



**PLANNING COMMISSION AGENDA**

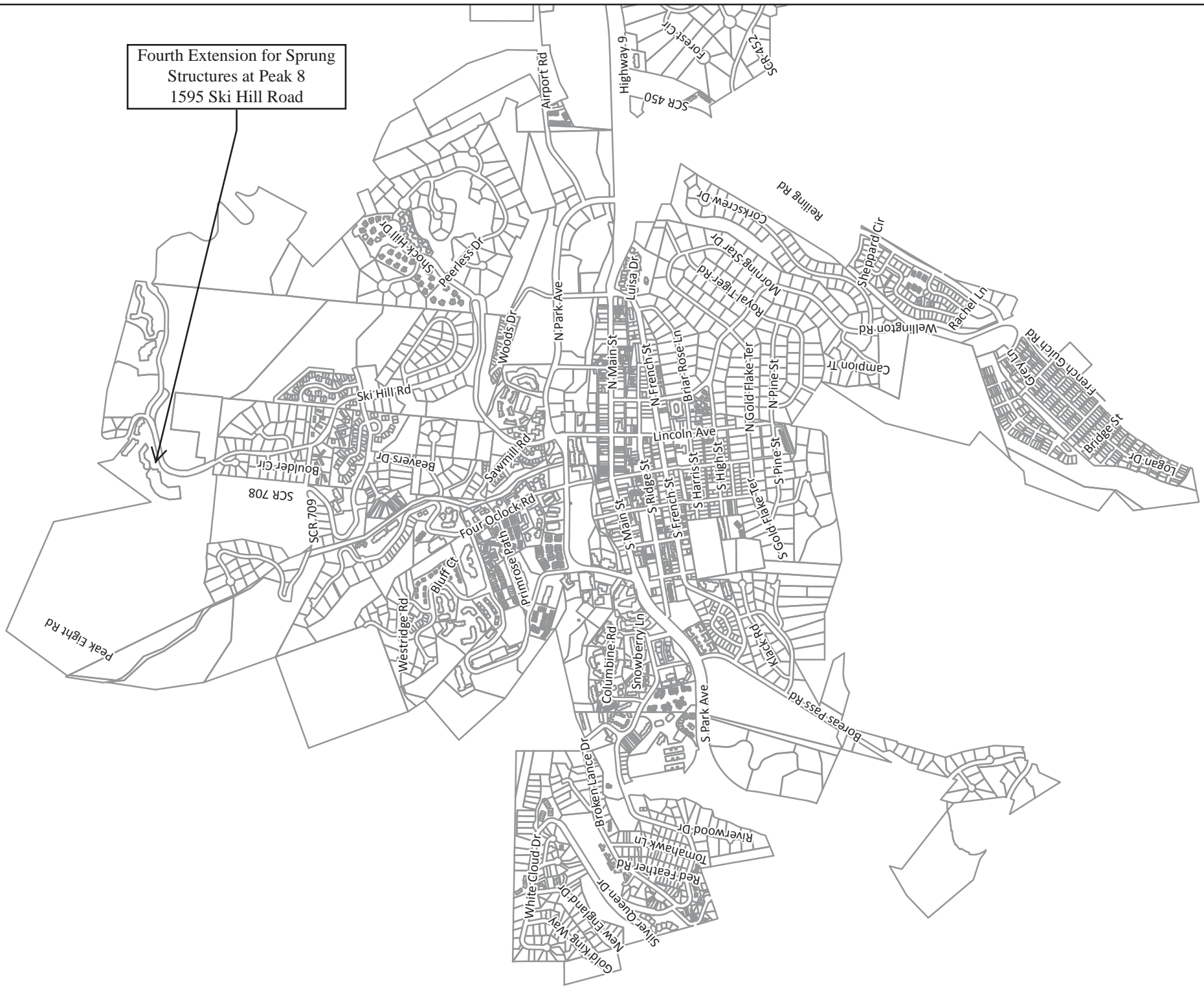
Tuesday, September 20, 2016  
Breckenridge Council Chambers  
150 Ski Hill Road

<b>7:00pm</b>	<b><i>Call To Order Of The September 20 Planning Commission Meeting; 7:00 P.M. Roll Call</i></b>	
	<b><i>Location Map</i></b>	<b>2</b>
	<b><i>Approval Of Minutes</i></b>	<b>3</b>
	<b><i>Approval Of Agenda</i></b>	
<b>7:05pm</b>	<b><i>Worksessions</i></b>	<b>8</b>
	1. Wireless Communications Facility Ordinance Review (JP)	
<b>7:45pm</b>	<b><i>Combined Hearings</i></b>	<b>35</b>
	1. Fourth Extension for Sprung Structures at Peak 8 (MM) PL-2016-0370; 1595 Ski Hill Road	
<b>8:30pm</b>	<b><i>Development Code Steering Committee Update</i></b>	
<b>9:00pm</b>	<b><i>Other Matters</i></b>	
	1. Town Council Update (JP)	
<b>9:30pm</b>	<b><i>Adjournment</i></b>	

For further information, please contact the Planning Department at 970/453-3160.

**\*The indicated times are intended only to be used as guides. The order of projects, as well as the length of the discussion for each project, is at the discretion of the Commission. We advise you to be present at the beginning of the meeting regardless of the estimated times.**

Fourth Extension for Sprung Structures at Peak 8  
1595 Ski Hill Road



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# Breckenridge South



**PLANNING COMMISSION MEETING**

The meeting was called to order at 7:00 pm by Vice Chair Schroder.

**ROLL CALL**

Mike Giller                      Christie Leidal                      Ron Schuman (arrived 7:25 pm)  
Dan Schroder                      Gretchen Dudney                      Jim Lamb  
Dave Pringle (arrived at 7:12 pm)

Dan Schroder, Vice Chair filled in for Ron Schuman, Chair, until 7:25 pm

**APPROVAL OF MINUTES**

With no changes, the August 16, 2016, Planning Commission Minutes were approved as presented.

**APPROVAL OF AGENDA**

With no changes, the September 6, 2016, Planning Commission Agenda was approved as presented.

**CONSENT CALENDAR:**

1) Shock Hill Overlook Duplex Lot 4 (MM) PL-2016-0364, 62 & 58 West Point Lode  
With no comments, the consent calendar was approved as presented.

**COMBINED HEARINGS:**

1) Peak 8 Resubdivision Tract C (MM) PL-2016-0294, 1627 Ski Hill Road  
Mr. Mosher presented a proposal to re-subdivide the remainder of Tract C to create Lot 3, Peak 8 Subdivision in order to accommodate the development and property transfer of the Grand Lodge Peak 8 East Building, authorized by Development Permit PL-2015-0215. The previous resubdivision of Tract C (PC#2013009) created Lot 2 which defined the property for Grand Colorado on Peak 8 (currently under construction). This resubdivision is being created solely to transfer the property (Lot 3) from Vail Resorts to Grand Colorado on Peak 8 to accommodate the recently approved Grand Colorado Lodge on Peak 8 East Building. After the conveyance, the shared property line will be abandoned allowing the Grand Colorado on Peak 8 (east and west buildings) to become essentially one building on one property.

This subdivision proposal is in compliance with the Subdivision Standards. Staff recommended approval of The Third Resubdivision Plat of the Remainder of Tract C Peak 8 Subdivision, Filing No. 1, PL-2016-0294, with the presented Findings and Conditions.

*Commissioner Questions / Comments:*

Ms Leidal:        Where will the pedestrian easement be when the lot line is vacated? (Mr. Steve West, Attorney for Vail/Summit Resorts): The current pedestrian easement is not functioning with the current construction activities. It is the future easement and it will be slightly to the south, a bit larger than required. It is possible, however, that the pedestrian easement won't be done until the condo subdivisions are processed, though prior to then it would not be functional anyway because of the construction.)

Mr. Schroder opened the hearing for public comment. No public was present to comment and the hearing was closed.

*Commissioner Questions / Comments (continued):*

Mr. Lamb:        This is necessary for the project, so I support it.  
Ms. Dudney:     No comment.  
Mr. Giller:        No comment.  
Ms. Leidal:        I support the conclusions of staff.

Mr. Schroder: I also support the conclusions of staff and agree with Mr. Lamb.

Ms. Dudney made a motion to approve the Third Resubdivision Plat of the Remainder of Tract C, Peak 8 Subdivision, Filing No. 1, PL-2016-0294, 1627 Ski Hill Road, with the presented Findings and Conditions. Mr. Lamb seconded, and the motion was carried unanimously (5-0).

**DEVELOPMENT CODE STEERING COMMITTEE UPDATE:**

Mr. Truckey presented. Mass policy 4R was discussed. There is a bonus provided for condos, hotels, inns, etc. which allows an additional 25% for common areas and amenities. The Steering Group discussed issues that there have been in the past, a number of recent applications have gone through development agreements to request more area for amenities. Input from the architects on the Steering Group was that you could basically reach 25% in just common areas, so it is a bit tight and we may want to provide a bit more flexibility, perhaps up to 30 % for common areas and amenities. As a whole, the Steering Group was concerned that bumping up the allowance much more would create too much mass in a project. Suggestions included moving up to 30% to allow a little more room for amenities, though it may not be enough. Additional recommendation from the committee was that the Town Council refer this aspect of development agreements to Planning Commission to provide a recommendation before approval. The Planning Commission recommendation would be focused on the fit test: whether the additional mass fit on the site properly. There is a separate category for apartments, which currently allows 15% mass bonus, and the architects recommended that this category be bumped up as well.

Mr. Grosshuesch: We have seen condo developments go into assessment mode, desiring more development space in the name of amenities and the issue with giving an increase without oversight is that developers will over-build their sites. I do think it's good to have anything more than a minor increment go through analysis to determine if it fits.

*Commissioner Questions / Comments:*

- Mr. Pringle: Has there been an analysis over time for common area needed with no amenities? (Mr. Truckey: Around 20-25%, based on recent projects.)
- Ms. Dudney: The amenities are determined by the market and if they are needed, a development agreement can be proposed.
- Mr. Pringle: We want better amenities, and I'm not sure that's what we'll get by just adding percentage.
- Ms. Dudney: I don't quite agree with that; the market determines amenities and if the market demands certain amenities, I think they will be fulfilled.
- Mr. Pringle: I'm reluctant to give additional mass unless we really know what we will be getting from it and that what we're getting is what we need. (Mr. Mosher: In the projects I have recently worked on, the 25% has been a tight fit.)
- Ms. Dudney: When there is an extra 25% allowed, is it required that the extra 25% is used for common area or amenities? (Mr. Truckey: They can only use it for that, not density.)
- Ms. Leidal: What needs to be counted as the bare minimum of common area? To increase hallway width, for example?
- Mr. Pringle: If we are going to give out bonus mass, I think we have to know what it is going to.
- Ms. Leidal: But that is the way it is, already, correct? You have to use the additional mass for common areas and amenities.
- Ms. Dudney: It is an incentive so that the developer does not have to take amenities out of the area that can be rented. (Mr. Mosher: The market has changed, and right now, those who need more room for amenities will get a development agreement or wiggle with the area they have.) (Mr. Truckey: The bigger projects are still going to need to get a development agreement; the extra 5% may assist with a few smaller projects.)
- Mr. Pringle: What about projects built before this 25% rule? Can they suddenly add more mass to these buildings and will we like that? Before we give out the additional mass, I would like to see

that we are getting amenities out of that. (Mr. Mosher: In those projects we do count their hallways and common areas when we look at them now. But it depends on how the scenarios are handled architecturally.) We've never had the stick to enforce the carrot we offered; we gave the bonus but the amenities are never used, we just made it easier for them to get their density and the buildings just got bigger.

Ms. Dudney: So do you think the current buildings would just get scraped and replaced with something 25% bigger? (Mr. Grosshuesch: I do not think this would happen, and I don't know where they would even put the additional 25% in many of these situations. We should still have them go through the development agreement process.)

Mr. Lamb: How many properties do we have out there that could really be scraped?

Ms. Dudney: This just does not seem likely given that someone would need to buy out all the existing condos and property to redevelop it.

Mr. Pringle: I think it's possible that places would do that, who knows.

Ms. Dudney: The 25% is on the books now, so they could currently do what you're suggesting, do you want to take that off the books?

Mr. Pringle: I'm just saying we shouldn't offer more and we should ensure that projects go through the development agreements.

Mr. Truckey presented on the architectural and coloring policies on buildings. Currently three colors are allowed, with minor exceptions. We talked about other types of surfaces not counting toward color like stone or rusted metal. Additionally, we allow fiber cement siding on a building as long as there are some natural materials on each elevation. The architects on the Steering Group believed that fiber cement siding was turning out to be a durable product. There were a few examples where it did not work well, like on a relatively blank wall, which was not because of the fiber cement, but because of the lack of other interesting aspects. We talked about having some percentage of wood material or natural material. The committee decided not to go that route and to leave it to discretion as it is now.

*Commissioner Questions / Comments:*

Ms. Leidal: The committee did not think we should put a percentage there and that we should invoke policy in a different way and be flexible.

Mr. Lamb: No one can tell the difference on a lot of the materials that are not "natural" but do look like natural materials.

Ms. Dudney: Pinewood II for example, I do not think the siding there looks great, it is very flat, and this gave us discussion about breaking up these planes of non natural material.

