



TOWN OF
BRECKENRIDGE

Planning Commission Meeting Agenda

Tuesday, August 20, 2019, 5:30 PM

Council Chambers

150 Ski Hill Road

Breckenridge, Colorado

5:30pm - Call to Order of the August 20, 2019 Planning Commission Meeting; 5:30pm Roll Call

Location Map

Approval of Minutes

2

Approval of Agenda

5:35pm - Public Comment On Historic Preservation Issues (Non-Agenda Items ONLY; 3-Minute Limit Please)

5:40pm - Work Sessions

1. Policy 50: Wireless Communication Facilities

7

6:10pm - Other Matters

1. Town Council Summary (Memo Only)

49

6:15pm - Adjournment

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 the 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.

PLANNING COMMISSION MEETING

The meeting was called to order at 5:32 p.m. by Chair Giller.

ROLL CALL

Christie Mathews-Leidal
Mike Giller
Dan Schroder

Jim Lamb
Steve Gerard
Lowell Moore

Ron Schuman

APPROVAL OF MINUTES

With no changes, the July 16, 2019 Planning Commission Minutes were approved.

APPROVAL OF AGENDA

With no changes, the August 6, 2019 Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No comments.

CONSENT CALENDAR:

1. Chalissima Chalet Single Family Residence (CL) 256 Timber Trail Rd, PL-2019-0194

Mr. Giller: Is this a modular?

Mr. LaChance: Yes, it is a Swiss modular.

Mr. Giller: If you think there is anything the commission should learn from that or it is worth touring, let us know.

Mr. Gerard: At last meeting, we were discussing disturbance envelope, and here is a house that fits perfectly on the envelope designed.

With no call-ups, the Consent Calendar was approved as presented.

WORK SESSIONS:

1. Subdivision Standards Review (CK), PL-2019-0293

Mr. Kulick presented a work session regarding the Subdivision Code and proposed changes to the code. The Commission was asked for feedback on the proposed changes.

Commissioner Questions / Comments:

Mr. Giller: Any questions on the building envelope?

Mr. Schuman: On the 6th or 7th paragraph in, I disagree with Steve a little bit on his comment on this first application. I think you are comparing apples and oranges. You made a comment that the house fit perfectly in the building envelope, well it's a half acre lot. In that particular incidence, I think we were talking about a building envelope designed 20 years or more ago. I'm curious why the language is designed so you can't do anything to your envelope. It's a big difference when you're building on a 5 acre lot as opposed to a 1/2 acre lot. Maybe the staff knows off the top of their head how many large lots are left, but my assumption is there are a lot more smaller lots.

Mr. Kulick: There are more small half acre to one acre lots. Beyond 2 acres, the quantity goes down significantly.

Ms. Leidal: I appreciate your comment, but our subdivision standards don't speak to that right now. My concern is the lots are laid out and platted by the developer. The developer had a blank slate, they can propose their envelopes wherever they want. People have bought into that subdivision relying on the envelope. Suddenly a neighbor can change their envelope and

