970	(40,370)	262%	35,638	183%
10 GARAGE SERVICES FUND	1,180,330	1,708,290	69%	85%	1,381,750	1,203,109	(178,641)	115%	1,839,888	75%
11 INFORMATION TECHNOLOGY FUND	564,339	956,000	59%	82%	685,029	578,789	(106,240)	118%	2,289,988	30%
12 FACILITIES MAINTENANCE FUND	51,000	51,000	100%	75%	67,620	45,504	(22,116)	149%	1,533,694	4%
13 SPECIAL PROJECTS FUND	223,279	329,716	68%	44%	508,154	617,500	109,346	82%	740,000	69%
TOTAL EXPENDITURES	34,659,183	54,997,079	63%	108%	37,294,486	40,858,247	3,563,761	91%	69,725,403	53%
	5,134,897	5,602,240			3,648,746	924,771	2,723,975		(7,386,353)	

FINANCIAL MEMORANDUM

TO: TIM GAGEN, TOWN MANAGER; RICK HOLMAN, ASSISTANT TOWN MANAGER
FROM: CLERK AND FINANCE DIVISION
SUBJECT: JULY TAX COLLECTIONS
DATE: 9/19/2012

This memo explains significant items of note in relation to collections that occurred within the Town of Breckenridge in the month of July.

New Items of Note:

- Overall, tax collections for July were up 22.1% from 2011, and 117.1% of the month's budget.
- Sales Tax was up 10.1% from 2011, and 109.7% of budget. YTD, we are up 5.1% from prior year, but down 5.6% from budget.
- Accommodations Tax was up from prior year by 2.3%, and 136.7% of budget for the month. YTD we are now up slightly from prior year, and 107.8% of budget.
- Real Estate Transfer Tax in July was up from prior year by 201.8%, and reached 148.7% of budget. For August, we were up from prior year by 5.1%, and reached 125.8% of budget. September is at 53.9% of budget at this time.
- For housing, tax was up 13.2% from prior year, and ahead of budget at 150.9% for the month. YTD we are now up 8.9% from prior year, and ahead of budget at 108.4%.
- Medical Marijuana currently totals 63.6% of the annual budget. It is beginning to appear that we may meet our annual budget of \$57,996.

Continuing Items of Note:

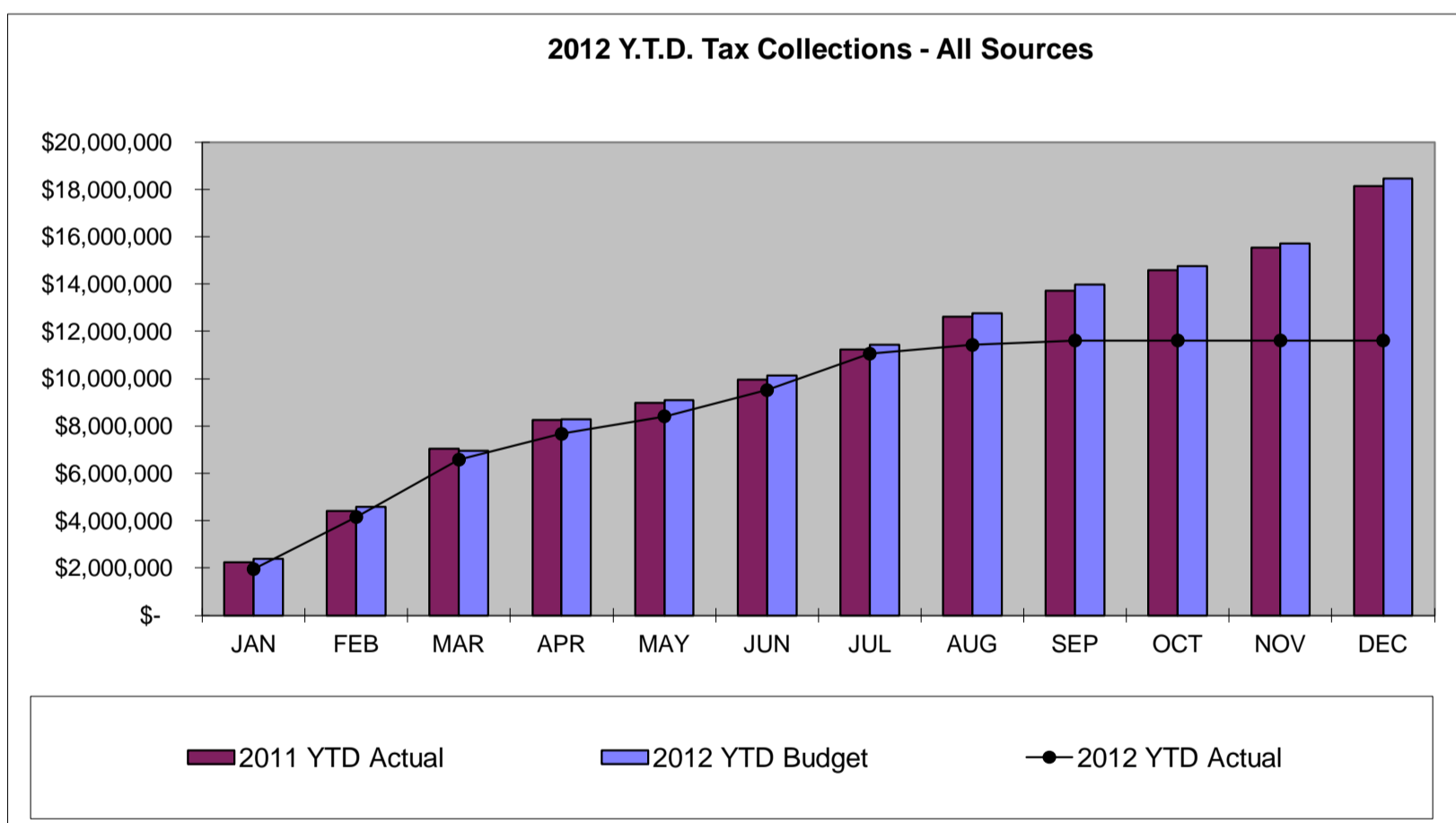
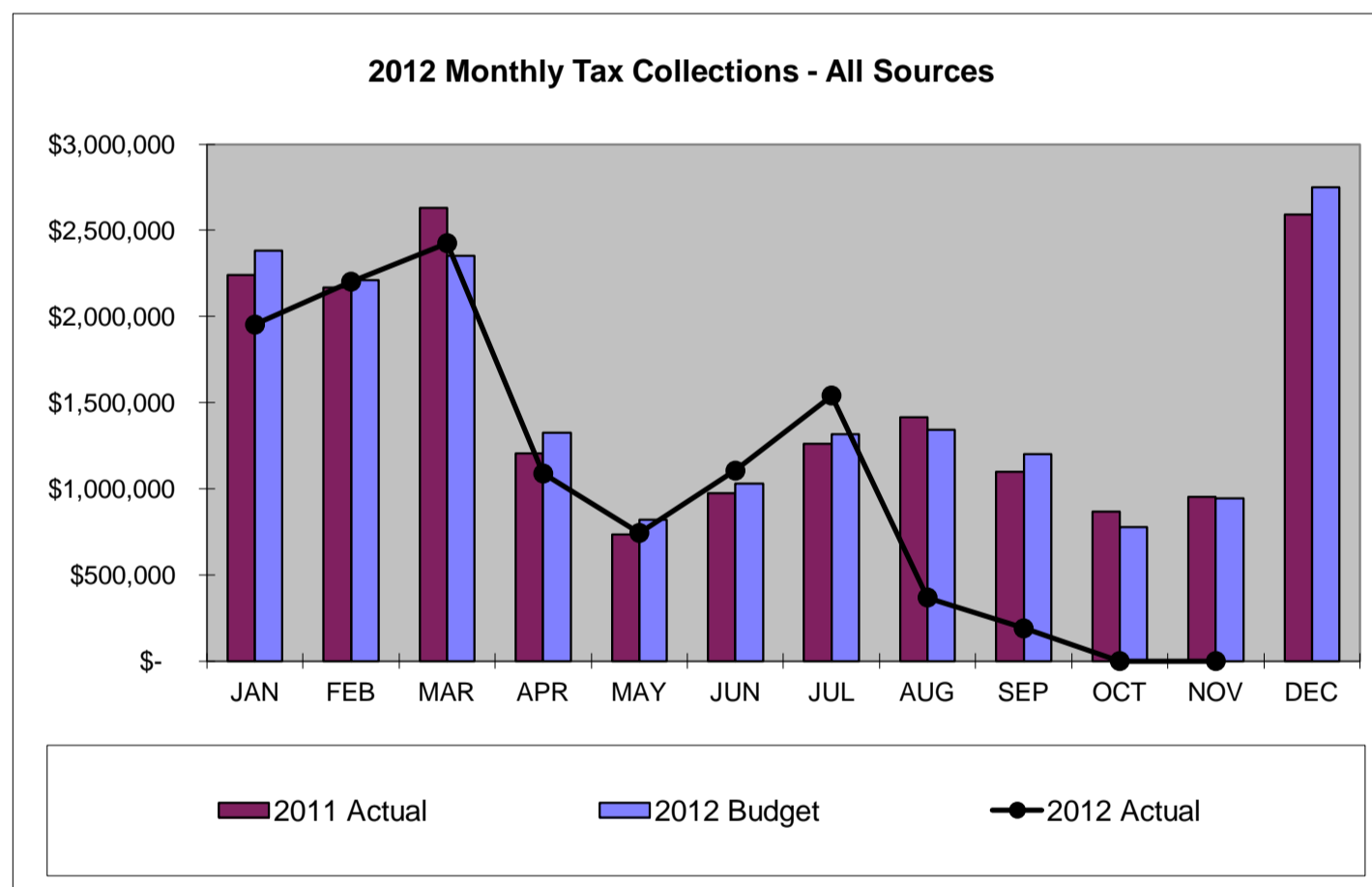
- Tax collections are reported in the second Council meeting following the due date of the tax remittance to the Town of Breckenridge. The taxes in these reports are listed in the month that they were collected by the vendor. The tax may have been remitted to the Town in any month and therefore these reports will vary from the amounts reported in the financial statements.
- Town of Breckenridge taxes collected from the customer by the vendor are remitted to the Town on the 20th of the following month.
- Taxes remitted to the State of Colorado, Department of Revenue for Summit County are distributed to the Town around the 8th business day of the month following the due date – ex. taxes collected by the vendor in January are due to the State on February 20th and distributed to the Town on the 8th business day of March.
- Quarterly taxes are reported in the last month of the period. For example, taxes collected in the first quarter of the year (January – March), are include on the report for the period of March.
- Sales and Accommodations Tax collections are continually updated as late tax returns are submitted to the Town of Breckenridge. Therefore, you may notice slight changes in prior months, in addition to the reporting for the current month.
- Sales & Accommodations Tax collections are reported as of the day that the reports are generated. Therefore, if late returns have been remitted in the current month that revenue is included in the tax collection reports. However, that revenue would not be included in the financial statements provided to Council for the same meeting. This difference can cause the total collections to exceed the total tax reported in the financial statements.