Mr. Lamb: I think a lot of it is paint.

Mr. Pringle: I don't think that non-natural materials have been a problem in the historic district, but there is a problem outside the historic district where we have developed a mountain alpine motif and the non natural materials have diminished that character a bit. The non natural materials take on a character that really does not meet the look.

Mr. Giller: What about steel columns and beams in the more modern architecture? Are those natural under 5R? (Ms. Puester: We have been considering that non-natural, though metal is not officially a part of the written policy.)

Mr. Pringle: What about making metal an accent instead of a color? (Ms. Puester: We did talk about making rusted metal and the like not count as a color, if it is painted, it would be a color.) I object a bit to the amount of different materials brought on to the projects. (Ms. Puester: We have not really talked about different materials, just different colors.) (Mr. Truckey: The way the code reads now is that non natural materials can be no more than 25% no matter what the material is.) (Ms. Puester: If you had multiple different types of materials, as it stands, you could keep adding materials until you reach the 25%.) I think we should strongly encourage that the projects are kept simpler, like one project that had a bunch of different materials going.

- Mr. Schuman: In the particular instance you are referencing, that was not a code issue, but more of the commission's problem.
- Mr. Pringle: In that particular section of the code, the word "siding" is used, can we define siding? Not trim or accents? Because in some projects, siding is being defined more loosely.
- Ms. Dudney: It's still limited to 25% though? Except that fiber cement siding does not get negative points if there are also natural materials.
- Ms. Leidal: It says stucco specifically (Ms. Puester: Precedent has meant all non natural materials, but we will clarify that.)
- Mr. Pringle: I am concerned that non natural materials are being used as corner boards and such.
- Ms. Dudney: It does not say that anywhere that they cannot be used.
- Mr. Pringle: I would like for it to say that specifically.
- Ms. Leidal: It is written as 25% non natural regardless of how you apply it, is that okay?
- Mr. Pringle: I don't think that is enough to maintain the mountain rustic motif we want.
- Ms. Dudney: I'm not even sure it's the verbiage that's a problem; I don't think we all agree on this issue. I do not object to what Mr. Pringle objects to.
- Mr. Lamb: I don't object to it either.

Mr. Truckey also presented discussion on an architectural compatibility provision that assesses positive and negative points for excessive dissimilarity and excessive similarity. We have given negative points in the past for buildings that looked too modern compared to neighbors. We have rarely given negative points for similarity. Overall the group agreed that it should be left as is, and that it works as stands.

*Commissioner Questions / Comments:*

- Mr. Pringle: I don't think that assessing negative points on a project for dissimilarity is enough because they can just make up points elsewhere. (Mr. Truckey: You can get up to negative six, which is a pretty big number to overcome and could kill a project.)
- Mr. Lamb: I think that this policy works as stands.

(Mr. Schroder opened the meeting as chair, but it was passed to Mr. Schuman midway through committee discussion when Mr. Schuman arrived.)

**OTHER MATTERS:**

1) Planning Commission Field Trip Retreat

Ms. Puester presented. Staff would like to start discussing topic ideas for an annual Planning Commission field trip. This trip usually takes place in October of each year, but depending upon Commission availability, and the focus of the trip, an alternate month could be arranged. At this time, Staff is thinking that some relevant topics could include fiber cement siding durability, site disturbance related to long driveways, and retaining wall heights. These topics are based on topics arising from the Development Code update project and have been raised numerous times by Planning Commission members.

*Commissioner Questions / Comments:*

- Mr. Lamb: I think that staying here would be a good idea to look at fiber cement siding and non natural materials.
- Mr. Schuman: We could look at cell towers.
- Mr. Pringle: We could look at the Residence Inn, it highlights some of the concerns I have. (Ms. Puester: We should wait until they are done there, it is not painted yet).
- Mr. Schroder: I think it would be a good idea to look at driveways, since we will be getting more lots that will require different driveways .
- Ms. Dudney: Can we look at Maggie Placer, thinking about our discussion of fit? Columbia Lode?
- Mr. Schuman: Maybe phase one of Wellington? And to Lincoln Park to look at the car ports, which I think look a bit out of place and it would be good to look those over. (Ms. Puester: Town Council

Mr. Lamb: will be doing a site visit at Lincoln Park at 2 pm on October 11 which we could join.)  
Maybe Denison Placer? (Ms. Puester: I am not sure what there will be to look out there right now.)

Mr. Pringle: I do have one comment, I'm sorry I was late and unable to make note earlier, but on page four of our last minutes, I believe what I said was: "We are not smart enough to write code that considers every possible project that may come across" and not "We are not smart enough to write code."

Ms. Puester: If any of you do decide to go to the APA conference in Colorado Springs, please let me know. It is October 24<sup>th</sup>-26<sup>th</sup>.

**ADJOURNMENT:**

The meeting was adjourned at 8:12 pm.

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Ron Schuman, Chair



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## MEMORANDUM

**TO:** Planning Commission

**FROM:** Julia Puester, AICP, Senior Planner

**DATE:** September 9, 2016 for meeting of September 20, 2016

**SUBJECT:** Wireless Communication Facilities Ordinance Basics

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Staff worked with the Town Attorney, our specialist on this topic Attorney Ken Fellman, as well as wireless providers to develop the ordinance in conjunction with the most recent regulations which are intended to provide design standards, address height and density related to such structures and installations. Further, one of the key features of the ordinance is to create an incentive with a faster administrative review process to be in conformance with the Federal Communication Commission (FCC) recent legislation for proposed WCF. In addition, this ordinance provides guidance on preferred standards for location and design while in turn, provide a lengthier public hearing process for those WCFs not meeting preferences. (Currently, all WCFs require a Class A development review).

The Planning Commission last reviewed and directed staff to proceed to the Town Council on June 7. The Town Council reviewed and approved this ordinance on August 9, 2016. There were some minor changes from the adopted version of the ordinance that the Planning Commission reviewed on June 7. Staff wanted to take this opportunity to familiarize the Commission with the primary issues addressed in the ordinance and answer any questions the Commission may have prior to any applications being submitted under this new policy which is effective September 8.

Primary issues addressed in the ordinance include:

- A simpler Class D major review process as an incentive for locations, types and design of facilities which is encouraged (e.g. Outside of the Conservation District; on an existing building; collocation with other carriers; in public rights of ways or facilities; commercial land use districts; community facilities; and/or DAS). (Section (D)(2) and Section (I))
- A Class A process for WCFs which are not in a preferred location and design. (Section (D)(1))
- Design Standards (Section J) which include a requirement for all WCFs to be camouflaged and concealed (Section (J)(8 & 11)); encourage collocation (Section (J)(3b)); roof or wall mounted preferred over freestanding (Section (J)(6)); and concealed with compatible design in the rights of ways (Section (J)(9)). Height limitation of 35 feet unless processed as an adjustment. (Section (J)(4))
- Special variance procedure referred to in Adjustments to Standards (Section K) to address any unforeseen issues which would allow the Town to process the applications in a timeframe established by the Federal Communications Commission (FCC).

Staff will be available at the meeting to answer any questions that the Planning Commission may have.



ORDINANCE NO. 18

Series 2016

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE," BY ADOPTING A NEW POLICY 50 (ABSOLUTE), ENTITLED "WIRELESS COMMUNICATIONS FACILITIES," AND MAKING MISCELLANEOUS CONFORMING AMENDMENTS TO THE BRECKENRIDGE TOWN CODE

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

Section 1. Item G in the definition of "Class A Development" in Section 9-1-5 of the Breckenridge Town Code is amended to read as follows:

- G. Those wireless communication facilities permit applications described in subsection D1 of Section 9-1-19-50A.

Section 2. The definition of "Class D – Major" development in Section 9-1-5 of the Breckenridge Town Code is amended by the addition of a new item B, which shall read as follows:

- B. Those wireless communication facilities permit applications described in subsection D2 of Section 9-1-19-50A.

Section 3. Chapter 1 of Title 9 of the Breckenridge Town Code is amended by the addition of the following new development policy:

**9-1-19-50A: POLICY 50 (ABSOLUTE) WIRELESS COMMUNICATIONS FACILITIES:**

**A. PURPOSE AND INTENT:**

1. The purpose of this policy is to regulate the installation and operation of various wireless communications facilities in the Town, recognizing the benefits of wireless communications while reasonably respecting other important Town needs, including the protection of public health, safety, and welfare.
2. The overarching intent of this policy is to make wireless communications reasonably available while preserving the unique aesthetic character, beauty, and historic charm of the Town. This will be realized by:
  - (a) Minimizing the visual and physical effects of wireless communications facilities through appropriate design, siting, screening techniques, and location standards;
  - (b) Encouraging the installation of wireless communications facilities at locations where other such facilities already exist;
  - (c) Encouraging the installation of such facilities where and in a manner such that potential adverse impacts to the Town are minimized; and
  - (d) Providing for the efficient modification and upgrading of existing wireless communications facilities to accommodate changing technologies.
3. It is not the purpose or intent of this policy to:
  - (a) Prohibit or have the effect of prohibiting wireless communications services; or

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- (b) to regulate the placement, installation, or modifications of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facilities do or will comply with the applicable FCC regulations; or
  - (c) Unreasonably discriminate among providers of functionally equivalent wireless communications services.
4. Nothing in this policy is intended to allow the Town to preempt any state or federal law or regulation applicable to a wireless communications facility.
  5. The provisions of this policy are in addition to, and do not replace, obligations a wireless communications facility permittee may have under franchises, licenses, other permits issued by the Town, or any other agreement with the Town.

**B. EXCLUSIONS:**

1. Except as specifically provided in the Spectrum Act, this policy does not apply to and no wireless communications facilities permit shall be required for: (i) ordinary maintenance of a WCF as defined in this policy; (ii) the siting of Distributed Antenna Systems facilities located within a building, stadium, or similar structure, or campus, and intended primarily to provide wireless coverage within that building, stadium, or similar structure, or campus; (iii) antennas used by residential households solely for broadcast radio and television reception; (iv) satellite antennas used solely for residential or household purposes; (v) amateur radio antennas; (vi) television and AM/FM radio broadcast towers and associated facilities; (vii) WCFs placed for a period of not more than 21 days for temporary uses related to special events if authorized by a special events permit issued pursuant to chapter 13 of title 4 of this code; (viii) WCFs owned by or exclusively operated for government agencies, including the Town; and (ix) development as defined in Section 9-1-5 that does not meet the definition of a WCF, which development is subject to the other provisions of this chapter.
2. This policy does not apply to the Town when the Town is acting in its propriety capacity as owner of land. This policy applies to the Town only when it acts as a land use regulator.

**C. DEFINITIONS:**

1. For the purposes of this policy, the following terms shall have the following meanings:

**ANTENNA :** A device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to, panel antennas, reflecting discs, panels, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations.

**ANTENNA ARRAY:** Two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

**BASE STATION:** A structure or equipment at a fixed location that enables FCC-licensed or authorized

**WIRELESS COMMUNICATIONS FACILITIES ORDINANCE**

wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this policy or any equipment associated with a tower. Base Station includes, but is not limited to:

(a) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).

(c) Any structure other than a tower that, at the time the relevant application is filed with the Town, supports or houses equipment described in subsections (a) and (b) of this definition that has been reviewed and approved under this chapter or policy, even if the structure was not built for the sole or primary purpose of providing such support.

The term does not include any structure that, at the time the relevant application is filed with the Town, does not support or house equipment described in subsections (a) and (b) of this definition.

CAMOUFLAGED OR CONCEALED WIRELESS COMMUNICATIONS FACILITY:

A WCF that: (a) is integrated as an architectural feature of an existing structure such as a false facade; (b) is integrated in an outdoor fixture such as a flagpole; (c) uses a design that mimics and is consistent with nearby natural or architectural features; or (d) is incorporated into or replaces existing permitted facilities (including, but not limited to, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

COLLOCATION (Eligible Facilities Request):

With respect to an eligible facilities request, means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

CONSERVATION DISTRICT:

Has the meaning provided in Section 9-1-5.

DISTRIBUTED ANTENNA SYSTEM (OR DAS):

A network of one or more antennas and related fiber optic nodes typically mounted to streetlight poles, or utility poles, which provide access and signal transfer for wireless service providers. DAS also includes the equipment location, sometimes called a

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	<p>“hub” or “hotel,” where the DAS network is interconnected with one or more wireless service provider’s facilities to provide the signal transfer services.</p>
ELIGIBLE FACILITIES REQUEST:	<p>Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.</p>
ELIGIBLE SUPPORT STRUCTURE:	<p>Any tower or base station as defined in this policy, provided that it is existing at the time the relevant application is filed with the Town under this policy.</p>
EXISTING:	<p>A constructed tower or base station if it has been reviewed and approved by the Town under this chapter or policy; provided that a tower that has not been reviewed because it was not in a zoned area when it was built, but was lawfully installed, is existing for purposes of this chapter and policy.</p>
FCC:	<p>The Federal Communications Commission.</p>
LATTICE TOWER:	<p>An open framework structure used to support one or more antennas, typically with three or four support legs.</p>
MONOPOLE:	<p>A single freestanding pole used to act as or support an externally mounted antenna or antenna arrays.</p>
ORDINARY MAINTENANCE:	<p>Ensuring that WCFs and support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing, and modifications that maintain functional capacity, and aesthetic and structural integrity (e.g., the strengthening of a support structure’s foundation or of the support structure itself). Ordinary maintenance includes: (i) replacing existing antennas with antennas of the same size and color, <b><u>when such replacement antennas will not increase the overall height or footprint of the WCF</u></b>; (ii) replacing accessory equipment within an existing WCF; and (iii) relocating the antennas of approved WCFs to different height levels on an existing monopole or vertical facility upon which they are currently located if such height level is in compliance with the applicable requirements of this chapter. Ordinary maintenance does not constitute a modification to a WCF, whether classified as an eligible facilities requests or otherwise.</p>
RF:	<p>Radio frequency.</p>
RADOME:	<p>A visually-opaque, radio frequency</p>

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transparent enclosure which may contain one or more antennas, cables, and related facilities therein.