- views are potentially blocked? I don't think that's right.
- Mr. Moore: We just had the same thing happen at the Upper Blue Planning Commission. The applicant came in and wanted to move their building envelope, and no neighbors showed up in opposition. But when you bought that lot, you expected to have the building in the same place.
- Mr. Giller: I agree entirely with what you both said, and that design didn't lay well on the land... there was twenty feet of drop across that house, a lot of reasons that wasn't a good design. Clear the client had one aim, to stretch out the view on that one axis. We shouldn't move building envelopes around for reasons like that.
- Mr. Kulick: What is prohibited outside the envelope doesn't address parking. We've seen people use this gray area to put all their exterior parking outside the envelope, which creates a larger home and more sight disturbance. If you bring the required parking in the envelope, it will reduce home sizes and sight disturbance. We recommend having all required parking within the envelope in the future. You can also park extra vehicles in your driveway but we don't want a huge auto court outside the envelope for additional parking. We don't want to prohibit anyone from parking a car in the driveway outside the envelope either.
- Mr. Gerard: Maximizing the intensity of the structure. Page 35 where the bullets start. We may want to replace intensity with density or mass. Intensity seems like something people can argue about.
- Mr. Kulick: We can re-write that.
- Mr. Lott: Part of the reason for that language is that people have cut off corners of their existing envelopes and then add that square footage somewhere else, sort of gerrymandering the envelope shape.
- Mr. LaChance: To Mr. Gerard's comment, if you were going to have a deck, covered deck or outdoor living space, that would be considered development intensity, but it would not be considered density or mass, so perhaps we should still mention that envelopes should not be modified to make more room for intensity of development.
- Ms. Leidal: Maybe intensity of development is correct.
- Mr. Schroder: The way that disturbance envelopes are drawn they need to remain simple geometric shapes and such.
- Ms. Leidal: Is staff comfortable this new bullet and language would prevent people moving their envelopes around?
- Mr. Kulick: You could technically modify an envelope if you weren't creating weird shapes and there were no environmental constraints.
- Mr. Lott: Yes, but also if you go a few bullet points up, it talks about amended envelopes that should not result in more grading or environmental degradation.
- Ms. Leidal: But that can still impact an existing property owner and their view corridor.
- Mr. Gerard: Maybe view corridor should be listed.
- Mr. Kulick: We've always stayed away from that in the code. It's a slippery slope, very subjective. In larger lots, it is rarely taking away someone else's view.
- Mr. Truckey: We typically require buffering to the adjacent properties and setbacks, which address some of the separation issue. It's more difficult to define a view corridor.
- Mr. Lott: There's also noticing requirements for all subdivision and an eleven day waiting period for public comment. Adjacent owners could provide comments on applications adjacent to them.
- Ms. Leidal: What if an adjacent property owner commented that they were concerned?
- Mr. Kulick: To be valid, it has to be a code based concern. Many of the development objections I've witnessed are from owners who have been in their house for a long period of time and have gotten used to adjacent open space and they are looking for ways impede the adjacent development.
- Mr. Gerard: I can use a personal example. My lot is relatively flat. The way the building envelope was,

- there was a long distance between me and next door. I could have moved my envelope to a better location for me that would have blocked my neighbor's view completely. Maybe you say view corridors of neighboring property.
- Mr. Kulick: Tim Berry has specifically told us before to be careful.
- Ms. Leidal: I don't support modifying envelopes unless it is for environmental constraints.
- Mr. Schroder: I didn't know I was coming to a neighbor conflict meeting tonight!
- Mr. Moore: So Christie, you just want it tightened up more? I can see how legally it is a can of worms. Views are different from one person to another.
- Mr. Lamb: When you buy a lot, you get an envelope. If you want to do something different, you should have bought another lot.
- Mr. Truckey: We are getting more and more requests to modify envelopes. Not all unfounded. Some are legitimate reasons, so I don't know how tight we want to make it.
- Mr. Kulick: We are beginning to see re-developments for existing houses, a lot of the time they want to put a deck or have a more open concept in the house, and to do that it would go outside of the existing envelope. So, in these cases, envelopes have been modified slightly.
- Mr. Schroder: I appreciate that clarification. Where is the land that could accommodate a subdivision within town limits?
- Mr. Kulick: Two most recent larger subdivisions were 2004-2005. There's always possibilities for annexations. New, larger subdivisions is not something we are seeing a lot right now.
- Mr. Lamb: There should be some mechanism to do minor modifications. Putting in a deck, no issue, moving it across the lot, maybe.
- Mr. Lott: I think moving envelopes on undeveloped lots isn't super common.
- Mr. Kulick: And for the first ten years I worked here I didn't process any envelope changes, but in the past two years, I've seen about eight.
- Mr. Moore: When people want to modify their houses, if they have extra envelope land, they can modify?
- Mr. Kulick: A lot of the time people don't even understand that's a possibility. We don't really have clear direction right now of what the process or standards are. The previous application the Commission saw was brought up because the applicant was proposing something that we had not seen before. Another envelope modification was a family who wanted to create a dog run and the envelope wasn't very functional due to the topography of the lot. Staff agreed with the modification because we thought it was reasonable and the envelope was actually downsized overall.
- Mr. Gerard: Didn't we move Dick Bauder's lot because of the wetlands?
- Mr. Truckey: I believe we allowed the size of the envelope to get a little larger in that case because the neighboring properties all had larger envelopes. That wouldn't be allowed with the proposed language we have written.
- Mr. Kulick: It was a weird envelope, so modifying the envelope made it a lot more valuable as a lot.
- Mr. Giller: I had a couple of questions: I would suggest some descriptors to guide people on things like topography, wetlands, geology, and vegetation. Envelope designs should also take those into account. I have a lot of little editing and I'll just email it. Would we consider sustainability and green design?
- Mr. Truckey: I am thinking of solar access, it isn't a criteria right now, but one we can consider.
- Mr. Giller: I know there are greener site design guidelines. I found something on energy efficiency that is online, but as we update, let's look at sustainability.
- Mr. Kulick: We did refer this out to Tim Berry and the Engineering Department. We will sit down with our sustainability coordinator and look for avenues to promote sustainability.
- Mr. Giller: When we went to Aspen we saw these storm water detention beds that were designed with sustainability in mind.
- Mr. LaChance: Additionally, green infrastructure doesn't have an expiration date. For example, concrete drainage facilities and infrastructure have a shelf life for replacement. Soil and vegetation