- Medical Marijuana Tax Collections was added to these reports beginning with the period of June 2012. Note that the distribution for 2012 is appearing to be more consistent on a monthly basis than prior years' (versus seasonal highs and lows) net taxable sales. This is what should be expected of such a category and future budgets will reflect the adjusted distribution. Due to the fact that there is no prior year data to compare to, this data is not included on the Tax Summary sheet.

TOWN OF BRECKENRIDGE
CASH TAX COLLECTIONS - ALL SOURCES - SALES, LODGING, RETT, ACCOMMODATIONS
REPORTED IN THE PERIOD EARNED

Sales Period	2011 Collections			2012 Budget			2012 Monthly			2012 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2011	% of Budget	Actual	% Change from 2011	% of Budget
JAN	\$ 2,241,955	\$ 2,241,955	12.4%	\$ 2,380,436	\$ 2,380,436	12.9%	\$ 1,952,685	-12.9%	82.0%	\$ 1,952,685	-12.9%	82.0%
FEB	\$ 2,168,971	\$ 4,410,925	24.3%	\$ 2,212,365	\$ 4,592,801	24.9%	\$ 2,201,938	1.5%	99.5%	\$ 4,154,623	-5.8%	90.5%
MAR	\$ 2,630,255	\$ 7,041,180	38.8%	\$ 2,350,673	\$ 6,943,474	37.6%	\$ 2,425,454	-7.8%	103.2%	\$ 6,580,077	-6.5%	94.8%
APR	\$ 1,206,703	\$ 8,247,883	45.5%	\$ 1,327,067	\$ 8,270,541	44.8%	\$ 1,088,271	-9.8%	82.0%	\$ 7,668,347	-7.0%	92.7%
MAY	\$ 736,222	\$ 8,984,105	49.5%	\$ 822,135	\$ 9,092,676	49.3%	\$ 743,618	1.0%	90.4%	\$ 8,411,966	-6.4%	92.5%
JUN	\$ 973,532	\$ 9,957,638	54.9%	\$ 1,028,725	\$ 10,121,401	54.9%	\$ 1,105,085	13.5%	107.4%	\$ 9,517,051	-4.4%	94.0%
JUL	\$ 1,261,917	\$ 11,219,554	61.8%	\$ 1,315,918	\$ 11,437,320	62.0%	\$ 1,541,176	22.1%	117.1%	\$ 11,058,227	-1.4%	96.7%
AUG	\$ 1,414,452	\$ 12,634,006	69.6%	\$ 1,342,085	\$ 12,779,404	69.3%	\$ 368,749	-73.9%	27.5%	\$ 11,426,976	-9.6%	89.4%
SEP	\$ 1,097,716	\$ 13,731,722	75.7%	\$ 1,200,980	\$ 13,980,384	75.8%	\$ 189,487	-82.7%	15.8%	\$ 11,616,463	-15.4%	83.1%
OCT	\$ 868,202	\$ 14,599,924	80.5%	\$ 778,969	\$ 14,759,353	80.0%	\$ -	n/a	0.0%	\$ 11,616,463	-20.4%	78.7%
NOV	\$ 954,973	\$ 15,554,897	85.7%	\$ 944,049	\$ 15,703,402	85.1%	\$ -	n/a	0.0%	\$ 11,616,463	-25.3%	74.0%
DEC	\$ 2,592,144	\$ 18,147,041	100.0%	\$ 2,748,099	\$ 18,451,501	100.0%	\$ -	n/a	0.0%	\$ 11,616,463	-36.0%	63.0%