- REVIEWING AUTHORITY:** The Director, the Planning Commission, or the Town Council with respect to a Class D - Major WCF permit application, or the Planning Commission or Town Council with respect to a Class A WCF permit application.
- RIGHT-OF-WAY:** Any publicly-owned or controlled street, roadway, alley, sidewalk, and other public way, including any public utility easements that extend beyond the curb onto private property.
- SITE:** For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures. For other towers in the public right-of-way, a site is further restricted to that area comprising the base of the structure and to other transmission equipment already deployed on the ground.
- SMALL-CELL:** A deployment that meets the following conditions:  
1. All antennas that are part of the small cell deployment fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that are individually no more than three (3) cubic feet in volume, and all antennas on the structure, including any pre-existing antennas on the structure, fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that total no more than six (6) cubic feet in volume; and  
2. All other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground associated with antennas on the structure, are cumulatively no more than seventeen (17) cubic feet in volume, exclusive of: (a) vertical cable runs for the connection of power and other services; (b) ancillary equipment installed by other entities that is outside of the applicant's ownership or control; and (c) comparable equipment from pre-existing wireless deployments on the structure.
- SMALL-CELL NETWORK:** A network consisting of one or more nodes connected, directly or indirectly, by fiber to a carrier's mobile switching center or other point of interconnection.
- SPECTRUM ACT AND SPECTRUM REGULATIONS:** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. §1455(a), as amended from time to time. The FCC's rules under the Spectrum Act are contained in the FCC Report and

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Order adopted October 17, 2014, as amended from time to time, and codified at 47 C.F.R. §1.40001.

SUBSTANTIAL CHANGE:

A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act in February 2012;

(b) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;

(c) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;

(d) It entails any excavation or deployment outside the current site;

(e) It would defeat the concealment elements of the eligible support structure; or

(f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections (a) – (d) of this definition.

- SUPPORT EQUIPMENT:** The physical, electrical, and/or electronic equipment included within a WCF used to house, power, and/or process signals from or to the WCFs antenna or antennas, but specifically excluding the base station.
- SUPPORT STRUCTURE:** A structure, outdoor fixture, tower, or utility pole capable of safely supporting a WCF, but does not include a wireless tower.
- TEMPORARY WCF:** A WCF that is designed and intended to be used for a limited period of time as described in subsections D1c or D2c of this policy.
- TOWN PROPERTY:** Property owned or under the control of the Town, but specifically excludes the Town’s right-of-way. By way of example and not limitation, public property includes structures and outdoor fixtures owned by the Town.
- TRANSMISSION EQUIPMENT:** Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- UNIPOLE:** A uniform width pole with one or more antennas and associated equipment and cables contained within the interior of the pole, and with a Radome at the top of the pole being the same width as the pole.
- UTILITY POLE:** A metal or wood pole or structure located in the right-of-way and dedicated to use by multiple utilities and providers of communications authorized by the Town, or otherwise authorized to use the pole by applicable law.
- WIRELESS COMMUNICATIONS FACILITY (WCF):** A facility for the transmission or reception of low power radio signals used for two-way communications provided by a FCC licensee. WCFs shall not include facilities for broadcasting or receiving commercial or public radio or television programming, or

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facilities for transmitting or receiving signals by governmental agencies or amateur radio, citizens band, or similar users. WCFs are composed of two or more of the following components:

- (a) antenna;
- (b) support structure;
- (c) equipment enclosure; or
- (d) security barrier

**WCF ADJUSTMENT:** An authorization to deviate from the requirements of this policy granted by the reviewing authority pursuant to Section K of this policy.

**WCF APPLICATION (OR APPLICATION):** An application for a WCF permit submitted pursuant to this policy.

**WIRELESS TOWER:** Any structure, such as a monopole or unipole, built for the sole or primary purpose of supporting a WCF. A support structure which is modified or replaced to allow for the installation of all or a portion of a WCF retains its prior use as its primary use, and the wireless use is only a secondary use thereof, even if the WCF is the only attachment to the support structure.

**WCF PERMIT (OR PERMIT):** A WCF permit for the initial placement of a WCF, or the modification, replacement, or removal of a WCF, issued by the Town pursuant to this policy and chapter.

- 2. Terms not defined in this policy that are defined in applicable federal law or regulation shall have the meaning provided in such law or regulation.
- 3. Terms not defined in this policy or applicable federal law or regulation are to be given their common meaning.

**D. WCF PERMIT CLASSIFICATIONS:** Applications for WCF permits submitted under this policy are classified as follows:

- 1. Class A Development WCF Permit.
  - (a) All collocation applications and modifications of an existing WCF permit that are not eligible facilities requests.
  - (b) An application for a temporary WCF that will be operational for a period of time more than 30 but less than 180 days. No temporary WCF shall be approved if it will be operational for 180 days or longer unless the use of such temporary WCF is in response to and during the period a period of a declaration of emergency by the Governor of the State of Colorado. The Director shall not accept an application for a temporary WCF under this policy: (i) that is not filed concurrently with an application for a permanent WCF; ~~and~~ or (ii) that will be operational for 180 days or longer unless the use of the Temporary WCF is in response to and during the period a period of a declaration of emergency by the Governor of the State of Colorado.
  - (c) All other applications to install, modify, or replace a WCF within the Town that are not classified as a Class D - Major application pursuant to subsection D2.
- 2. Class D - Major Development WCF Permit.

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- (a) An application for an eligible facilities request.
  - (b) An application to install a new WCF at one of the preferred locations as set forth in Section I4 of this policy if the application meets the applicable design requirements of this policy.
  - (c) An application to install a new wall-or roof-mounted WCF if such installation is preferred under Section J6 of this policy, and if the application meets the applicable design requirements of this policy.
  - (d) An application for a temporary WCF that will be operational for a period of time not longer than 30 days, whether in response to and during the period a period of a declaration of emergency by the Governor of the State of Colorado, or otherwise.
  - (e) An application to install a WCF that is part of a DAS or small-cell network, and is camouflaged consistent with the design requirements contained in this policy.
3. Director's Authority to Reclassify an Application. The Director's authority to reclassify a development permit application as authorized by the definition of "Classification" in Section 9-1-5 may only be used in connection with an application filed under this policy to reclassify a Class D - Major application to a Class A application. The Director's authority to reclassify an application under Section 9-1-18-4-1C does not apply to a Class D - Major application filed pursuant to this policy.

**E. WCF PERMIT REQUIRED:**

- 1. A WCF may not be installed, modified, or replaced without a WCF permit, except as provided in this policy.
- 2. An applicant must obtain all other WCF permits, authorizations, and approvals that are required for the installation, modification, replacement, or removal of the WCF, or for the installation, modification, replacement, or removal of the support structure or wireless tower under federal, state, or local law, including, but not limited to, building permits or FCC approvals. A WCF permit is not in lieu of any other permit required under this code or other applicable law, except as specifically provided in this policy, nor is it a franchise, license, or other authorization to occupy the right-of-way, or a license, lease, or agreement authorizing occupancy of any other private or public property.
- 3. An application for a Temporary WCF related to a special event for which a special events permit is required under chapter 13 of title 4 of this code may be approved in such special events permit without a separate WCF permit being issued pursuant to this policy.
- 4. A WCF permit issued in error, based on incomplete, false, or misleading information submitted by an applicant, or that conflicts with the provisions of this policy, is void and of no effect.

**F. APPLICATION REQUIRED; DIRECTOR TO PREPARE APPLICATION FORMS; ESTIMATED DEPOSITS:**

- 1. An applicant for a WCF permit must utilize the form of application required by the Town. The Director is authorized to prepare forms of application, and may develop application forms that distinguish between different types of installations and modifications in order to streamline the processing of applications, and to comply with legal requirements. Without limiting the generality of the preceding sentence, the Director shall prepare and make publicly available an application form that requires the applicant for an eligible facilities request to provide documentation or information only to the extent reasonably related to determining whether the application is in fact an eligible

facilities request. An application for an eligible facilities request shall not require the applicant to submit any other documentation, including, but not limited to, documentation intended to illustrate the need for the WCFs that are the subject of the application or to justify the business need to modify such WCFs.

2. If required by the Director the applicant shall deposit with the Town funds sufficient to reimburse the Town for the cost of having a third-party review the application, and provide analysis and testimony before the Town regarding the application. In determining whether to require third-party review under this subsection, the Director shall consider the complexity and legal issues involved in reviewing the application. The Director may defer the requirement for the payment of the deposit described in this subsection F2 until after the application is received and the complexity and legal issues involved in reviewing the application have been identified. Upon the approval, conditional approval, denial, or withdrawal of the WCF application, any unexpended portion of the deposit shall be returned to the applicant without interest. If the deposit did not cover the Town's costs, the Town will charge the applicant therefore, and in the event of an approval or conditional approval of the WCF, the Town shall not issue the WCF permit until such charge is fully paid.
3. When a WCF is part of a network of WCFs that will be installed contemporaneously or sequentially, such as a DAS, the applications for each of the facilities in the proposed network shall be submitted simultaneously.
4. If an applicant for a small-cell network so elects, the Director shall allow the applicant to file a consolidated application and receive a single WCF permit for the small-cell network instead of filing separate applications for each small-cell facility.
5. If an applicant for the collocation of several WCFs so elects, the Director shall allow the applicant to file a single set of documents that will apply to all of the collocated WCFs to be sited.
6. Applications for new support structures with proposed WCFs shall be considered as one application requiring only a single application fee.

**G. PROCEDURE FOR REVIEW OF WCF PERMIT APPLICATIONS:**

1. **Pre-Application Meetings Required; Submission of Application By Appointment Only.**
  - (a) Except for eligible facilities requests, one pre-application meeting with Town staff is normally required for an application for a WCF permit. At the meeting the prospective applicant should be prepared to present to staff a service area map, description of the type of WCF sought, preliminary site plan, and visual impact drawings. This meeting is not a public hearing and is not subject to any public notification requirements. The Director may require a second pre-application meeting if the first meeting did not adequately address all relevant issues. The provisions of this subsection G1 control over the pre-application meeting requirements for a Class D-Major permit application set forth in Section 9-1-18-4-1A.
  - (b) All WCF applications, including eligible facilities requests, may be submitted to the Director only by appointment.
2. **Procedure for Class A Development WCF permit.**
  - (a) The provisions of this subsection G2 control in the event of any conflict between this subsection and the rules for processing a Class A Development WCF permit application set forth in Section 9-1-18-1.

- (b) The presumptively reasonable time period for the Town to review and act upon a Class A WCF permit application to collocate on an existing WCF that does not qualify as an eligible facilities request is 90 days.
- (c) The presumptively reasonable time period for the Town to review and act upon all other Class A WCF permit applications is 150 days.
- (d) The 90 or 150-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the Director determines that the application is incomplete.
  - (i) To toll the timeframe for incompleteness, the Director must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information.
  - (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Director's notice of incompleteness.
  - (iii) Following a supplemental submission, the Director will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection G2d. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (e) A complete application submitted under this subsection G2 shall be scheduled for a hearing before the Planning Commission as required for Class A development permit applications by Section 9-1-18-1.
- (f) Notice of the public hearing on an application submitted under this subsection G2 shall be given in the same manner required for any Class A development permit application under this chapter.
- (g) Subject to the tolling provision described above, the Planning Commission must issue a written decision approving, conditionally approving, or denying an application submitted under this subsection G2 within the 90 or 150-day period described above, whichever time period is applicable to the application.
- (h) Should the Planning Commission deny an application submitted under this subsection G2, the Planning Commission shall provide written justification for the denial. The denial must be based on substantial evidence in the written record.
- (i) A decision of the Planning Commission under this policy is subject to call up by the Town Council as provided in Section 9-1-18-1E6 of this chapter. Any decision by the Town Council shall be made within the 90 or 150-day period described above, whichever time period is applicable to the application.

3. **Procedure for Class D - Major Development WCF Permit That Is Not An Eligible Facilities Request.**

- (a) The provisions of this subsection G3 control in the event of any conflict between this subsection and the rules for processing a Class D - Major development permit application set forth in Section 9-1-18-4-1.