- don't expire.
- Mr. Gerard: If we want something in the sub language about the 9600 fiber optics and requiring the drops to be put in by the developer, is that in another part of the code?
- Ms. Leidal: It would be in the utility section here.
- Mr. Kulick: We can make sure it not only accommodates current utility needs, but maybe also where we are going in the future.
- Mr. Schroder: That probably wasn't even contemplated when they wrote this. The County's chapter on subdivision says that when a subdivision is developed, defensible space is to be done by the developer.
- Mr. Truckey: Reality of the situations is that we are going to see very few new subdivisions, but definitely will see more envelope modifications.
- Mr. Kulick: This includes a lot of cleanup of language to make sure we have a mechanism for allowing the things we want and not allowing the things we don't want.
- Mr. Gerard: Someone could come in and purchase public land, so we should be ready for potential annexations and subdivisions.
- Ms. Leidal: Look at the three mile plan for annexation.
- Mr. Truckey: Every year we re-adopt our three mile plan which goes beyond town boundaries should we ever annex them. (Mr. Giller: Is that a separate document?) Mr. Truckey: A resolution that refers to our Land Use Guidelines and the Comprehensive Plan.

Commissioner Questions / Comments:

- Mr. Schroder: I think it is good we contemplate this based on the application we recently saw.
- Ms. Leidal: I appreciate the modifications, very much needed. Previous concerns of people relying on platted disturbance envelopes to site their homes and modifications that could block views.
- Mr. Gerard: Necessary update, proposed language limits significant moving of envelopes, so I think we are taking care of getting architects to fit buildings into envelopes and not designing the envelope to fit the house.
- Mr. Schuman: On some points earlier, I was playing devil's advocate, but overall I agree. This is a good process and it's good to have the foresight on this.
- Mr. Lamb: I don't think we will see a lot of this, when you buy a lot, you look at the envelope, and having said that, a lot of these envelopes are quite generous so you can move things around. Good to have some mechanism for environmental concerns or for someone to come and make a good argument to us. We should have the ability to say yes you can do that. I just don't want to see them move the envelope all the way over to the other side of the lot.
- Mr. Moore: Totally agree with Christie and everything else. One project was in the county under the radio station, just outside western sky ranch, I went out there and they were asking to change the envelope as well, but the neighbors were actually happy. I just starting thinking tonight, with people wanting to move around an envelope with an existing structure, I don't know how you codify that but I can see people doing this more and more in the future.
- Mr. Kulick: We didn't have envelopes until about 1995 and now that buildings are changing hands and getting renovated, we are at the first wave of older subdivision filings where people are wanting to change envelopes.
- Mr. Giller: I agree with staff and fellow commissioners, I think we will see more building envelope questions in the future. Be very careful about adjustments to envelopes. I encourage us to look at sustainability in the guidelines as well.