Medical Marijuana Tax is not included in this Tax Summary page

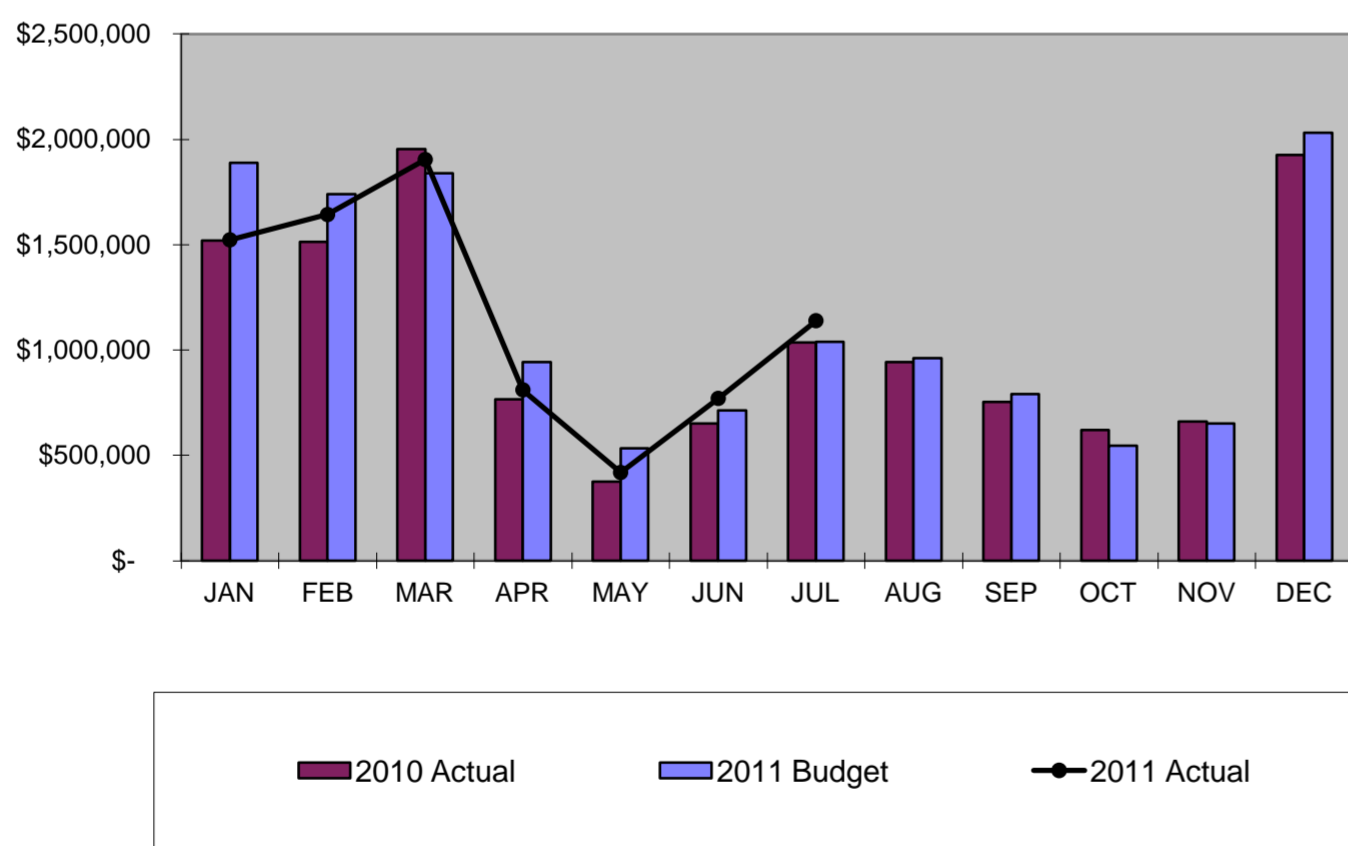


Prior Year Actual and Current Year Budget Variances					
	TOTAL	Sales	Accommodations	RETT	Housing
vs. July 11 Actual	279,260	104,416	2,675	168,582	3,586
vs. July 12 Budget	225,258	100,422	31,862	82,577	10,397
vs. YTD 11 Actual	(161,327)	395,530	17,139	(591,952)	17,956
vs. YTD 12 Budget	(379,093)	(487,415)	85,364	5,930	17,027

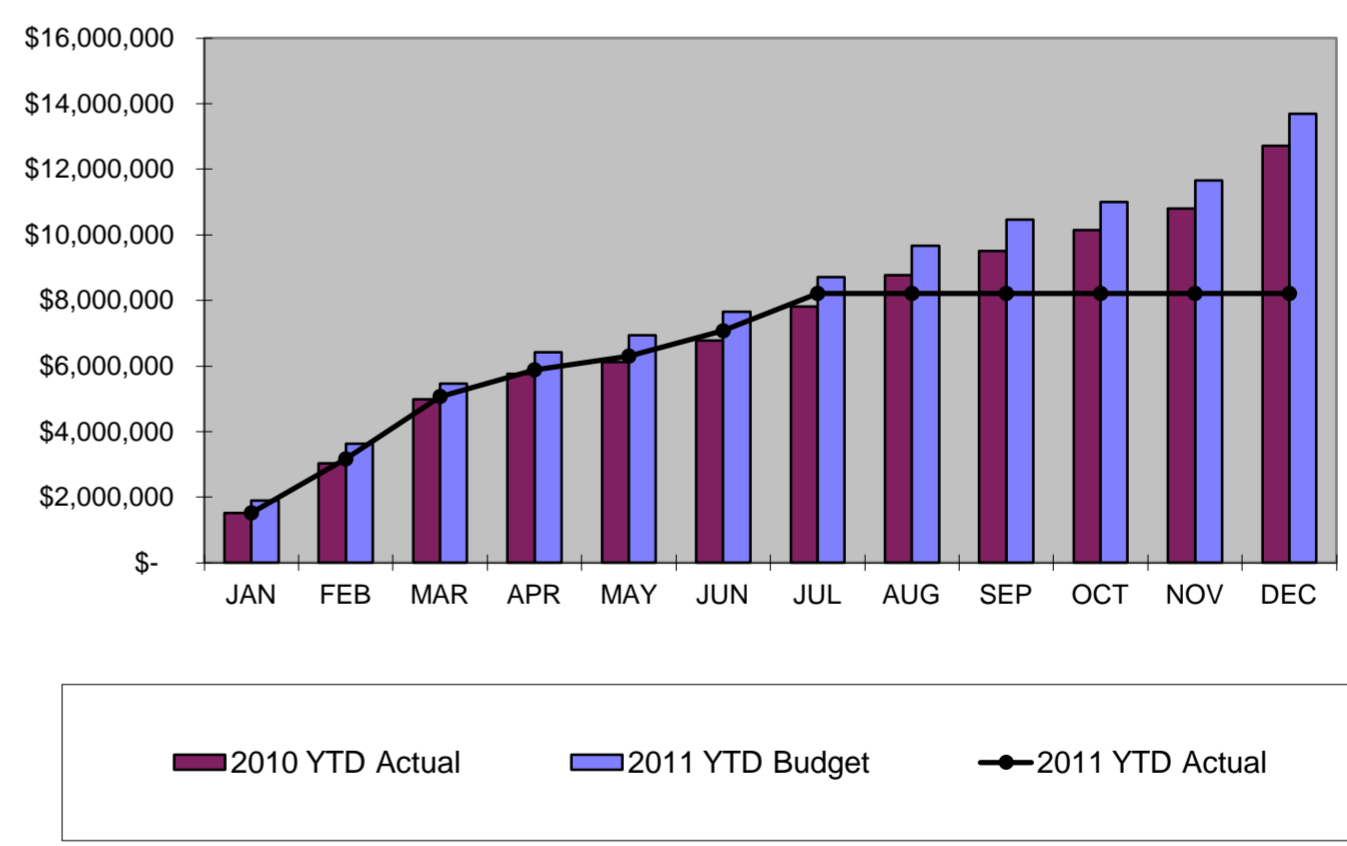
**TOWN OF BRECKENRIDGE
SALES TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2011 Collections			2012 Budget			2012 Monthly			2012 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2011	% of Budget	Actual	% Change from 2011	% of Budget
JAN	\$ 1,520,247	\$ 1,520,247	11.9%	\$ 1,888,658	\$ 1,888,658	13.8%	\$ 1,523,432	0.2%	80.7%	\$ 1,523,432	0.2%	80.7%
FEB	\$ 1,512,513	3,032,760	23.8%	1,741,629	3,630,287	26.5%	\$ 1,643,414	8.7%	94.4%	3,166,846	4.4%	87.2%
MAR	\$ 1,954,811	4,987,571	39.2%	1,838,986	5,469,273	40.0%	\$ 1,904,508	-2.6%	103.6%	5,071,355	1.7%	92.7%
APR	\$ 767,248	5,754,819	45.2%	943,740	6,413,013	46.9%	\$ 811,397	5.8%	86.0%	5,882,752	2.2%	91.7%
MAY	\$ 374,562	6,129,381	48.2%	533,132	6,946,146	50.8%	\$ 419,133	11.9%	78.6%	6,301,885	2.8%	90.7%
JUN	\$ 652,272	6,781,653	53.3%	714,458	7,660,603	56.0%	\$ 770,882	18.2%	107.9%	7,072,767	4.3%	92.3%
JUL	\$ 1,035,217	7,816,869	61.4%	1,039,211	8,699,814	63.6%	\$ 1,139,632	10.1%	109.7%	8,212,399	5.1%	94.4%
AUG	\$ 943,229	8,760,098	68.9%	960,640	9,660,454	70.6%	n/a	0.0%		8,212,399	-6.3%	85.0%
SEP	\$ 754,423	9,514,520	74.8%	792,398	10,452,852	76.4%	n/a	0.0%		8,212,399	-13.7%	78.6%
OCT	\$ 620,533	10,135,053	79.7%	547,043	10,999,895	80.4%	n/a	0.0%		8,212,399	-19.0%	74.7%
NOV	\$ 660,370	10,795,423	84.9%	652,433	11,652,328	85.2%	n/a	0.0%		8,212,399	-23.9%	70.5%
DEC	\$ 1,926,697	\$ 12,722,120	100.0%	\$ 2,032,073	13,684,401	100.0%	n/a	0.0%		\$ 8,212,399	-35.4%	60.0%