- (b) The presumptively reasonable time period for the Director to review a Class D - Major WCF permit application that is not an eligible facilities request is 90 days.
- (c) The 90-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the Director determines that the application is incomplete.
  - (i) To toll the timeframe for incompleteness, the Director must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information.
  - (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Director's notice of incompleteness.
  - (iii) Following a supplemental submission, the Director will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection (c). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (d) Subject to the tolling provisions described above, the Director must issue a written decision approving, conditionally approving, or denying an application submitted under this subsection within 90 days of the submission of the initial application
- (e) Should the Director deny an application submitted under this subsection G3, the Director shall provide written justification for the denial. The denial must be based on substantial evidence in the written record.
- (f) The Director's decision approving, conditionally approving, or denying an application submitted under this subsection G3 may be appealed by the applicant to the Planning Commission and Town Council. Such appeal shall be filed and processed in accordance with the requirements of Section 9-1-18-4-1D. Any decision by the Planning Commission or Town Council shall be made within the 90 or 150-day period described above, whichever time period is applicable to the application.

4. **Procedure for Eligible Facilities Request.**

- (a) The provisions of this subsection G4 control in the event of any conflict between this subsection and the rules for processing a Class D - Major development permit application set forth in Section 9-1-18-4-1.
- (b) Upon receipt of an application for an eligible facilities request the Director shall review such application to determine whether the application qualifies as an eligible facilities request under the Spectrum Act, the Spectrum Act rules, and this policy.
- (c) Within 60 days of the date on which an applicant submits a request seeking approval under this subsection G4, the Director shall approve the application unless the Director determines that the application is not covered by this subsection.

- (d) The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the Director determines that the application is incomplete.
    - (i) To toll the timeframe for incompleteness, the Director must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information necessary for the Director to determine if the application qualifies as an eligible facilities request under the Spectrum Act, the Spectrum Act rules, and this policy.
    - (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the Director's notice of incompleteness.
    - (iii) Following a supplemental submission, the Director will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection G4d. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
  - (e) The Director shall not approve an eligible facilities request that does not comply with the Spectrum Act, the Spectrum Act rules, or the applicable requirements of this policy. Without limiting the generality of the preceding sentence, the Director shall not approve an application for an eligible facilities request that substantially changes the dimensions of the eligible support structure that is the subject of the application.
  - (f) Should the Director deny the application, the Director shall provide written justification for the denial. The denial must be based on substantial evidence in the written record.
  - (g) An application for an eligible facilities request that has been denied by the Director may be refiled at the applicant's discretion as a Class A WCF permit application.
  - (h) If the Director fails to approve, conditionally approve, or deny an application for an eligible facilities request within the applicable timeframe (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the Director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
  - (i) The Director's decision on an application submitted under this subsection G4 may be appealed by the applicant to the Planning Commission and Town Council. Such appeal shall be filed and processed in accordance with the requirements of Section 9-1-18-4-1D.
5. Appeal to Court. The 30 day period to appeal the Town's decision on an application for a WCF permit provided in 47 U.S.C. §332(c)(7)(B)(v) shall commence as follows:
- (a) With respect to a Class D - Major WCF permit application, upon the final decision made by the Director if the Director's decision is not appealed, or upon the final decision of Planning Commission or the Town Council, whichever last rules on the application; or

- (b) With respect to a Class A WCF permit application, upon the Town Council's affirmation of the Planning Commission's written decision on the application, or the Town Council's own written decision on the application if the Planning Commission decision is called up by the Town Council.

**H. RULES FOR APPROVAL OR DENIAL OF APPLICATION:**

1. Pursuant to Section 9-17-6, it is the applicant's burden to show that a WCF permit submitted under this policy should be granted.
2. In evaluating an application for a WCF permit, all relevant absolute and relative development policies of this chapter shall be considered by the reviewing authority; provided, however:
  - (a) Policies 9-1-19-6A "Policy 6 (Absolute) Building Height" and 9-1-19-6R "Policy 6 (Relative) Building Height" shall not apply to an application to install a WCF; and
  - (b) Although density must be provided for a WCF to be installed pursuant to this policy, no negative points shall be assessed against a WCF permit application under Policy 9-1-19-3R "Policy 3 (Relative) Compliance With Density/Intensity Guidelines."
  - (c) Notwithstanding subsection 2b of this Section, no density shall be required for:
    - (i) an underground mechanical room installation;
    - (ii) an installation in an existing interior space; or
    - (iii) an outdoor equipment cabinet.
3. Except as otherwise provided in this policy, this chapter, or other applicable law, an application submitted under this policy may be lawfully denied for any of the following reasons:
  - (a) The application does not implement all affected absolute policies of this chapter (subject to variance);
  - (b) The applicant has not shown that the application conforms to the applicable requirements of this policy; or
  - (c) The applicant has not provided to the Town all of the information required by this policy to WCF permit the reviewing authority to approve, conditionally approve, or deny the application taking into account legal deadlines affecting the Town's consideration of the application.
4. Except as to an eligible facilities request and when the Town is prohibited from considering a matter by applicable law, in determining whether to approve, conditionally approve, or deny an application, the reviewing authority may consider the following and such other matters as the reviewing authority may be entitled or required to consider as a matter of law:
  - (a) Whether the applicant is authorized to file the application;
  - (b) Whether the WCF and support structure additions and modifications proposed will adversely affect or alter the unique aesthetic character, beauty, and historic charm of the Town. If the application is for a location in the Conservation District, the reviewing authority shall also consider Section 9-1-19-5A, "Policy 5 (Absolute)(Architectural Compatibility)"; Section 9-1-19-5R, "Policy 5 (Relative)(Architectural

Compatibility)”; and the “Handbook of Design Standards/Handbook of Design Standards For the Historic and Conservation Districts;”

- (c) Whether the WCF and support structure modifications and additions proposed comply with the design standards of this policy, and other applicable provisions of this policy or chapter;
  - (d) Whether the WCF and support structure modifications and additions proposed comply with generally applicable building, structural, electrical and other safety codes and laws, interfere with the public’s use of right-of-way, or create undue risks to persons or property;
  - (e) Whether the applicant has or will have necessary local, state, or federal regulatory approvals required in connection with the WCF; and
  - (f) Whether alternative designs or locations would minimize the impact of the WCF and support structure modifications and additions required.
5. Notwithstanding any other provision of this policy or chapter to the contrary, the reviewing authority may approve an application for a WCF permit under this policy, notwithstanding that the evidence supported denial of the application, if the reviewing authority makes a finding that the applicant has demonstrated that the refusal to approve the application would prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 U.S.C. Section 332(c)(7)(B)(i)(II), or finds that the Town authority to deny the application is otherwise preempted or prohibited by state or federal law.

**I. LOCATION CRITERIA FOR WCFs:** The purpose of this Section I is to provide guidance to prospective applicants as they seek appropriate WCF locations within the Town. This Section I does not express a preference for any category of technology.

- 1. WCFs are encouraged to be located on existing buildings and structures because of aesthetics and land use compatibility.
- 2. WCFs shall be collocated with existing WCFs, if within 1,500 feet of an existing WCF, unless the Town determines that doing so would create excessive visual clutter.
- 3. No WCF permit to install a new freestanding WCF shall be granted unless the applicant first demonstrates that no existing wireless tower or structure can accommodate the applicant’s needs.
- 4. Unless subsection 15 applies, WCFs shall be located outside of the Conservation District. The preferred locations for WCFs outside of the Conservation District are listed below in order of preference:
  - (a) Collocation to existing WCF facilities located in non-residential land use districts;
  - (b) Town property;
  - (c) Other publicly owned property and facilities;
  - (d) Rights-of-way;
  - (e) Public and private utility installations;
  - (f) Land use districts where commercial uses are recommended; and
  - (g) Community facilities (such as places of worship, community centers, etc.).

5. Notwithstanding subsection I4, and except for a wall-mounted WCF, an application to locate a new WCF in the following areas of Town: (i) in the Town's Conservation District; (ii) in Land Use Districts where single-family residential uses are a recommended use; (iii) in any land use district that contains a legally established single family residential use; (iv) on vacant land; (v) on an environmentally sensitive habitat; (vi) on a ridgeline; or (vii) any other area of the Town not specifically described as a preferred location for the placement of a WCF in subsection I4, may be granted if the applicant demonstrates that all of the following factors exist:
  - (i) a significant gap in the provider's service exists;
  - (ii) the proposed WCF is the least visually intrusive means to close the significant gap;
  - (iii) no feasible alternative exists to close the significant gap; and
  - (iv) the provider's existing WCFs lacks the capacity to service the wireless users except by the installation of one or more WCF sites in the otherwise restricted locations described in this subsection ~~I4~~15.

When considering an application for a WCF to be located in the Conservation District, the reviewing authority shall also consider those policies listed in Section H4b.

**J. DESIGN STANDARDS:** The design standards set forth in this Section J shall apply to the location of all WCFs that are subject to this policy; provided, however, the reviewing authority may waive any design standard if it determines the overall intent of this policy will not be served by the implementation of the particular design standard with respect to a particular WCF or application.

1. All WCFs shall be designed to comply with current standards and regulations of the Federal Aviation Administration, the FCC, the National Environmental Policy Act, and any other agency of the state or federal government with the authority to regulate WCFs.
2. All WCFs shall be designed to comply with all applicable laws, rules, and regulations, including, but not limited to, the FCC's RF emission safety rules.
3. A WCF shall be designed and located to minimize the impact on the surrounding neighborhood, and to maintain the unique aesthetic character, beauty, and historic charm of the Town, consistent with other provisions of this chapter. To that end, WCFs should:
  - (a) Employ the least intrusive design for the proposed location in terms of size, mass, visual and physical impact, and effects on properties from which the WCF is visible, and, if located within the Conservation District, be located on a structure that is non-historic and non-contributing as defined by Town policy or ordinance; and
  - (b) Accommodate collocation consistent with the other design requirements of this policy; and
  - (c) Be consistent with the Town's Master Plan.
4. Unless an adjustment is granted pursuant to Section K, no WCF, or tower or other structure designed or intended to be used for the placement of one or more antennas, may be approved outside the Conservation District at a height that is taller than the maximum height for nonresidential structures and multifamily structures provided in Section D (Exceptions) in the definition of "Building Height Measurement" in Section 9-1-5 of this Chapter. Unless an adjustment is granted pursuant to Section K, no WCF, or tower or other structure designed or intended to be used for the placement of one or more



antenna may be placed on the roof of any structure within the Conservation District.

5. DAS networks and small-cell networks are encouraged WCF facilities under this policy.
6. Wall- or roof-mounted WCFs and DASs are preferred over freestanding WCFs and DASs outside the Conservation District. Within the Conservation District wall-mounted WCFs and DASs are preferred. An applicant proposing to install a freestanding WCF that is not a DAS must first demonstrate that a wall- or roof-mounted WCF is not feasible or is inadequate to provide service. The Town may require that an alternative WCF that reflects the character of the surrounding property (developed or undeveloped) be employed.
7. No new lattice tower may be approved under this policy.
8. All WCFs shall be concealed or camouflaged. The installation of an uncamouflaged WCF is prohibited. Without limiting the foregoing, all portions of a WCF affixed to a support structure shall be designed to blend in or be screened from view in a manner consistent with the support structure's architectural style, color, and materials, when viewed from any part of the Town. WCFs shall be painted and textured or otherwise camouflaged to match the color and finish of the support structure on which they are mounted. Where the support structure is a building, the WCF support equipment, including, without limitation, base station cabinets, remote transmitters and receivers, and antenna amplifiers, shall be placed within the building or mounted behind a parapet screened from public view unless that is not feasible. If the Director determines that such in-building placement is not feasible, the equipment shall be roof-mounted in an enclosure or otherwise screened from public view as approved by the Director.
9. A WCF located in the right-of-way shall:
  - (a) If to be located on a street light, be compatible with the design of the existing street lights;
  - (b) With respect to its pole-mounted components, be located on an existing utility pole serving another utility;
  - (c) Be concealed consistent with other existing natural or manmade features in the right-of-way near the location where the WCF is to be located;
  - (d) With respect to its pole-mounted components, be located on a new utility pole where other telephone distribution lines are aerial, if there are no reasonable alternatives, and the applicant is authorized to install new utility poles;
  - (e) Be installed and maintained so as not to obstruct or hinder the usual travel on such right-of-way, or required maintenance or snow removal within the right-of-way; and/or
  - (f) Be painted a dark color to blend in with the surrounding area.
10. The pole-mounted components of a WCF on a utility pole shall, whether in or outside of the right-of-way, be consistent with the size and shape of pole-mounted equipment installed by communications companies on utility poles near the WCF.
11. To the extent a WCF is permitted aboveground, a WCF shall otherwise be appropriately screened, landscaped, and camouflaged to blend in with the surroundings, and non-reflective paints shall be used.

12. Unless it is determined by the reviewing authority that there is no less intrusive alternative available to close a significant gap in the service provided by a WCF, or it is determined that the Town is legally required to approve an application, the height of the WCF may not exceed the minimum height that is necessary from an engineering perspective to allow the WCF to function properly.
13. If an application proposes the construction of improvements to the surface of the roof of a building for the purpose of locating the utility box or cabinet that will hold the mechanical equipment required to operate the WCF, such improvements must:
  - (a) be made of the same materials that exist on the building;
  - (b) be of a height no taller than is necessary from an engineering perspective in order for the WCF to function properly; and
  - (c) must have density, subject to the provisions of Section H2b.
14. Unless it is determined by the Town that there is no less intrusive alternative available to close a significant gap in the service provided by a WCF, or it is determined that the Town is legally required to approve an application, the Town shall not approve an application for a WCF where the application proposes a design that would require extensions from any support structure inconsistent in size with the extensions otherwise WCF permitted under this policy.
15. WCFs shall not be lighted except with the authorization of the reviewing authority. The reviewing authority may permit lighting at the lowest intensity necessary:
  - (a) For proximity-triggered and/or timer-controlled security lighting;
  - (b) To comply with regulations for the illumination of any flag attached to a WCF; or
  - (c) Where such lighting is required to protect public health or welfare, or as part of the camouflage for a particular design.

Any approved lighting shall comply with Section 9-1-19-46A, "Policy 46 (Absolute)(Exterior Lighting)."
16. No advertising signage shall be displayed on any WCF, except for government-required signs shown in the WCF permit application. Additional site identification, address, warning, and similar information plates may be WCF permitted where approved by the Director.
17. The WCF shall be designed so that it does not operate by a generator except when the permanent power to the WCF is temporarily interrupted.
18. The WCF shall not inconvenience the public (including without limitation, persons with disabilities) in its use of any structure, or any portion of the right-of-way.

**K. ADJUSTMENTS TO STANDARDS:**

1. **Applicability.** Except as otherwise provided in this policy, no WCF shall be used or developed contrary to any applicable development standard of this policy unless an adjustment has been granted pursuant to this Section K. The provisions of this Section apply exclusively to WCFs, and shall control over the variance criteria set forth in Section 9-1-11 of this title.
2. **Application Classification.** An application for a WCF adjustment is classified as a Class A Development WCF application.

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3. **Submittal Requirements.** In addition to the general submittal requirements for a Class A Development WCF application, an application for a WCF adjustment shall include:
  - (a) a written statement demonstrating how the requested adjustment would meet the criteria;
  - (b) a site plan that includes:
    - (i) a description of the proposed facility's design and dimensions, as it would appear with and without the adjustment;
    - (ii) elevations showing all components of the WCF as it would appear with and without the adjustment;
    - (iii) color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the adjustment; and
    - (iv) such other information as is required by the Director;
  
4. **Criteria.** An application for a WCF adjustment shall be granted if applicant demonstrates that:
  - (a) the adjustment is consistent with the purpose of the development standard for which the adjustment is sought;
  - (b) based on a visual analysis, the design significantly minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping; and
  - (c) the applicant demonstrates the existence of either of the following:
    - (i) **Gap in Service.**
      - (A) A gap in the coverage, capacity, frequency, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
      - (B) The gap can only be filled through an adjustment to one or more of the standards in this policy; and
      - (C) The adjustment is narrowly tailored to fill the service gap such that the WCF conforms to this policy's standards to the greatest extent possible.
    - (ii) **Minimization of Impacts.**

The adjustment would significantly minimize or eliminate negative impacts to surrounding properties and their uses, through a utilization of existing site characteristics, including, but not limited to, the site's size, shape, location, topography, improvements, and natural features. Negative impacts are minimized or eliminated if there is:

      - (A) a substantial decrease in negative visual impacts, including, but not limited to, visual clutter;
      - (B) better preservation of views or view corridors; or
      - (C) a substantial decrease in any other identifiable negative impacts to the surrounding area's primary uses.

**L. STANDARD WCF PERMIT CONDITIONS:** The following conditions shall be

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included in each WCF permit issued by the Town, unless otherwise approved by the Town Attorney for good cause:

1. The term of a Class A WCF permit granted pursuant to this policy shall be 10 years from the date of issuance, unless sooner revoked or terminated as provided in this policy. The term of a Class D-Major WCF permit granted pursuant to this policy shall be as provided in Section 9-1-17-8, unless sooner revoked or terminated as provided in this policy.
2. As a condition of every WCF permit issued pursuant to this policy, the Director may establish a reasonable installation build-out period for a WCF.
3. The WCF shall be operated in compliance with: (i) the terms of the permit; (ii) all other applicable requirements of this chapter and policy; and (iii) all applicable laws, rules, and regulations, including, but not limited to, the FCC's RF emission safety rules.
4. The permittee shall obtain and maintain all other applicable WCF permits, approvals, and agreements necessary to install and operate the WCF in conformance with federal, state, and local laws, rules, and regulations.
5. Within 30 days after installation of a WCF, the permittee shall demonstrate to the Director that its WCF as installed and normally-operating fully complies with all of the conditions of the WCF permit, including, but not limited to, height and size restrictions, and applicable building and safety codes. The demonstration shall be provided in writing to the Director containing all technical details to demonstrate such compliance, and certified as true and accurate by a qualified professional engineer or, in the case of height or size restrictions, by a qualified surveyor. This report shall be prepared by the permittee and reviewed by the Town at the sole expense of the permittee. The Director may require additional proofs of RF emission compliance on an ongoing basis to the extent the Town may do so consistent with federal law.
6. The Town may inspect WCF permitted facilities and property and may enter onto a site to inspect WCF facilities upon reasonable notice to the permittee. In case of a bona fide emergency or risk of imminent harm to persons or property within the vicinity of WCF permitted facilities, the Town has the right, but not the duty, to enter upon the site of the facilities and to support, disable, or remove those elements of the facilities posing an immediate threat to public health and safety. Prior to taking any action pursuant to this subsection, the Town shall make a reasonable effort to locate the permittee and advise it of the existence and nature of the emergency. The reasonableness of Town's efforts to locate the permittee shall be determined based upon the nature of the emergency and the Town's efforts to locate and notify the permittee. If, after reasonable efforts, the permittee cannot be located, the Town shall have the right to enter the property and perform any needed emergency repairs as herein provided and, upon demand, the permittee shall reimburse Town for the reasonable and necessary costs of such emergency repairs. Failure of the permittee to pay to the Town upon demand the costs of such emergency repairs shall constitute a default event under the WCF permit.
7. The permittee shall maintain on file with the Town and onsite at the WCF current and updated contact information of all parties responsible for maintenance of the WCF.
8. The permittee shall defend, indemnify, and hold harmless the Town, its agents, officers, officials, and employees: (i) from any and all damages, liabilities, injuries, losses, costs and expenses, and from any and all claims, demands, lawsuits, and other actions or proceedings brought against the Town or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void, or annul the Town's approval of the WCF permit; and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, lawsuits, or causes of action and

other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the permittee's or the permittee's agents, employees, licensees, contractors, subcontractors, or independent contractors, activities, or performance related to the WCF contractors ((i) and (ii) collectively are "Actions"). If the Town becomes aware of any such Actions , the Town shall promptly notify the permittee and shall reasonably cooperate in the defense. It is expressly agreed that the Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town's defense, and the property owner and/or permittee (as applicable) shall reimburse Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense. The indemnity obligation described in this subsection L8 shall survive the expiration or termination of the WCF permit, and shall continue to be enforceable thereafter, subject to any applicable statute of limitation.

9. The permittee shall file with the Town, and shall maintain in good standing throughout the term of the WCF permit, proof that the permittee has a policy of commercial general liability insurance with minimum limits of liability of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) aggregate, or such other limits as may be reasonably acceptable to the Director. The Town shall be named as an additional insured under such insurance policy.
10. If determined to be necessary by the Director in order to adequately protect the Town, the permittee shall file with the Town, and maintain in good standing throughout the term of the WCF permit, a performance bond or other surety or another form of security acceptable to the Town Attorney to pay for the removal of the WCF in the event that the use is abandoned; the WCF permit expires, is revoked, or is otherwise terminated; or the permittee is otherwise financially unable to pay for the removal of the WCF. If required, the security shall be in the amount equal to one hundred fifteen percent (115%) of the cost of physically removing the WCF and all related facilities and equipment on the site.
11. The permittee shall make a good faith effort to minimize project-related disruptions to adjacent properties. Without limiting the generality of the preceding sentence, site improvement and installation work, including set-up, loading, or unloading of materials or equipment, performed as part of the installation of the approved this project are subject to the provisions of Section 5-8-6 of this code. Emergency maintenance and repairs are exempt from the restricted hours. Violation of this condition may result in issuance of a Stop Work Order or other appropriate enforcement action by the Town.

#### **M. OPERATIONAL REGULATIONS:**

1. All WCFs within the Town shall be designed, maintained, and operated at all times to comply with the provisions of this policy, the terms and conditions of the WCF permit, and the following additional requirements:
  - (a) Conditions of any license for the WCF issued by a local, state, or federal agency, which has jurisdiction over the WCF;
  - (b) Rules, regulations, and standards of the state and federal governments, including, but not limited to the FCC, and the Town, including, but not limited to, this chapter and policy;
  - (c) Easements, covenants, conditions, and/or restrictions on or applicable to the underlying real property; and
  - (d) All other laws, codes, and regulations applicable to the WCF.
2. All WCFs shall be maintained in good working condition and to the visual standards established at the time of approval over the life of the WCF permit. The WCF and surrounding area shall remain free from trash, debris, litter,

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graffiti, and other forms of vandalism. Any damage shall be repaired as soon as is practicable, and in no instance more than 30 days from the time of notification by the Town or after discovery by the permittee, weather permitting. If landscaping was required by the WCF permit, the landscaping must be maintained by the permittee.

**N. MODIFICATION OF A WCF PERMIT:** The following provisions shall apply to the modification of a WCF permit notwithstanding any other provision of this chapter or policy to the contrary. In the event of a conflict between the provisions of N and any other provision of this chapter or policy, this Section shall control.

1. The Town may modify a WCF permit before its termination date where necessary to protect public health and safety, or where the WCF permit as issued is no longer enforceable in accordance with its terms.
2. A permittee may modify a WCF permit by seeking either an eligible facilities request or other modification.
3. Requests for modifications shall be reviewed in accordance with the provisions of this chapter that are in effect at the time modification is sought, and not the provisions of this chapter and policy that were in effect at the time the WCF permit was initially issued.

**O. RENEWAL OF A CLASS A WCF PERMIT:** A Class A WCF permit issued pursuant to this policy may be renewed for additional terms of 10 years each. Any renewal application must be submitted to the Director between 365 days and 180 days prior to the expiration of the current WCF permit, and shall be processed as a Class D Major WCF Permit. A renewal of a Class A WCF permit under this section shall be subject to the WCF's continuing compliance all conditions of approval of the Class A Permit. If a renewal application is submitted less than 180 days prior to expiration of the current WCF permit, the applicant must submit a new Class A WCF permit application, which will be subject to all then-current relevant absolute and relative development policies of this chapter shall be considered by the reviewing authority, except as provided in Section B of this policy. Even if a renewal application for a Class A WCF Permit is submitted 180 days or more prior to expiration of the current WCF permit, the director may reclassify such application as a Class A WCF Permit pursuant to Section D3 of this policy.

**P. ABANDONMENT, REMOVAL, OR RELOCATION OF WCF FACILITY:**

1. Any permittee who abandons or discontinues use of a WCF for a continuous period of 180 days shall notify the Director by certified mail within 30 days after the end of the 180 day period. If there are two or more permittees collocated on a single WCF, this Section shall not apply until all permittees cease using the WCF for a continuous period of 180 days.
2. If the Director believes a WCF has been abandoned or discontinued for a continuous period of 180 days, the Director shall send a notice of proposed abandonment or discontinuation to the permittee stating why the Town believes the WCF to be abandoned or discontinued. Failure of the permittee to reply to the Director in writing within 30 days after receiving, rejecting, or returning the Town's certified letter shall entitle the Director to make a determination that the WCF is, in fact, abandoned or discontinued.
3. Upon declaration of the Director pursuant to Section Q2 that the WCF is abandoned or discontinued, the permittee or, if located on private property, the owner of the affected real property, shall have 90 days from the date of the declaration, weather permitting, or a further reasonable time as may be approved by the Director, within which to complete one of the following actions:

- (a) Reactivate use of the WCF;

- (b) Transfer the rights to use the WCF to another entity (who shall be subject to all the provisions of this policy and the permit) in the manner provided in Section R of this policy; or
  - (c) Remove the WCF and any supporting structures installed solely in connection with the WCF, and restore the site to be consistent with the then-existing surrounding area.
- 4. If the permittee disputes that the WCF has been abandoned or discontinued for a continuous period of 180 days, the Town Council shall hold a public hearing to consider such matter and the evidence related thereto. Except where inconsistent with the terms of this policy, any public hearing conducted by the Town Council pursuant to this Section Q shall be governed by chapter 19 of title 1 of this code. If the evidence supports such decision by a preponderance of the evidence, the Town Council may declare that the WCF is deemed abandoned. If such a declaration is made, the Director shall provide notice of such finding to the permittee and to the wireless provider last known to use the WCF and, if applicable, to the owner of the affected private real property, requiring such parties to complete one of the following actions within 30 days from the date of the notice:
  - (a) Reactivate use of the WCF, subject to the terms and conditions of the applicable WCF permit;
  - (b) Transfer the rights to use the WCF to another entity (who shall be subject to all the provisions of this policy and the permit) in the manner provided in Section R of this policy; or
  - (c) Remove the WCF and any supporting structures installed solely in connection with the WCF, and restore the site to be consistent with the then-existing surrounding area.
- 5. If there is no reactivation, transfer, or removal as set forth in subsection P4, the Town may thereafter remove the abandoned WCF, repair any and all damages to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes. If the Town removes the WCF, the Town may, but shall not be required to, store the removed WCF or any part thereof, and may use it, sell it, or dispose of it in any manner deemed by the Town to be appropriate. The entity that abandoned the WCF, or its successor in interest, and if on private property, the private property owner, shall be jointly and severally liable for the entire cost of such removal, repair, restoration, and storage and shall remit payment to the Town promptly after demand therefor is made. In addition, the Town Council, at its option, may utilize any financial security required in conjunction with granting the WCF permit to recover such costs.
- 6. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the WCF, and any related personal property and any private real property on which the WCF was located for the full amount of the cost of removal, repair, restoration, and storage. The Town Clerk shall cause a notice of the Town's lien under this subsection Q6 to be recorded with the Summit County, Colorado Clerk and Recorder. The Town's lien provided by this subsection may be foreclosed in the manner provided by Colorado law for the foreclosure of a mortgage.
- 7. If an existing utility pole that hosts a WCF must be replaced, the permittee shall, at no cost to the Town and within 30 days after the installation of the replacement pole, either relocate its WCF in the same configuration on the replacement pole, or remove the prior-existing WCF rather than relocate it, notify the Director of the removal, and surrender its WCF permit for cancellation by the Director.