2012 Monthly Sales Tax Collections



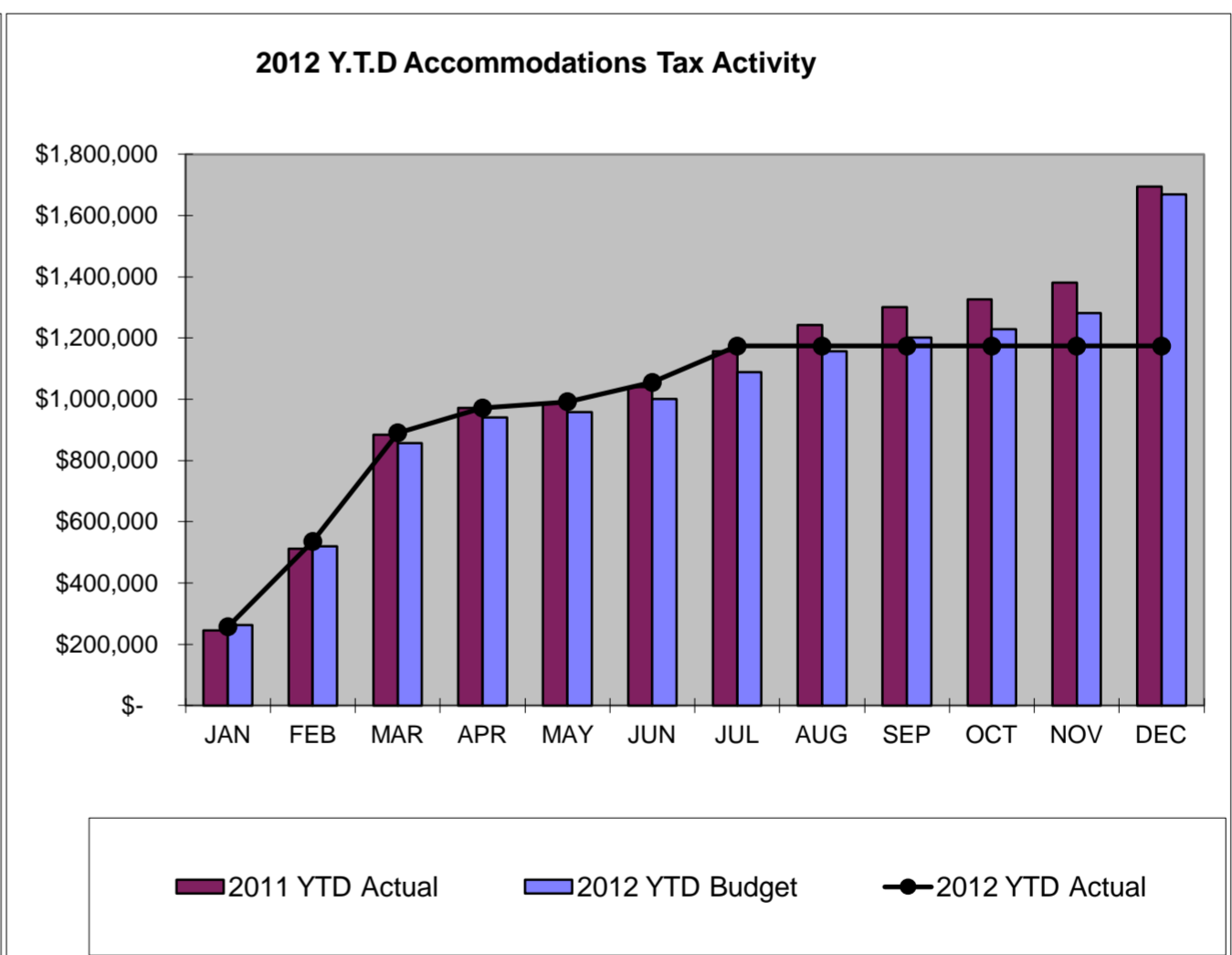
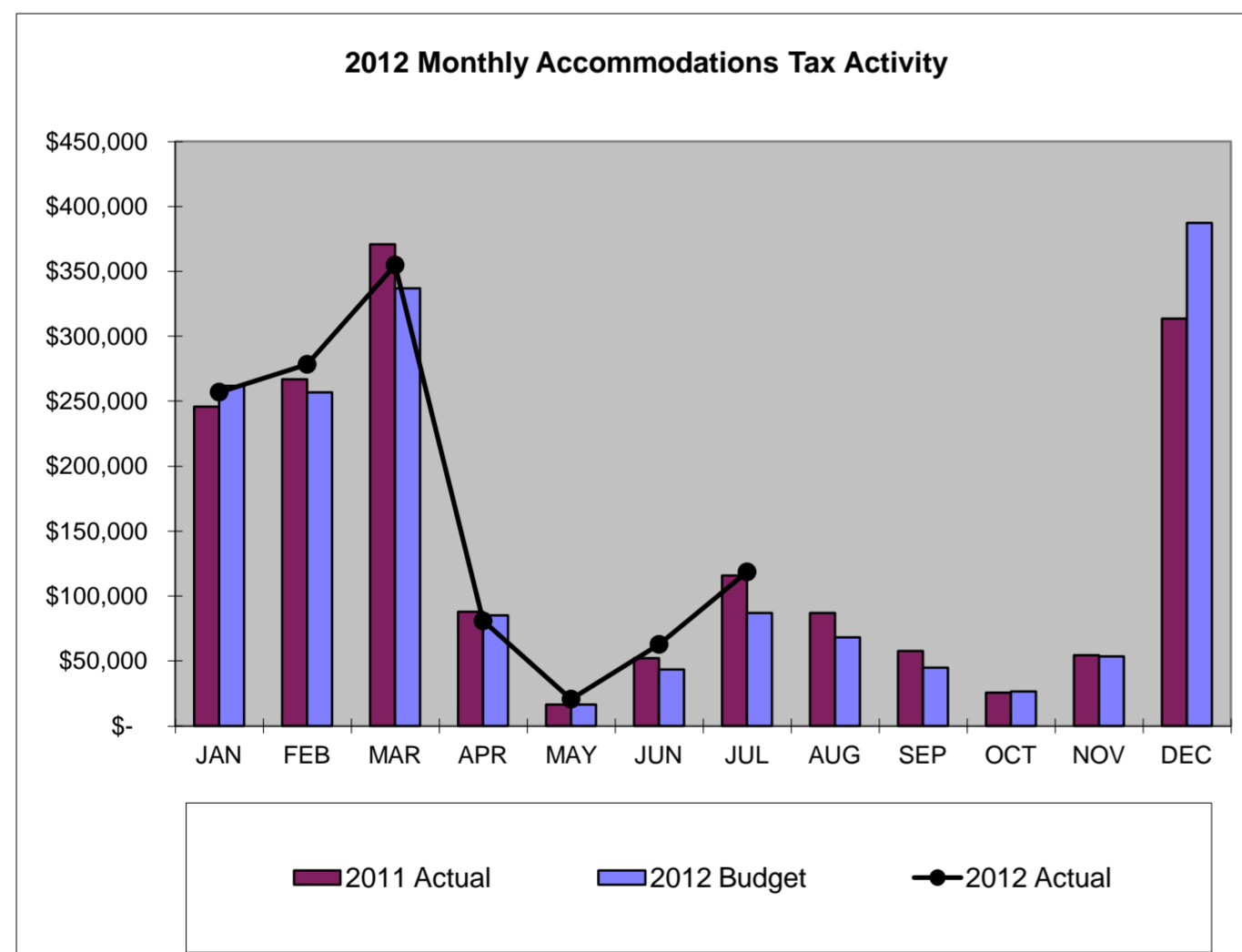
2012 Y.T.D. Sales Tax Collections



**TOWN OF BRECKENRIDGE
ACCOMMODATION TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2011 Collections			2012 Budget			2012 Monthly			2012 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2011	% of Budget	Actual	% Change from 2011	% of Budget
JAN	\$ 245,846	\$ 245,846	14.5%	\$ 261,985	\$ 261,985	15.7%	\$ 257,038	4.6%	98.1%	\$ 257,038	4.6%	98.1%
FEB	\$ 266,709	512,555	30.2%	256,979	518,965	31.1%	\$ 278,437	4.4%	108.3%	535,475	4.5%	103.2%
MAR	\$ 370,938	883,493	52.1%	337,077	856,042	51.3%	\$ 354,856	-4.3%	105.3%	890,331	0.8%	104.0%
APR	\$ 87,676	971,169	57.3%	85,104	941,145	56.4%	\$ 80,893	-7.7%	95.1%	971,224	0.0%	103.2%
MAY	\$ 16,675	987,844	58.3%	16,687	957,832	57.4%	\$ 20,675	24.0%	123.9%	991,899	0.4%	103.6%
JUN	\$ 52,413	1,040,257	61.4%	43,386	1,001,218	60.0%	\$ 62,822	19.9%	144.8%	1,054,720	1.4%	105.3%
JUL	\$ 115,959	1,156,216	68.2%	86,772	1,087,990	65.2%	\$ 118,634	2.3%	136.7%	1,173,355	1.5%	107.8%
AUG	\$ 86,872	1,243,089	73.4%	68,417	1,156,407	69.3%	n/a	0.0%		1,173,355	-5.6%	101.5%
SEP	\$ 57,840	1,300,928	76.8%	45,055	1,201,462	72.0%	n/a	0.0%		1,173,355	-9.8%	97.7%
OCT	\$ 25,726	1,326,654	78.3%	26,699	1,228,161	73.6%	n/a	0.0%		1,173,355	-11.6%	95.5%
NOV	\$ 54,350	1,381,004	81.5%	53,398	1,281,559	76.8%	n/a	0.0%		1,173,355	-15.0%	91.6%
DEC	\$ 313,529	\$ 1,694,533	100.0%	\$ 387,142	1,668,701	100.0%	n/a	0.0%		\$ 1,173,355	-30.8%	70.3%