8. If the permittee fails to relocate or remove the WCF as required by this Section Q, the Town may elect to treat the WCF as a nuisance to be abated as set forth in chapter 1 of title 5 of this code.

**Q. TRANSFER OF INTEREST IN WCF PERMIT:** A permittee shall not assign or transfer any interest in its WCF permit for a WCF without advance written notice to the Town. The notice shall specify the identity of the assignee or transferee of the WCF permit, as well as the assignee's or transferee's address, telephone number, name of primary contact person(s), and other applicable contact information, such as an e-mail address or facsimile number. The new assignee or transferee shall comply with all of the terms and conditions of the WCF permit, and this policy, and shall submit to the Town a written acceptance of the WCF permit's terms and conditions and a written assumption of the obligations thereafter accruing under such WCF permit prior to the date that such assignment or transfer is intended to take effect.

**R. INJUNCTIVE RELIEF:** In addition to any other remedies that are available to the Town, if a WCF is installed, modified, replaced, removed, operated, or located anywhere within the Town without a valid WCF permit issued by the Town pursuant to this policy, or is otherwise installed, modified, replaced, removed, operated, or located in violation of this policy, such action may be enjoined by the Town in an action brought in any court of competent jurisdiction. In any case in which the Town prevails in a civil action initiated pursuant to this Section S, the Town may recover its reasonable attorney fees, together with expert witness fee and costs of the proceeding.

Section 4. Section 1-3-2 of the Breckenridge Town Code is amended by the addition of the following definition:

DAY: Unless otherwise clearly indicated, a calendar day, not a business day or working day.

Section 5. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of the following definition:

PERMITTEE: The holder of any permit issued by the Town under this chapter.

Section 6. Section 9-1-17-9 of the Breckenridge Town Code is amended to read as follows"

#### 9-1-17-9 REVOCATION OF PERMIT

The following provisions shall apply to the revocation of a Development Permit notwithstanding any other provision of this chapter or any development policy to the contrary. In the event of a conflict between the provisions of this Section and any other provision of this chapter, this Section shall control.

1. A Development Permit may be revoked if the Town determines that:
  - (a) The Development Permit was granted based on false, misleading, or incomplete information submitted by the permittee;
  - (b) A material provision of the Development Permit is no longer enforceable;
  - (c) The permittee violates a condition of the Development Permit;
  - (d) The permittee fails to comply with any provision of this policy or chapter relating to the Development Permit,;
  - (e) For a WCF Permit, if the permittee modifies the WCF or its support structure without permission;

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- (f) The permittee fails to pay any sums owed to the Town under this policy or the Development Permit; or
- (g) The permittee commits any other act designated as a default event in this Code or any development policy.

Any such event is a "Default Event."

2. The Director may request the Planning Commission to revoke a Development Permit only after:
  - (a) Written notice of the alleged Default Event has been provided to the permittee; and
  - (b) The permittee has been afforded a reasonable opportunity to cure and comply with its Development Permit, or to demonstrate that no Default Event occurred.
3. If the permittee fails to cure the alleged Default Event, the Planning Commission shall conduct a public hearing where the permittee shall be afforded an opportunity to speak and be heard and to provide written materials to the Planning Commission as part of the hearing. A hearing conducted by the Planning Commission pursuant to this Section shall be noticed and held in the same manner as a final hearing on a Class A development permit application. After a public hearing, if the evidence supports such decision by a preponderance of the evidence, the Planning Commission may find that a Default Event has occurred. If such finding is made, the Planning Commission may: (i) revoke the Development Permit; (ii) modify a previous condition of approval of the Development Permit to specifically address the Default Event; or (iii) add a new condition of approval to the Development Permit to specifically address the Default Event.
4. If the Development Permit involves a WCF, upon revocation, the Planning Commission may require the removal of the WCF, or take any other legally permissible action or combination of actions necessary to protect the health and welfare of the Town.
5. A decision of the Planning Commission under this Section is subject to call up by the Town Council as provided in Section 9-1-18-1E6 of this chapter.

Section 7. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 8. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 9. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) Section 31-15-702, C.R.S. (concerning municipal streets and alleys); (vi) Section 38-5.5-106, C.R.S. (concerning consent necessary to use of streets); (vii) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; (viii) the powers contained in the Breckenridge Town Charter; (ix) 47 U.S.C. §332(c)(7); and (x) 47 U.S.C. §1455(a).

Section 10. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 26th day of July, 2016.

WIRELESS COMMUNICATIONS FACILITIES ORDINANCE

This ordinance was published in full on the Town of Breckenridge website on July 28, July 29, July 30, July 31 and August 1, 2016.

A public hearing on this ordinance was held on August 9th, 2016.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 9th day of August, 2016. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

\_\_\_\_\_/s/\_\_\_\_\_  
Helen Cospolich, Town Clerk

\_\_\_\_\_/s/\_\_\_\_\_  
Eric S. Mamula, Mayor

APPROVED IN FORM

\_\_\_\_\_/s/\_\_\_\_\_  
Town Attorney                      Date

This Ordinance was published on the Town of Breckenridge website on August 11, August 12, August 13, August 14 and August 15, 2016. This ordinance shall become effective on September 14, 2016.

## Planning Commission Staff Report

**Subject:** Fourth Extension of Peak 8 Ski School and Peak 8 Ski Rental Shop Temporary Sprung and Variance Renewal  
(PL-2016-0370; Class B Development, Combined Preliminary and Final Hearing)

**Project Manager:** Michael Mosher, Planner III

**Date:** September 12, 2016 (For meeting of September 20, 2016)

**Applicants:** Vail Summit Resorts (VSR), Graham Frank, Director of Mountain Planning

**Agents:** Peak 8 Properties LLC and Stais Architects, Matt Stais

**Proposal:** The applicants are requesting a fourth 3-year extension of their existing Development Permit and Variance for the use and placement of a temporary Sprung buildings that house the Peak 8 Ski School and Peak 8 Ski Rental Shop. There have been three previous renewals since the original 2006 approval. The current Development Permit #2013103, which was approved on November 26, 2013, is set to expire on April 12, 2017.

The use of both structures (ski rentals and ski school) has not changed since the original permit was executed in 2006 and the facilities are still an important aspect in fulfilling the guest service requirements of the ski resort. Their use within the Sprung Structures is anticipated until Grand Colorado on Peak 8 East Building can house these facilities.

With a separate approved Class D minor application (PL-2016-0358), the size of the rental shop sprung building is to be reduced to 5/8 of its current size (4,800 square feet to 3,000 square feet). This modification is in association with the Grand Colorado on Peak 8 - East Building, Development (PL-2015-0215). The sprung structures will be removed once these functions in the East Building are completed.

**Address:** 1595 Ski Hill Road

**Legal Description:** Tract C, Peaks 7 & 8 Perimeter Subdivision

**Site Area:** 111.19 acres (4,843,436 sq. ft.)

**Land Use District:** Development is subject to the recently approved Sixth Amendment to the Amended Peak 7 & 8 Master Plan, previous amendments to this Master Plan, and the Development Agreement between the Town of Breckenridge, Vail Summit Resorts, Inc., and Peak 8 Properties, LLC.

LUD 39 Residential, Lodging—SFR, Duplex, Townhomes, Condominiums, Condo-hotels, Hotels and Lodges @ 4 UPA

**Site Conditions:** The Peak 8 Ski School Sprung building is located on the ski slopes behind the existing Kids Castle, which is void of significant vegetation. The Peak 8 Ski Rental Sprung building is in the existing parking lot at the base of Peak 8, adjacent to the gondola terminal building. This site is flat and has no development constraints.

**Adjacent Uses:** North: Public Open Space

South: U.S.F.S

East: Four O’Clock Subdivision

West: Grand Colorado on Peak 8 and the Ski Watch Condos/U.S.F.S

**Density:**

Allowed under Master Plan:

282.0 SFEs Residential  
14.5 SFEs Commercial  
48.0 SFEs Guest Services

Proposed density\*:

30.0SFEs (3,000 sq. ft.) Commercial Rental Shop  
2.2 SFEs (2,200 sq. ft.) Guest Services Ski School

(\*Note: When these temporary buildings are removed, this density will become available for other uses and these functions will be housed and counted within the Grand Colorado on Peak 8 East Building.)

**Mass:**

Allowed under Master Plan:

14,500 sq. ft. Commercial  
48,000 sq. ft. Guest Services  
7,000 sq. ft. Commercial and Guest Services

Proposed mass:

**Height:**

Recommended\*:

26’ (mean)

Proposed:

21’-3’’ (overall) Rental Shop  
18’-10’’ (overall) Ski School

**Parking:**

Required:

0 spaces

Proposed:

0 spaces

(Note: Parking for guest services and commercial uses are provided by common spaces at the Ski Area’s existing parking lots. A minimum of 200 spaces that are available to Ski Area guests must be maintained within the Peak 7 & Peak 8 base areas.)

**Item History**

Under Section 9-1-17-11 Vested Property Rights (I) Extension Of Vested Property Rights:

*... No extension of a vested property right may be approved unless the approved project complies with all town land use laws in effect at the time of the extension request. The planning commission may approve the requested extension, deny the requested extension, or approve the requested extension with conditions. If an extension is granted, the planning commission shall fix the period of extension which may be up to and including a period of three (3) years. (Ord. 8, Series 2013)*

Since this application and variance were approved in 2006, there have been no changes to the Development Code that would affect this project. However, Staff notes that this renewal is being processed as a Class B review as the Code requires any Variance request. Per the Code:

*C. Setting A Hearing: Upon receipt of a completed variance application, the director shall set a date for review before the planning commission and utilize the class A process and notice requirements for all class A developments and the class B process and notice requirements for all other classes of development.*

The section below was taken from the original 2006 Staff report and approval (a renewal to this variance is also requested with this application):

*The Breckenridge Ski Resort constructed two Sprung buildings at the base of Peak 8 during the fall of 2006. Each structure would be developed under separate building permits and are referred to as the Ski School Sprung and the Rental Sprung. While each structure is a stand-alone project, the basis of both requests are similar and twofold: to continue to provide good guest service during an interim period of significant construction and to address overcrowding of existing facilities. Vail Resorts commits that each structure is indeed temporary and every effort will be made to remove them from service at the earliest opportunity.*

*The Ski School Sprung is a 2,200 square foot facility located uphill of the existing Kids Castle. It has been used to stage lessons and provide shelter for the Children's Ski School. The Rental Sprung will replace their current 3,200 square foot ski shop with a 4,800 square foot structure housing ski rental and retail capabilities. The old 3,200 sq. ft. rental building will be remodeled into a locker room and first aid facility.*

*The granting of this variance will be in general harmony with the purpose of the Development Code, since it will help to ensure quality guest services during the transition from the existing facilities at Peak 8 to the new Peak 8 base. This interim period will result in a new world-class resort, which is beneficial to the community in general, and has been a goal of the Town and the Applicant for many years.*

#### **Staff Comments**

The analysis of the policies below remain primarily unchanged from the 2013 development permit renewal which included the variance as no applicable changes have been made to the application. The timing of the removal of the Sprung structures is subject to the July 14, 2013 Development Agreement, REC#1095228, (in association with the Development permit for the Grand Colorado on Peak 8 East building). From the Development Agreement:

*K. In order to accommodate the rental and sales of winter recreational equipment and ticket sales functions of Owner, which currently occur in Sprung Structure #1 and the Ullr building to be removed and demolished, the Town acknowledges and understands that temporary structures will need to be placed in acceptable locations at the base of Peak 8 and maintained in such locations until the proposed Guest Services and Commercial spaces in Buyer's proposed development on the Sale Parcel (the "Guest Services/Commercial Spaces") are completed and ready for occupancy by Owner and temporary permits similar to Development Permit No. 2013103 that permits the Sprung structure to be maintained in its current location will need to be issued. Further, the Town acknowledges and understands that Development Permit No. 2013103 will need to be extended to allow the Sprung structure that accommodates the Kids Kastle facilities ("Sprung Structure #2") to remain in place until the proposed Guest Services/Commercial Spaces are completed and ready for occupancy by Owner. The permits referenced in this paragraph must be reviewed and approved by the Town's Planning Commission and Town Council as provided for in subparagraphs 1 (a)(iv) and (v) below.*

**Temporary Structures (Policy 36/A):** Per the definition of "TEMPORARY STRUCTURE: A structure, other than a vendor cart, construction trailer, temporary tent, or seasonal noncommercial greenhouse, that is not designed as a permanent structure, but is instead designed to be utilized only for a specified and limited period of time of not more than two (2) years."

The applicants originally requested a variance from Policy 36 (Absolute) Temporary Structures, as the proposal does not meet all the criteria of the Policy. Breckenridge Ski Resort has installed a restroom in the Ski School Sprung building. Hence, there are underground utilities.

Additionally, per Policy 36/A, Temporary Structures:

*C. Temporary Structures Or Uses: Temporary structures as defined in section 9-1-5 of this chapter are subject to the following conditions:*

*(1) Temporary structures shall only be utilized to replace an existing structure being demolished on site while a new, permanent structure on the same site is being constructed.*

*(2) The temporary structure shall have no greater floor area than the structure it is temporarily replacing.*

*(3) The temporary structure shall not be placed on site until a building permit has been issued for the new structure, and shall be removed once a certificate of occupancy for the new structure has been issued.*

*(4) The holder of the development permit for a temporary structure shall provide a monetary guarantee to the town, in a form acceptable to the town attorney, ensuring the complete removal of the structure, site cleanup, and site revegetation, once a certificate of occupancy for the new structure has been issued. In addition, the holder of the development permit shall enter into an agreement with the town authorizing the town to take possession of the temporary structure and to dispose of the structure, without the town being accountable for any damages for the loss or destruction of the structure, if the permit holder fails to remove the structure within a reasonable period of time after a certificate of occupancy for the new structure has been issued.*

This proposal does not meet the above criteria of numbers 1, 2, and 3 of Policy 36/A. Per the Development Code the definition of a variance is: “*VARIANCE: A finding by the approving agency that, although a proposed development is not in strict compliance with an absolute policy, to deny the development permit would result in "undue hardship" as defined by law. No relief from compliance with an absolute policy shall be granted except upon findings that:*

*A. The failure to implement the absolute policy is of insignificant proportions; and*

*B. The failure to implement the absolute policy will not result in substantial detriment to the public good or substantially impair the intent and purposes of the absolute policy; and*

*C. There are exceptional circumstances applicable to the specific development which do not apply generally to other properties in the same district or neighborhood.”*

**Staff Comments:**

A. The applicants will remove the temporary structures within three-years of the approval of this application or when a new replacement building is completed (future Grand Lodge on Peak 8 East Building of which construction is scheduled for Spring 2018).

B. These temporary structures could be a substantial benefit to the public and not a detriment. The intent of Policy 36A is that, within the Town, there not be temporary structures without building permits for new permanent structures to replace these temporary structures. The intent of Policy 36A can still be followed as the Town has an approved Master Plan for Peak 7 & 8. Furthermore, Vail Resorts has provided a monetary guarantee, ensuring the complete removal of the structures, site cleanup, and site re-vegetation, once the permit for the temporary structure has expired. In addition, the applicants have entered into an Agreement

with the Town, authorizing the Town to take possession of the structures and dispose of them upon failure of the applicants to remove the structure by the agreed to date.

C. The growth of the skiing and snowboarding sports, as well as the rapid population growth in both Summit County and Colorado has led to an ever-increasing demand for skier services, including rentals and lessons. Furthermore, the opening of the gondola has led to many more guests beginning their day on Peak 8, which has been in need of more skier service square footage for some time. The Peak 7&8 Master Plan anticipates the creation of a permanent structure to house these needs which will be located in Grand Lodge East Building.

**Land Use (Policies 2/A & 2/R):** Per Land Use District 39: *“District 39 is located at the very base of the Breckenridge Peak 8 Ski Area. The primary function of District 39 is to provide an area for lodging, residential and commercial development that will furnish goods and services for the everyday needs of the users and employees of the Peak 8 ski facility, as well as the surrounding neighborhoods.”*

Also,

*“The architectural style of this District should reflect the character of the mountain environment, while remaining compatible with existing developments in the area. It is important that all new development be integrated with the skier facilities and other existing developments. Some support commercial density may be incorporated into this District; however, it should be limited to goods and services that are directly related to accommodate the users and employees of the immediate development.”*

The architectural style of the Sprung structures was found compatible with the existing development in 2006 and 2011. The proposed use of a ski rental shop and a ski school are directly for the support of the users of Peak 8.

**Density/Intensity (3/A & 3/R)/Mass (4/R):** The request for the 3,000 square foot commercial Peak 8 Ski Rental Sprung building and the 2,200 square foot Peak 8 Ski School Sprung building for guest services is less than what the 6th Amended Peak 7&8 Master Plan allows.

**Architectural Compatibility (5/A & 5/R):** Per this policy: *“All proposed new developments, alterations, or additions are strongly encouraged to be architecturally compatible with the general design criteria specified in the land use guidelines.”*

Per the Land Use Guidelines for District 39: *“Contemporary architecture utilizing natural finishing materials and ornamentation appropriate to the natural setting of the District is acceptable. All new development should be compatible with the existing neighborhood, as well as sensitive and harmonious to the immediate site. Development directly accommodating the users of the skiing facilities at the base of the area shall have structural, visual and architectural continuity.”*

Since the Peak 7 & 8 Master Plan is in effect, the Design Standards of the Master Plan supersede portions of the Town’s Land Use Guidelines. The following are the Design Standards from the Master Plan:

*“The architecture will present a rustic mountain lodge style through the use of authentic stone foundations, large sheltering roof forms, large shaded windows, simple but strong detailing and a sense of informality. Natural and natural appearing materials such as lap and shingle siding, board and batten siding and real stone faced foundations will enhance the character and blend with natural surroundings. Natural appearing synthetic materials may only be used as exterior building materials where fire retardant materials are required by building and/or fire codes, or for elements, where in the determination of the Planning Commission, the synthetic material is indistinguishable from pedestrian level. The use of synthetic exterior building materials is subject to the Town of Breckenridge Development Code. No stucco will be used on any exterior building elevation. Wood elements will be stained, with muted colors chosen from a natural palate of weathered browns and grays. Brighter hues may be chosen for elements such as windows and window trim. Design diversity will be achieved with each type of building, or cluster of buildings, which may have their*

*own style based on these qualities. This is one of the few places in Breckenridge, where larger buildings can comfortably be in scale with the mountain backdrop and clearly be dominated by the surrounding natural mountain setting.”*

The existing temporary buildings use a white-coated PVC fabric. Due to these structures being temporary, Staff supports their use as skier services temporary buildings until the uses are incorporated into the East Building.

**Site Suitability (7/R) And Site Design (8/R):** Per Policy 7/R: *“The Town finds that it is in the public interest for all sites within the community to be designed, arranged, and developed in a safe and efficient manner. The overall design objectives shall be:*

- *To blend development into the natural terrain and character of the site*
- *To minimize the negative impacts of off-site views of grading and building massing*
- *To minimize site surface disruption; reduce the potential for erosion and other environmental degradation*
- *To generally develop in a visually cohesive manner while providing privacy for the occupants of the site and buffering to the neighboring properties as well.”*

The Ski School Sprung building will remain on the ski slope and blends in quite well when snow is on the ground. Staff and the applicants do not believe it is necessary to plant trees around the building, as it is temporary and when the building is removed, would not want new trees in the middle of the ski run.

The Peak 8 Ski Rental Shop Sprung building is currently located in the Peak 8 parking lot directly on the existing asphalt. A concrete curb has been built around the base of the building. The Peak 8 Ski Rental Shop Sprung building causes no site surface disruption or erosion.

**Placement Of Structures (9/A & 9/R):** These two structures are within all relative setbacks.

**Snow Removal And Storage (13/R):** The Peak 8 parking lot is cleared of snow every day, as needed, before use. The Peak 8 Ski Rental Shop Sprung structure does not interfere with snow removal or storage in the Peak 8 parking lot. Snow removal around the Ski School Sprung building is maintained in a similar manner as the property around the current Ski School Yurt.

**Landscaping (22/A & 22/R):** No permanent trees or other landscaping is proposed. The applicants will be placing movable planters for landscaping during the summer months around the Peak 8 Ski Rental Shop Sprung building in the Peak 8 parking lot to buffer the visual impact of the structure.

**Utilities Infrastructure (26/R):** All necessary utilities are located in the parking area of the base area. Vail Summit Resorts has added restroom facilities to the Ski School Sprung building. The current Ski School Yurt does not have restroom facilities. The proposed Rental Sprung building does not have a restroom.

**Point Analysis (Section: 9-1-17-3):** This application passed all absolute policies with the exception of Policy 36A, Temporary Structures. A variance was previously granted from this Policy. No additional points were incurred under any relative policies. No new policies affecting this development have been approved subsequent to the previous extension, nor have there been any changes to the variance criteria.

### **Staff Recommendation**

The Planning Department recommends the Planning Commission approve the Fourth Extension of Peak 8 Ski School and Peak 8 Ski Rental Shop Temporary Sprung and Variance Renewal request in accordance with Section 9-1-17-11 Vested Property Rights (I) Extension of Vested Property Rights, (PL-2016-370) with the attached Point Analysis and the Findings and Conditions.



<b>Final Hearing Impact Analysis</b>				
Project:	Fourth Extension of Peak 8 Ski School and Peak 8 Ski Rental Shop Temporary Sprung and Variance Renewal	<b>Positive Points</b>	<b>0</b>	
PC#	PL-2016-0370			
Date:	9/12/2016	<b>Negative Points</b>	<b>0</b>	
Staff:	Michael Mosher, Planner III			
		<b>Total Allocation:</b>	<b>0</b>	
Items left blank are either not applicable or have no comment				
<b>Sect.</b>	<b>Policy</b>	<b>Range</b>	<b>Points</b>	<b>Comments</b>
<b>1/A</b>	<b>Codes, Correlative Documents &amp; Plat Notes</b>	Complies		
<b>2/A</b>	<b>Land Use Guidelines</b>	Complies		
2/R	Land Use Guidelines - Uses	4x(-3/+2)		
2/R	Land Use Guidelines - Relationship To Other Districts	2x(-2/0)		
2/R	Land Use Guidelines - Nuisances	3x(-2/0)		
<b>3/A</b>	<b>Density/Intensity</b>	Complies		
3/R	Density/ Intensity Guidelines	5x (-2>-20)		
4/R	Mass	5x (-2>-20)		
<b>5/A</b>	<b>Architectural Compatibility</b>	Complies		
5/R	Architectural Compatibility - Aesthetics	3x(-2/+2)		
<b>6/A</b>	<b>Building Height</b>	Complies		
6/R	Relative Building Height - General Provisions	1X(-2,+2)		
	For all structures except Single Family and Duplex Units outside the Historic District			
6/R	Building Height Inside H.D. - 23 feet	(-1>-3)		
6/R	Building Height Inside H.D. - 25 feet	(-1>-5)		
6/R	Building Height Outside H.D. / Stories	(-5>-20)		
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
	For all Single Family and Duplex/Multi-family Units outside the Conservation District			
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
6/R	Minimum pitch of eight in twelve (8:12)	1x(0/+1)		
7/R	Site and Environmental Design - General Provisions	2X(-2/+2)		
7/R	Site and Environmental Design / Site Design and Grading	2X(-2/+2)		
7/R	Site and Environmental Design / Site Buffering	4X(-2/+2)		
7/R	Site and Environmental Design / Retaining Walls	2X(-2/+2)		
7/R	Site and Environmental Design / Driveways and Site Circulation Systems	4X(-2/+2)		
7/R	Site and Environmental Design / Site Privacy	2X(-1/+1)		
7/R	Site and Environmental Design / Wetlands	2X(0/+2)		
7/R	Site and Environmental Design / Significant Natural Features	2X(-2/+2)		
<b>8/A</b>	<b>Ridgeline and Hillside Development</b>	Complies		
<b>9/A</b>	<b>Placement of Structures</b>	Complies		
9/R	Placement of Structures - Public Safety	2x(-2/+2)		
9/R	Placement of Structures - Adverse Effects	3x(-2/0)		
9/R	Placement of Structures - Public Snow Storage	4x(-2/0)		
9/R	Placement of Structures - Setbacks	3x(0/-3)		
<b>12/A</b>	<b>Signs</b>	Complies		
<b>13/A</b>	<b>Snow Removal/Storage</b>	Complies		
13/R	Snow Removal/Storage - Snow Storage Area	4x(-2/+2)		
<b>14/A</b>	<b>Storage</b>	Complies		
14/R	Storage	2x(-2/0)		
<b>15/A</b>	<b>Refuse</b>	Complies		
15/R	Refuse - Dumpster enclosure incorporated in principal structure	1x(+1)		
15/R	Refuse - Rehabilitated historic shed as trash enclosure	1x(+2)		
15/R	Refuse - Dumpster sharing with neighboring property (on site)	1x(+2)		
<b>16/A</b>	<b>Internal Circulation</b>	Complies		
16/R	Internal Circulation / Accessibility	3x(-2/+2)		
16/R	Internal Circulation - Drive Through Operations	3x(-2/0)		
<b>17/A</b>	<b>External Circulation</b>	Complies		
<b>18/A</b>	<b>Parking</b>	Complies		
18/R	Parking - General Requirements	1x(-2/+2)		
18/R	Parking-Public View/Usage	2x(-2/+2)		
18/R	Parking - Joint Parking Facilities	1x(+1)		
18/R	Parking - Common Driveways	1x(+1)		
18/R	Parking - Downtown Service Area	2x(-2/+2)		