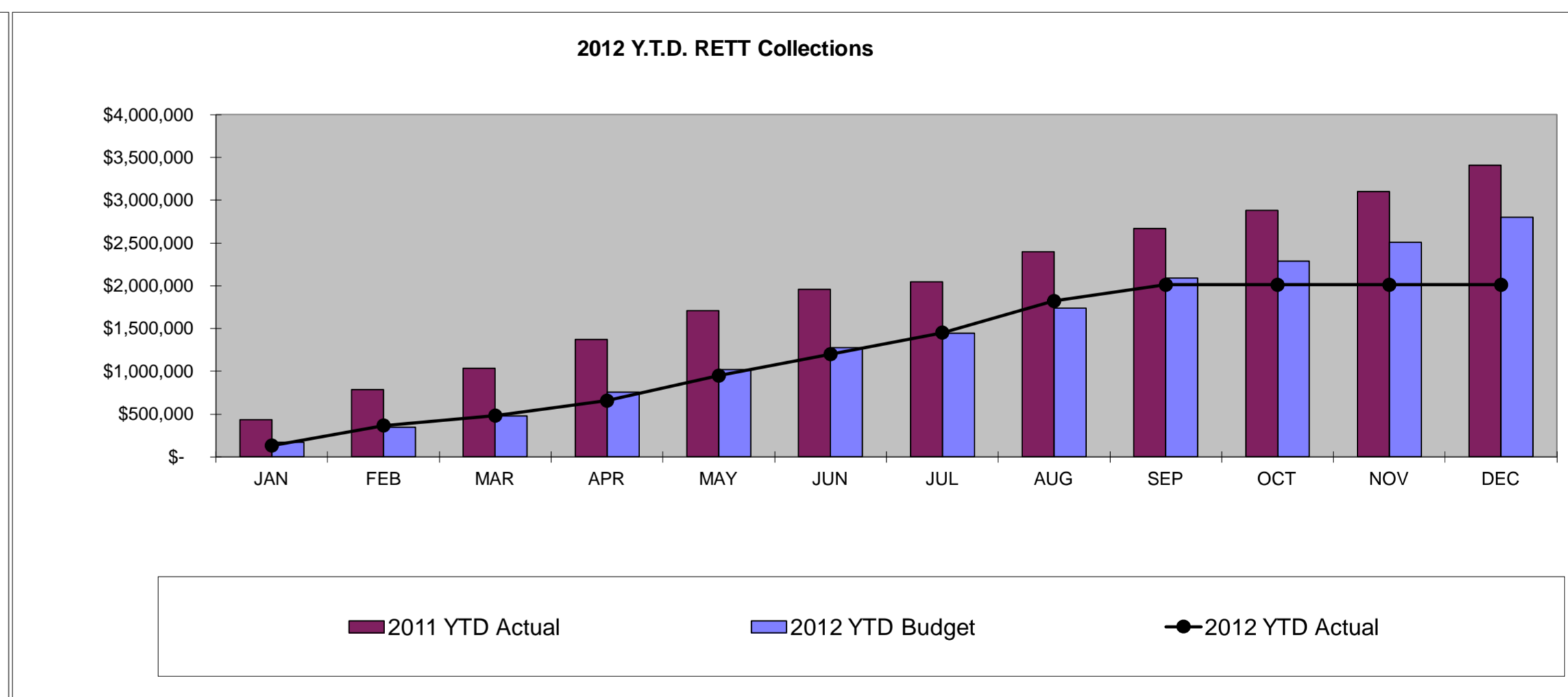
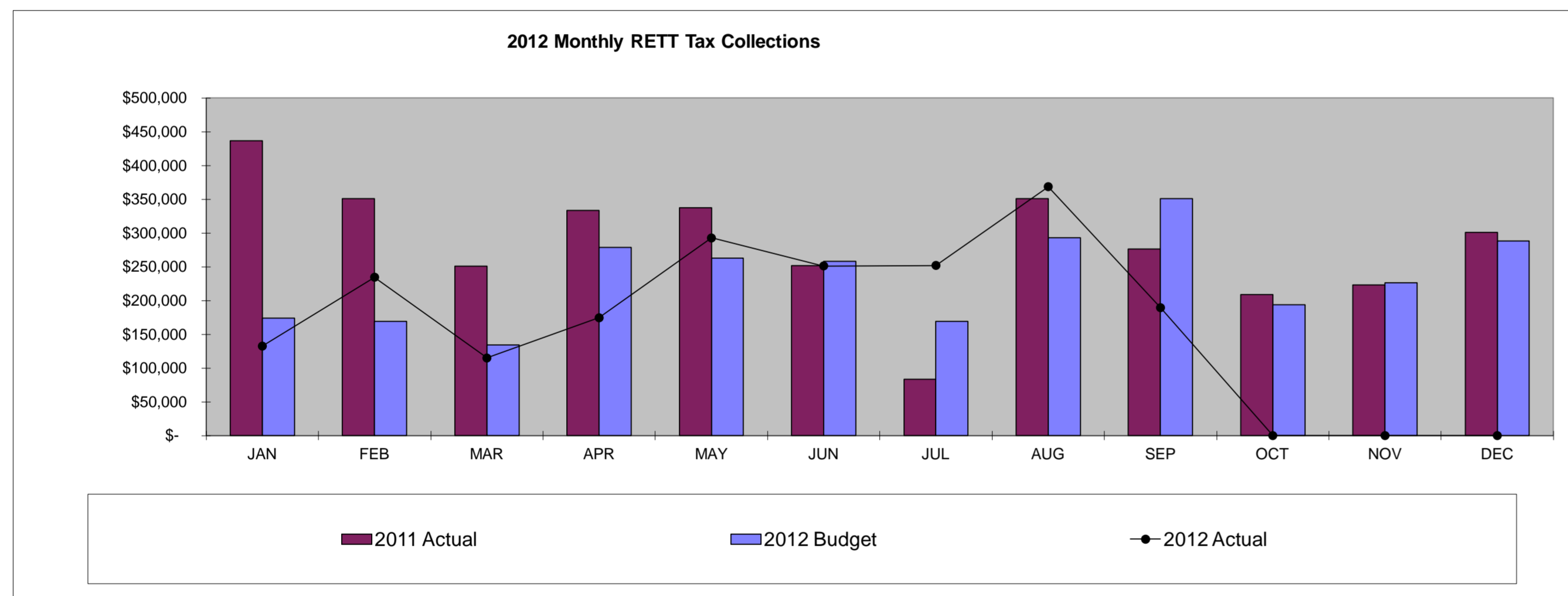
Accommodation tax amounts reflect collections at the 2% rate.



**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2007 Collections			2009 Percent of Total	2011 Collections			2012 Budget			2012 Monthly				2012 Year to Date			
	Tax Collected	Year To Date	Percent of Total		Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	% Change from 2007	% Change from 2011	Actual	% of Budget	% Change from 2007	% Change from 2011
JAN	\$ 352,958	\$ 352,958	6.2%	4.3%	\$ 436,605	\$ 436,605	12.8%	\$ 174,140	\$ 174,140	6.2%	\$ 132,557	76.1%	-62.4%	-69.6%	\$ 132,557	76.1%	-62.4%	-69.6%
FEB	342,995	695,953	12.3%	7.6%	350,866	787,471	23.1%	169,224	343,364	12.3%	234,630	138.7%	-31.6%	-33.1%	367,186	106.9%	-47.2%	-53.4%
MAR	271,817	967,770	17.1%	14.1%	250,986	1,038,457	30.5%	134,107	477,470	17.1%	114,921	85.7%	-57.7%	-54.2%	482,107	101.0%	-50.2%	-53.6%
APR	564,624	1,532,394	27.0%	29.6%	333,424	1,371,881	40.3%	278,570	756,040	27.0%	174,514	62.6%	-69.1%	-47.7%	656,621	86.9%	-57.2%	-52.1%
MAY	533,680	2,066,074	36.4%	39.1%	337,577	1,709,458	50.2%	263,303	1,019,342	36.4%	292,708	111.2%	-45.2%	-13.3%	949,329	93.1%	-54.1%	-44.5%
JUN	522,999	2,589,073	45.6%	43.4%	251,806	1,961,263	57.6%	258,033	1,277,375	45.6%	251,400	97.4%	-51.9%	-0.2%	1,200,729	94.0%	-53.6%	-38.8%
JUL	343,610	2,932,683	51.7%	48.2%	83,522	2,044,785	60.0%	169,527	1,446,903	51.7%	252,104	148.7%	-26.6%	201.8%	1,452,833	100.4%	-50.5%	-28.9%
AUG	594,349	3,527,032	62.1%	56.2%	350,730	2,395,515	70.3%	293,235	1,740,138	62.1%	368,749	125.8%	-38.0%	5.1%	1,821,582	104.7%	-48.4%	-24.0%
SEP	711,996	4,239,028	74.7%	67.0%	276,774	2,672,289	78.5%	351,278	2,091,416	74.7%	189,487	53.9%	-73.4%	-31.5%	2,011,069	96.2%	-52.6%	-24.7%
OCT	392,752	4,631,779	81.6%	78.7%	208,831	2,881,120	84.6%	193,773	2,285,189	81.6%	-	0.0%	n/a	n/a	2,011,069	88.0%	-56.6%	-30.2%
NOV	459,147	5,090,926	89.7%	87.5%	223,271	3,104,391	91.2%	226,530	2,511,719	89.7%	-	0.0%	n/a	n/a	2,011,069	80.1%	-60.5%	-35.2%
DEC	\$ 584,308	\$ 5,675,235	100.0%	100.0%	\$ 301,397	\$ 3,405,788	100.0%	\$ 288,281	\$ 2,800,000	100.0%	\$ -	0.0%	n/a	n/a	\$ 2,011,069	71.8%	-64.6%	-41.0%

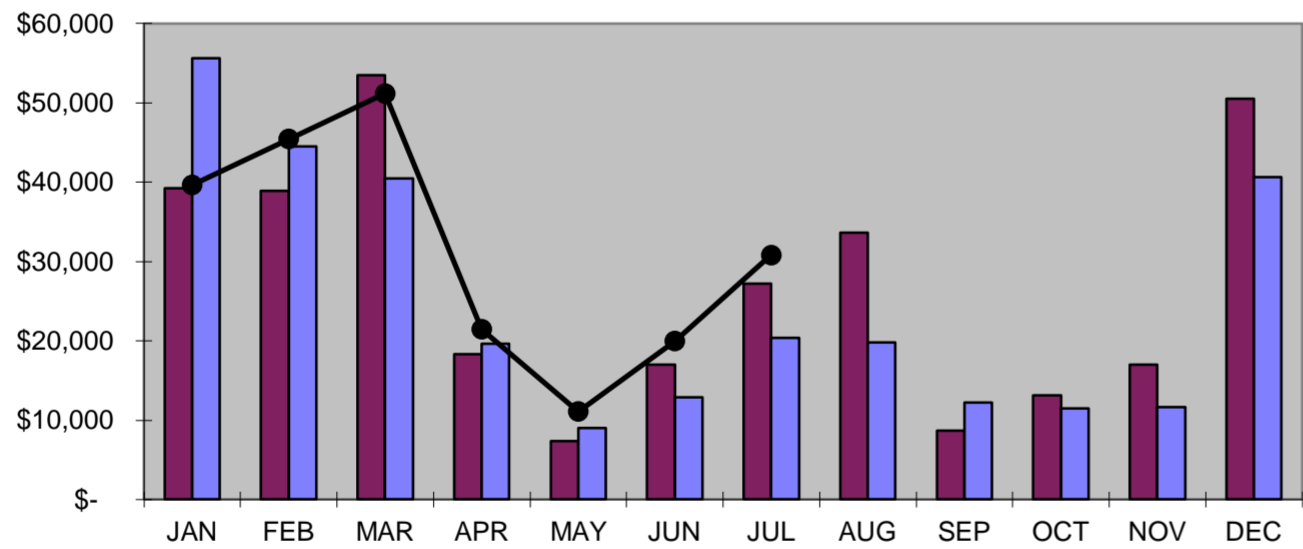
2012 budget is based upon 2007 monthly distribution
September Collections through 09/18/12



**TOWN OF BRECKENRIDGE
AFFORDABLE HOUSING SALES TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

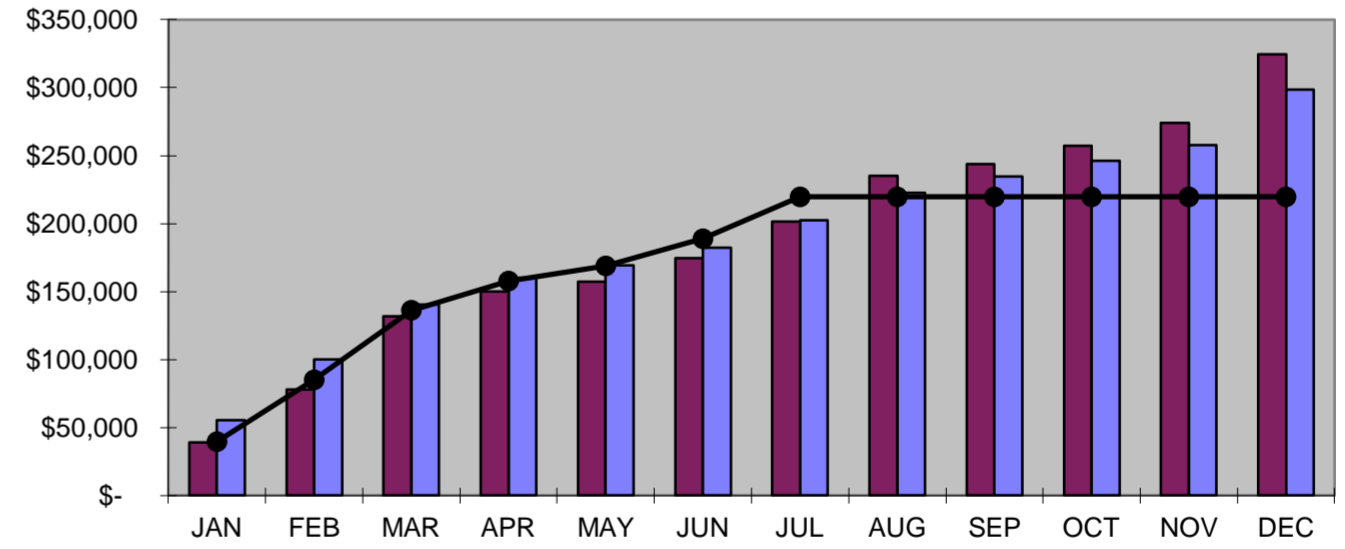
Sales Period	2011 Collections			2012 Budget			2012 Monthly			2012 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2011	% of Budget	Actual	% Change from 2011	% of Budget
JAN	\$ 39,257	\$ 39,257	12.1%	\$ 55,654	\$ 55,654	18.7%	\$ 39,658	1.0%	71.3%	\$ 39,658	1.0%	71.3%
FEB	\$ 38,882	78,139	24.1%	44,532	100,186	33.6%	\$ 45,457	16.9%	102.1%	85,115	8.9%	85.0%
MAR	\$ 53,520	131,660	40.6%	40,504	140,690	47.1%	\$ 51,168	-4.4%	126.3%	136,284	3.5%	96.9%
APR	\$ 18,354	150,014	46.2%	19,654	160,343	53.7%	\$ 21,466	17.0%	109.2%	157,750	5.2%	98.4%
MAY	\$ 7,409	157,423	48.5%	9,013	169,356	56.8%	\$ 11,103	49.9%	123.2%	168,853	7.3%	99.7%
JUN	\$ 17,042	174,465	53.7%	12,848	182,204	61.1%	\$ 19,982	17.3%	155.5%	188,834	8.2%	103.6%
JUL	\$ 27,219	201,684	62.1%	20,408	202,612	67.9%	\$ 30,805	13.2%	150.9%	219,640	8.9%	108.4%
AUG	\$ 33,621	235,305	72.5%	19,793	222,406	74.5%		n/a	0.0%	219,640	-6.7%	98.8%
SEP	\$ 8,679	243,984	75.2%	12,249	234,654	78.6%		n/a	0.0%	219,640	-10.0%	93.6%
OCT	\$ 13,113	257,097	79.2%	11,454	246,108	82.5%		n/a	0.0%	219,640	-14.6%	89.2%
NOV	\$ 16,982	274,079	84.4%	11,688	257,796	86.4%		n/a	0.0%	219,640	-19.9%	85.2%
DEC	\$ 50,521	\$ 324,600	100.0%	\$ 40,603	298,399	100.0%		n/a	0.0%	\$ 219,640	-32.3%	73.6%