<b>19/A</b>	<b>Loading</b>	Complies		
20/R	Recreation Facilities	3x(-2/+2)		
21/R	Open Space - Private Open Space	3x(-2/+2)		
21/R	Open Space - Public Open Space	3x(0/+2)		
<b>22/A</b>	<b>Landscaping</b>	Complies		
22/R	Landscaping	2x(-1/+3)		No permanent trees or other landscaping is proposed. The applicants will be placing movable planters for landscaping during the summer months around the Peak 8 Ski Rental Shop Sprung building in the Peak 8 parking lot to buffer the visual impact of the structure.
<b>24/A</b>	<b>Social Community</b>	Complies		
24/A	Social Community / Above Ground Density 12 UPA	(-3>-18)		
24/A	Social Community / Above Ground Density 10 UPA	(-3>-6)		
24/R	Social Community - Employee Housing	1x(-10/+10)		
24/R	Social Community - Community Need	3x(0/+2)		
24/R	Social Community - Social Services	4x(-2/+2)		
24/R	Social Community - Meeting and Conference Rooms	3x(0/+2)		
5/R	Social Community - Conservation District	3x(-5/0)		
24/R	Social Community - Historic Preservation	3x(0/+5)		
24/R	Social Community - Primary Structures - Historic Preservation/Restoration - Benefit	+1/3/6/9/12		
24/R	Social Community - Secondary Structures - Historic Preservation/Restoration - Benefit	+1/2/3		
24/R	Social Community - Moving Primary Structures	-3/10/15		
24/R	Social Community - Moving Secondary Structures	-3/10/15		
24/R	Social Community - Changing Orientation Primary Structures	-10		
24/R	Social Community - Changing Orientation Secondary Structures	-2		
24/R	Social Community - Returning Structures To Their Historic Location	+2 or +5		
25/R	Transit	4x(-2/+2)		
<b>26/A</b>	<b>Infrastructure</b>	Complies		
26/R	Infrastructure - Capital Improvements	4x(-2/+2)		
<b>27/A</b>	<b>Drainage</b>	Complies		
27/R	Drainage - Municipal Drainage System	3x(0/+2)		
<b>28/A</b>	<b>Utilities - Power lines</b>	Complies		
<b>29/A</b>	<b>Construction Activities</b>	Complies		
<b>30/A</b>	<b>Air Quality</b>	Complies		
30/R	Air Quality - wood-burning appliance in restaurant/bar	-2		
30/R	Beyond the provisions of Policy 30/A	2x(0/+2)		
<b>31/A</b>	<b>Water Quality</b>	Complies		
31/R	Water Quality - Water Criteria	3x(0/+2)		
<b>32/A</b>	<b>Water Conservation</b>	Complies		
33/R	Energy Conservation - Renewable Energy Sources	3x(0/+2)		
33/R	Energy Conservation - Energy Conservation	3x(-2/+2)		
	HERS index for Residential Buildings			
33/R	Obtaining a HERS index	+1		
33/R	HERS rating = 61-80	+2		
33/R	HERS rating = 41-60	+3		
33/R	HERS rating = 19-40	+4		
33/R	HERS rating = 1-20	+5		
33/R	HERS rating = 0	+6		
	Commercial Buildings - % energy saved beyond the IECC minimum standards			
33/R	Savings of 10%-19%	+1		
33/R	Savings of 20%-29%	+3		
33/R	Savings of 30%-39%	+4		
33/R	Savings of 40%-49%	+5		
33/R	Savings of 50%-59%	+6		
33/R	Savings of 60%-69%	+7		
33/R	Savings of 70%-79%	+8		
33/R	Savings of 80% +	+9		
33/R	Heated driveway, sidewalk, plaza, etc.	1X(-3/0)		
33/R	Outdoor commercial or common space residential gas fireplace (per fireplace)	1X(-1/0)		
33/R	Large Outdoor Water Feature	1X(-1/0)		
	Other Design Feature	1X(-2/+2)		

<b>34/A</b>	<b>Hazardous Conditions</b>	Complies		
34/R	Hazardous Conditions - Floodway Improvements	3x(0/+2)		
<b>35/A</b>	<b>Subdivision</b>	Complies		
<b>36/A</b>	<b>Temporary Structures</b>	Complies		The applicants have requested a variance from Policy 36 (Absolute) Temporary Structures, as the proposal does not meet all the criteria of the Policy.
<b>37/A</b>	<b>Special Areas</b>	Complies		
37/R	Special Areas - Community Entrance	4x(-2/0)		
37/R	Special Areas - Individual Sites	3x(-2/+2)		
37/R	Special Areas - Blue River	2x(0/+2)		
37R	Special Areas - Cucumber Gulch/Setbacks	2x(0/+2)		
37R	Special Areas - Cucumber Gulch/Impervious Surfaces	1x(0/-2)		
<b>38/A</b>	<b>Home Occupation</b>	Complies		
<b>38.5/A</b>	<b>Home Childcare Businesses</b>	Complies		
<b>39/A</b>	<b>Master Plan</b>	Complies		
<b>40/A</b>	<b>Chalet House</b>	Complies		
<b>41/A</b>	<b>Satellite Earth Station Antennas</b>	Complies		
<b>42/A</b>	<b>Exterior Loudspeakers</b>	Complies		
<b>43/A</b>	<b>Public Art</b>	Complies		
43/R	Public Art	1x(0/+1)		
<b>44/A</b>	<b>Radio Broadcasts</b>	Complies		
<b>45/A</b>	<b>Special Commercial Events</b>	Complies		
<b>46/A</b>	<b>Exterior Lighting</b>	Complies		
<b>47/A</b>	<b>Fences, Gates And Gateway Entrance Monuments</b>	Complies		
<b>48/A</b>	<b>Voluntary Defensible Space</b>	Complies		
<b>49/A</b>	<b>Vendor Carts</b>	Complies		

## TOWN OF BRECKENRIDGE

**Fourth Extension of Peak 8 Ski School and Peak 8 Ski Rental Shop Temporary Sprung Structures  
and Variance Renewal  
1599D and 1600B Ski Hill Rd.  
Tract C, Peaks 7 & 8 Perimeter Subdivision  
PL-2016-0370**

### FINDINGS

1. The proposed project is in accord with the Development Code and does not propose any prohibited use.
2. The project will not have a significant adverse environmental impact or demonstrative negative aesthetic effect.
3. All feasible measures mitigating adverse environmental impacts have been included, and there are no economically feasible alternatives, which would have less adverse environmental impact.
4. This approval is based on the staff report dated **September 12, 2016**, and findings made by the Planning Commission with respect to the project. Your project was approved based on the proposed design of the project and your acceptance of these terms and conditions imposed.
5. The terms of approval include any representations made by you or your representatives in any writing or plans submitted to the Town of Breckenridge, and at the hearing on the project held on **September 20, 2016**, as to the nature of the project. In addition to Commission minutes, the meetings of the Commission are tape-recorded.
6. The issues involved in the proposed project are such that no useful purpose would be served by requiring two separate hearings.
7. The applicant has requested a variance from Policy 36, Absolute, Temporary Structures, because the applicant's request does not meet the definition of a temporary structure, which is: A structure other than a vendor cart or construction trailer, intended to be utilized for a specified period of time of not less than four (4) days nor more than two (2) years that is not intended as a permanent structure, and does not provide a permanent foundation or underground utilities. The Planning Commission finds that underground utilities and a temporary structure utilized for a period longer than two (2) years to be in violation of Policy 36, Absolute, Temporary Structures. The variance is to allow the Ski School Sprung structure to have underground utilities for restrooms and to be in place until **September 27, 2018**. The variance would further allow the Rental Sprung Building to be in place until **September 27, 2018**. The variance is granted pursuant to Section 9-1-11 of the Development Code, based on the following findings:
  - a. *There are special circumstances or conditions applying to the land, buildings, topography, vegetation or other matters on the subject property, which would substantially restrict the effectiveness of the development in question. Such special circumstances or conditions are unique to the particular use of which the applicant desires a variance, and does not apply generally to all uses.*

- b. The special circumstance in this case is the growth of skiing and snowboarding industries, as well as the rapid population growth in Summit County and Colorado, and the new gondola have led Peak 8 to need these temporary Sprung structures.

A. *That such special circumstances were not created by the applicant.*

The growth of the skiing and snowboarding industries, as well as the rapid population growth in both Summit County and Colorado has led to an ever-increasing demand for skier services, including rentals and children's lessons. This growth, which was not created by the Applicant, has outpaced the Applicant's ability to construct high quality, permanent facilities, while still maintaining the high level of customer services expected by guests and the community.

B. *The granting of the variance will be in general harmony with the purposes of the Development Code, and will not be materially detrimental to the persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general.*

The purpose of the Development Code is to “ensure that future growth and development which occurs in Breckenridge is in accord with the wishes of the residents hereof; to identify and secure, for present and future residents, the beneficial impacts of growth; to identify and avoid the negative impacts of growth; to ensure that future growth is of the proper type, design and location and served by a proper range of public services and facilities; and in other respects to achieve the goals and implement the policies of the Breckenridge comprehensive planning program, as amended from time to time.” The granting of this variance will be in general harmony with the purpose of the Development Code, since it will help to ensure quality guest services during the transition from the existing facilities at Peak 8 to the new Peak 8 base. This interim period will result in a new world-class resort, which is beneficial to the community in general, and has been a goal of the Town and the Applicant for many years. The granting of this variance will not be materially detrimental to persons residing or working in the area, adjacent property, to the neighborhood or the public welfare in general. These structures will be temporary in nature and the permanent structure at the Peak 8 base have been approved but, due to economic reasons, will not be ready for use until at least 2016.

C. *The variance does not depart from the provisions of the Development Code more than is required.*

These structures will only be in place until permanent structures for the same uses are operational, at which time these temporary structures will be removed.

### CONDITIONS

1. This permit does not become effective, and the project may not be commenced, unless and until the applicant accepts the preceding findings and following conditions in writing and transmits the acceptance to the Town of Breckenridge.
2. If the terms and conditions of the approval are violated, the Town, in addition to criminal and civil judicial proceedings, may, if appropriate, issue a stop order requiring the cessation of work, revoke this permit, require removal of any improvements made in reliance upon this permit with costs to constitute a lien on the property and/or restoration of the property.

3. This permit expires on **September 27, 2018**, unless a building permit has been issued and substantial construction pursuant thereto has taken place. In addition, if this permit is not signed and returned to the Town within 30 days from the permit mailing date, the duration of the permit shall be three years, but without the benefit of any vested property right.
4. The terms and conditions of this permit are in compliance with the statements of the staff and applicant made on the evidentiary forms and policy analysis forms.
5. All development activity on this site shall be subject to approved Sixth Amendment to the Amended Peak 7 & 8 Master Plan, previous amendments to this Master Plan, and the Development Agreement between the Town of Breckenridge, Vail Summit Resorts, Inc., and Peak 8 Properties, LLC.
6. All hazardous materials used in construction of the improvements authorized by this permit shall be disposed of properly off site.
7. Each structure which is authorized to be developed pursuant to this permit shall be deemed to be a separate phase of the development. In order for the vested property rights associated with this permit to be extended pursuant to Section 9-1-17-11(D) of the Breckenridge Development Code, substantial construction must be achieved for each structure within the vested right period of this permit.
8. The Ski School Sprung Building shall be removed when Building 804 is open for business or November 26, 2016, whichever comes first.
9. The Rental Sprung Building shall be removed by November 26, 2016, or when the Skier Services Building is constructed at the gondola terminal (downtown), whichever comes first.
10. The applicant, owner, lessee, etc. of the temporary structure shall provide a monetary guarantee, ensuring the complete removal of the structure, site clean-up, and site revegetation, once the permit for the temporary structure has expired. In addition, the applicant, owner, lessee, etc shall enter into an agreement with the Town, authorizing the Town to take possession of the structure and dispose of it upon failure of the applicant to remove the structure by the agreed to date.
11. At all times during the course of the work on the development authorized by this permit, the permittee shall refrain from depositing any dirt, mud, sand, gravel, rubbish, trash, wastepaper, garbage, construction material, or any other waste material of any kind upon the public street(s) adjacent to the construction site. Town shall provide oral notification to permittee if Town believes that permittee has violated this condition. If permittee fails to clean up any material deposited on the street(s) in violation of this condition within 24 hours of oral notice from Town, permittee agrees that the Town may clean up such material without further notice and permittee agrees to reimburse the Town for the costs incurred by the Town in cleaning the streets. Town shall be required to give notice to permittee of a violation of this condition only once during the term of this permit.
12. The development project approved by this Permit must be constructed in accordance with the plans and specifications, which were approved by the Town in connection with the Development Permit application. Any material deviation from the approved plans and specifications without Town approval as a modification may result in the Town not issuing a Certificate of Occupancy or Compliance for the project, and/or other appropriate legal action under the Town's development regulations.