2012 Monthly Aff. Housing Sales Tax Collections



2011 Actual 2012 Budget 2012 Actual

2012 Y.T.D. Aff. Housing Sales Tax Collections

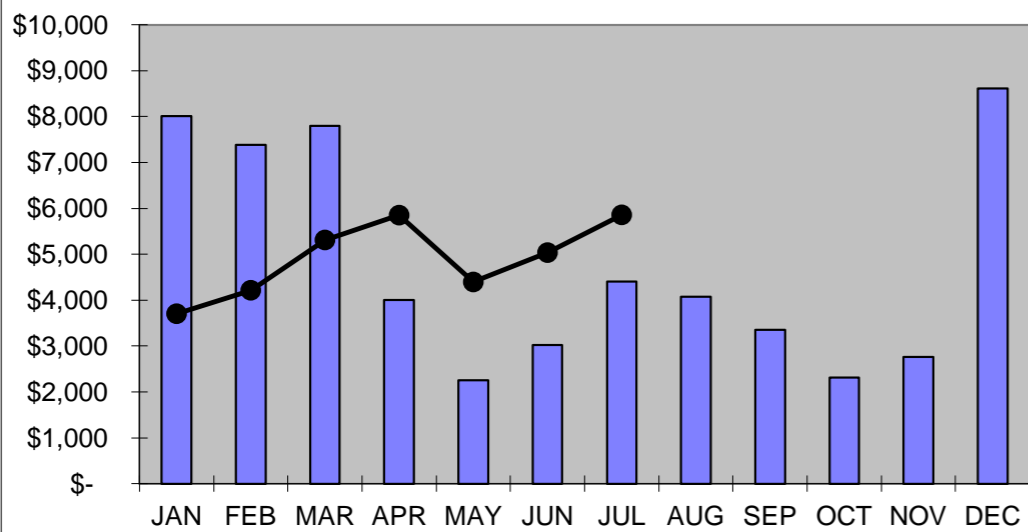


2011 YTD Actual 2012 YTD Budget 2011 YTD Actual

**TOWN OF BRECKENRIDGE
MEDICAL MARIJUANA TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

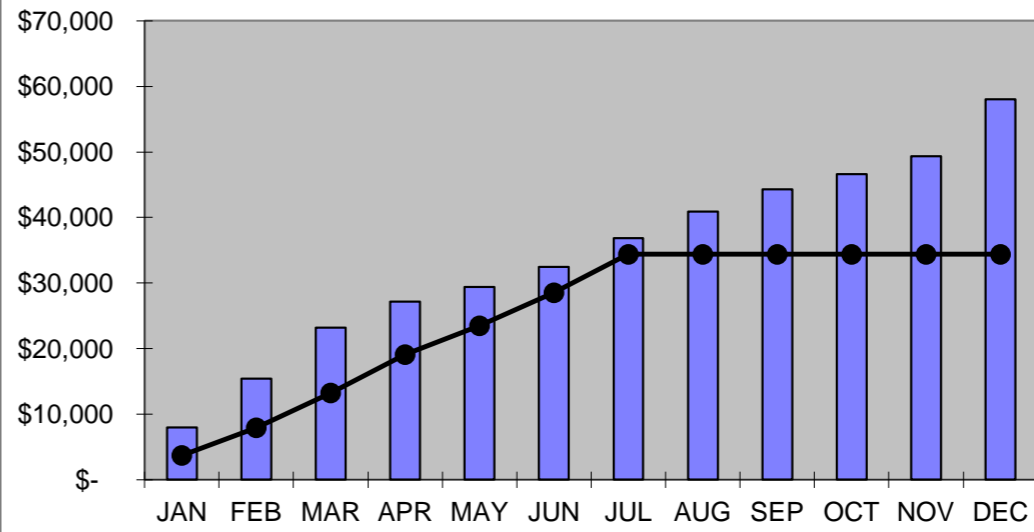
Sales Period	2012 Budget			2012 Monthly		2012 Year to Date	
	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	Actual	% of Budget
JAN	\$ 8,004	\$ 8,004	13.8%	\$ 3,704	46.3%	\$ 3,704	46.3%
FEB	7,381	15,386	26.5%	\$ 4,215	57.1%	7,920	51.5%
MAR	7,794	23,179	40.0%	\$ 5,311	68.1%	13,231	57.1%
APR	4,000	27,179	46.9%	\$ 5,852	146.3%	19,082	70.2%
MAY	2,259	29,439	50.8%	\$ 4,396	194.6%	23,478	79.8%
JUN	3,028	32,466	56.0%	\$ 5,036	166.3%	28,514	87.8%
JUL	4,404	36,871	63.6%	\$ 5,858	133.0%	34,372	93.2%
AUG	4,071	40,942	70.6%		0.0%	34,372	84.0%
SEP	3,358	44,300	76.4%		0.0%	34,372	77.6%
OCT	2,318	46,619	80.4%		0.0%	34,372	73.7%
NOV	2,765	49,384	85.2%		0.0%	34,372	69.6%
DEC	\$ 8,612	57,996	100.0%		0.0%	\$ 34,372	59.3%

2012 Monthly Medical Marijuana Tax Collections



2012 Budget 2012 Actual

2012 Y.T.D. Medical Marijuana Tax Collections



2012 YTD Budget 2012 YTD Actual

MEMORANDUM

TO: Town Council

FROM: Mark Truckey, Assistant Director of Community Development

SUBJECT: Single Use Plastic and Paper Bags

DATE: September 13, 2012 for September 25 Council Meeting

Over the last four months, the SustainableBreck Business Task Force (a voluntary advisory committee comprised of business representatives from retail, restaurants, and lodging) has met to discuss the issue of single use plastic and paper bags. At its June 26 meeting, the Town Council gave direction for staff to work with the SustainableBreck Business Task Force to come up with a recommended plan for reducing the use of plastic bags by the end of 2012. This reduction would implement goals and actions identified in the SustainableBreck Plan.

The Business Task Force has reviewed and discussed a number of issues regarding plastic and paper bags. These issues included: environmental impacts of using plastic and paper bags, recycling options for plastic and paper bags, estimates on volumes of bags used annually in Breckenridge, proactive strategies to reduce bag use, experiences in other communities that had implemented some type of plastic bag restriction, and logistical issues with implementing a ban in local businesses. After all these discussions, the Task Force discussed a series of options for addressing the issue and made a recommendation to forward to the Town Council. The rest of this memo highlights the issues discussed above and sets forth the Task Force's recommendation.

Environmental Impacts

Environmental impacts from plastic bags include resource consumption (including petroleum products) in manufacturing the bags, the disposal of billions of these bags on an annual basis (US estimates of up to 100 billion bags per year), and litter from these airborne bags across our landscapes and oceans. Many jurisdictions that have banned plastic bags have allowed for the continued use of paper bags. The primary reason paper has been allowed is to provide a relatively affordable viable option to plastic and because paper is more readily recycled and is a renewable resource (trees, as opposed to fossil fuels which are used to produce plastic bags). Paper also can eventually biodegrade, whereas plastic simply breaks into smaller and smaller particles and can end up in the food chain (e.g., consumed in the ocean by fish). Despite these differences, most research shows that production of paper bags actually requires more energy than plastic and creates more air and water pollution. Please refer to the attached table for more information on these impacts.

Recycling Options

Plastic bags can be recycled and made into other products (e.g., Trex composite decking). However, there are currently very limited collection or recycling options in Summit County. If consumers could be convinced to recycle their bags, if collection points could be arranged, and if the funding could be found to ship the bags to the Front Range, then they could reach recycling facilities. Paper, in contrast, is readily recyclable and picked up curbside and collected at local recycling stations. Estimates staff has found indicate that nationwide about 1 to 3 percent of plastic bags are recycled, whereas 10 to 15 percent of paper bags are recycled.

Estimated Annual Bag Volumes

Staff has received data from a number of businesses in Town regarding the amount of bags that they use. The following table extrapolates that data and provides a very rough estimate of the number of bags that are used by merchants in Town. City Market has not provided data on bag usage, so we have made an assumption that they City Market (along with the several other small grocers) account for roughly 60% of the total single-use bag volume in Town. This 60% assumption is based on study data compiled from a couple cities where a breakdown analysis for different businesses was conducted (Seattle and San Jose). Retailers from the Business Task Force have indicated that these estimates may be a little conservative (some larger volume stores go through up to 20,000 bags per year).

Merchant	Bags Used Per Year	Number of Merchants	Total
Large Volume Stores	13,000 bags per year	27	351,000
Medium Volume Store	8,000 bags per year	63	504,000
Small Volume Store	3500 bags per year	91	318,500
Restaurants			
Small Volume	500 bags per year	80	40,000
Large Volume	2500 bags per year	6	15,000
Grocery/Liquor	Typically 60% of the total bags in a community	4	1,842,750
Total Breckenridge Bags		271	3,071,250*

*For reference purposes the City of Boulder estimates their total annual bag use at approximately 21.5 million bags with 790 businesses (approximately 27,217 bags per business per year and 221 bags per person per year). The Breckenridge estimate is significantly lower-approximately 11,333 bags per business per year, most likely due to the fact that there are more small merchants in Breckenridge and fewer large chains and grocery stores.

Pro-Active Strategies to Reduce Bag Use

The Task Force discussed a number of ways that bag use could be reduced. One of their recommendations was a strong educational and marketing campaign with local retailers and with the lodging companies, who can educate visitors about the Town’s efforts to reduce bag use. Another strategy would be to have “bag bank” locations where residents can drop off excess reusable bags

they own and others can help themselves to a free bag. Another strategy would be to have periodic free reusable bag handouts. The last strategy would have a cost associated with it for purchase of reusable bags. Staff has found costs of from \$1.00 to \$5.00 per reusable bag, depending on the quality of the material, etc.

Experience in Other Communities

In addition to researching other plastic bag programs, staff has contacted numerous businesses in communities where restrictions have been enacted to see how they and the consumers are dealing with the new programs. In Aspen and Telluride most feedback from local businesses/grocers has been that the public generally has been fine with the adjustments and there has not been a lot of negative reaction. Staff and other Task Force members have visited Telluride this summer and we observed a large number of shoppers in the grocery store using reusable bags, so it seems that the community is adjusting to the new program.

Paper bags are still being provided in Aspen at a cost of 20 cents. The revenues collected are reimbursed partially to the grocers to assist with program administration and the rest of the revenues are used for educational efforts to reduce bag use (e.g., reusable bag handouts). The 20 cents “fee” has been recently challenged by a taxpayers’ rights group that feels it is a tax that should have received voter approval. The case has not yet gone to Court.

Logistical Issues

A number of retailers participated in the Task Force discussions. They noted the following issues with implementing a plastic bag ban/paper bag fee on Main Street:

- Some retailers have a large inventory of existing bags and would want to exhaust that inventory since they paid for it. It could take up to a couple years to exhaust some business inventories.
- Storage becomes an issue in businesses if plastic bags are prohibited and they are forced to go to paper. Paper bags are not as compact and take up a much larger storage volume.
- Paper bags are much more expensive than plastic bags. They can cost from 25 cents to 50 cents per bag. City Market, which deals in large mass quantity orders, provided a very rough estimate of one cent per plastic bag vs. five to ten cents per paper bag. Some retailers also use a much sturdier and thicker plastic bag, which can cost 25 cents or more per bag. Another concern with paper bags is their durability (e.g., potentially soiled if outside in the rain or snow).
- Retailers indicated a difference in shopper behavior on Main Street compared to City Market. At City Market, shoppers typically can run back to their car to grab a reusable bag and when they have done shopping they put their groceries in the car and drive home. On Main Street, shoppers tend to go from store to store and do not have an easy opportunity to run their purchased items back to their car. Shoppers also do not typically bring reusable bags with them on Main Street.
- Some of the retailers felt that a fee on either paper or plastic would not be well-received by shoppers and could dissuade business.

Options and Task Force Recommendations

Staff explored a number of options with the Task Force. These included a ban on plastic bags and fee on paper bags, a ban on plastic, and a fee on both plastic and paper bags. Although all Task Force participants indicated a desire to see environmental improvement in our community, most were unwilling to support any of the above strategies if they applied across the board to all Breckenridge retailers. At least one Task Force member was supportive of a ban/fee, but all retailers that participated were opposed to that approach. The following outlines an option that the Task Force did support:

Recommendation. Plastic Bag Ban and Fee for Large Grocers only/Targets for Smaller Retailers

- Plastic bags banned at large grocers six months after Town ordinance adoption
- Paper bags allowed to be given to customers at large grocers for a fee (paper bags also banned after two years)
 - Revenues from the fee would be placed in a special fund, with revenues used to reimburse the large grocer for administrative costs and for educational and marketing programs aimed at the goal of reducing bag use.
- Voluntary effort by smaller retailers with benchmarks for single use bag reduction (e.g., 40 % reduction by the end of first two years, 60% by end of year three)—if benchmarks are not met, the Council could revisit the issue and potentially decide to enact bans and fees by year four. The smaller retailers would also agree to have reusable bags for sale to the public and to have educational information on the Town’s bag reduction program prominently displayed in their stores.
- Further details:
 - Town will also make available a large number of free reusable bags for both residents and visitors
 - A vigorous educational and marketing campaign is needed. This could include signage for all stores that explains the Town’s efforts, information on the newspaper, radio, etc., and one-on-one efforts with the lodging community to provide effective messaging to their guests.

The following outlines some of the positive benefits of implementing the above recommendation:

- Results in elimination of plastic bags at large grocers, which produce a majority of the total bag volume in the community
- Provides consumers with a choice of bag options in smaller retail establishments
- Provides time windows to allow for smooth transition to new requirements
- “Reusable bag fund” mitigates costs to larger grocers and provides revenue stream for educational efforts and bag give-aways (but goes away after year two)
- Still attempts to hold smaller retailers accountable for reducing single use bags—sets targets which need to be met to avoid bans
- Addresses both plastic and paper bags, which both have environmental impacts.

There is one note staff would like to make regarding the above recommendation. Staff has not found another jurisdiction that has banned both plastic and paper. Thus, this is an area that will need further discussion. Banning both plastic and paper bags would not leave a relatively low-cost alternative for shoppers. However, the Task Force felt that both plastic and paper should be addressed. An alternative to the ban would be imposing a fee on paper (or both paper and plastic). Communities that have implemented a fee have seen a change in shopper behavior and a significant reduction in bag use.

Next Steps

After the Council has discussed this issue, the next step we anticipate is to take the issue out to the public for community input. We envision a public engagement process that would include the use of some newer technology (e.g., MindMixer public engagement software) and other social media, along with more traditional efforts such as press releases and public open houses. The engagement process would include educational information about the issue and why it is important and furthers the goals of the SustainableBreck Plan. We would likely identify an option that the Council is leaning towards (e.g., the above recommendation as revised by the Council) but would also ask the public for other ideas. This engagement process would preferably occur in October and November, giving the Council time to discuss a final “plan” before the end of the year.

Council Questions

- Does the Council have questions regarding any of the information or data provided in this memo?
- Are there changes the Council would like to make to the Task Force’s recommendation and is the Council comfortable forwarding the revised proposal as a “strawman” for the public engagement process?
- Does the Council have other suggestions regarding the public engagement process?

Environmental Impacts of Paper and Plastic Bags*		
	Paper Bags (30% Recycled Fiber)	Plastic
Number of Bags used	10 billion per year-US	100 billion per year-US (2 billion in Colorado)
Resource	14 million trees cut annually for bags	12 million barrels of oil annually
Energy to Manufacture	2,511 BTUs per bag	594 BTUs per bag
Air Pollutants	70% more air pollution	
Water Pollutants	50 times more water pollution	
Fossil Fuel Use	23.2 kg per bag	14.9 kg per bag
Green House Gas	.08 tons per bag	.04 tons per bag
Fresh Water	1,004 gal per bag	58 gal per bag
Recycled	10-15% (mostly recycled to cardboard) as new bags require new wood fiber	1-3% (cost to recycle 1 ton is \$4,000-the value on the commodities market is \$32)
Energy to Recycle	1,444 BTUs per pound	17 BTUs per pound
Biodegradable	Yes-but issues with modern landfills (paper tends to biodegrade very slowly because of compaction and lack of sunlight).	No-requires remelting/will disintegrate and small microscopic particles are absorbed or ingested introducing toxic chemicals into the food chain-concerns about long term impact on human and wildlife health
Litter		4 billion bags per year worldwide end up as litter-hundreds of thousands of marine mammals plus sea birds, fish, turtles die from ingesting or entangling cost of cleanup is passed on to taxpayers Great Pacific Garbage Patch approx 2 times the size of Texas
Municipal Solid Waste	2,000 bags weigh 280 pounds and take up 80% more landfill space	2,000 bags weigh 30 pounds

* Table Source: Washington Post

TOWN OF BRECKENRIDGE

PUBLIC ART COMMISSION

AGENDA

Tuesday, September 25, 2012

Meeting Location: Town Council Chambers,
Town Hall, 150 Ski Hill Road

6:00 Introductions

6:05 Public Art and Arts District Program Overview 2011 -2012

Public Art Program

6:10 Art Around Town

6:15 Public Art Donations

6:20 Roundabout Sculpture

Breckenridge Arts District (BAD)

6:30 Arts District Master Plan
Phasing and Barney Ford Lot Recommendations

6:45 Breckenridge as a “Year Round Arts Destination” = Collaboration

6:55 Council Liaison to BPAC?

7:00 Adjourn

For further information, please contact:
Jennifer Cram at 970-547-3116.