OTHER MATTERS:

1. Town Council Summary (Memo Only)

- Mr. Truckey: National Trust conference in Denver. If anyone needs lodging we can arrange that for you.

ADJOURNMENT:

The meeting was adjourned at 6:21 pm.

Mike Giller, Chair



Memo

To: Planning Commission
From: Julia Puester, AICP, Assistant Director of Community Development
Date: 8/15/2019 for meeting of August 20, 2019
Subject: Wireless Policy 50 Modifications Work Session

In response to recent changes to federal and state rules, Staff is bringing Policy 50 *Wireless Facilities* for modifications. There is some conflict between the FCC Small Cell Order that was issued last fall and the changes to state law made by the Colorado legislature in 2017. Ken Fellman, the Town's consulting attorney in the wireless field, has suggested that, although there is some risk, where there is a conflict between the federal law and the state law the Town should update our ordinance to implement the state law changes that were made in 2017 and wait to see how the court challenge to the FCC Small Cell Order comes out. The attached changes reflect this approach.

Below is a summary of the primary concepts incorporated into the attached draft of the amendments to the Policy 50A of the Town Development Code.

1. Incorporate Small Cell facilities and Broadband Service into Policy 50 with definitions and processes.
2. Classify small cell facilities as Class D Minor permits due to the short "shot clock" review time period set by the FCC. It would still be possible for the Director to reclassify Class D Majors to a higher classification, if necessary.
3. In Section 1 of the ordinance on page 1, staff has amended the definition of "Class D-Minor Development" in the Development Code to include small cell applications.
4. In the definition of "Wireless Communications Facility" (WCF) on page 13, we have clarified that a small cell facility is a WCF.
5. A new section D3 has been added on page 15 to specifically establish the Class D-Minor permit process for small cell applications.

Staff would like feedback from the Planning Commission on the attached changes at this work session. The proposed changes include additional language clean up needed in the Policy as well.

After incorporating any Planning Commission comments, staff will proceed to ordinance readings at Town Council.

1 ***DRAFT ~~May 28~~ August 2, 2019 DRAFT***

2
3 **Redlined to Show Changes to May 28, 2019 Draft**

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

7
8 COUNCIL BILL NO. _____

9
10 Series 2019

11
12 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
13 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE,” BY
14 AMENDING POLICY 50 (ABSOLUTE) ENTITLED “WIRELESS COMMUNICATIONS
15 FACILITIES,” CONCERNING SMALL CELL FACILITIES

16
17 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
18 COLORADO:

19
20 Section 1. The definition of “Class D – Minor” development in Section 9-1-5 of the
21 Breckenridge Town Code is amended by the addition of a new item DD, which shall read as
22 follows:

23
24 DD. Those small cell facilities applications described in 9-1-19-50A, subsection D(3)
25 of this chapter.

26 Section 1. Section 2. Section 9-1-19-50A, “Policy 50 (Absolute) of the Breckenridge
27 Town Code is repealed and readopted with changes so as to read in its entirety as follows:

28 9-1-19-50A: POLICY 50 (ABSOLUTE) WIRELESS COMMUNICATIONS
29 FACILITIES:

30
31 A. PURPOSE AND INTENT:

- 32 1. The purpose of this policy is to regulate the installation and operation of
33 various wireless communications facilities in the Town, recognizing the
34 benefits of wireless communications while reasonably respecting other
35 important Town needs, including the protection of public health, safety, and
36 welfare.

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- 1 2. The overarching intent of this policy is to make wireless communications
2 reasonably available while preserving the unique aesthetic character, beauty,
3 and historic charm of the Town. This will be realized by:
- 4 (a) Minimizing the visual and physical effects of wireless communications
5 facilities through appropriate design, siting, screening techniques, and
6 location standards;
- 7 (b) Encouraging the installation of wireless communications facilities at
8 locations where other such facilities already exist;
- 9 (c) Encouraging the installation of such facilities where and in a manner
10 such that potential adverse impacts to the Town are minimized; and
- 11 (d) Providing for the efficient modification and upgrading of existing
12 wireless communications facilities to accommodate changing
13 technologies.
- 14 (e) **Accommodating the installation of small cell facilities within the**
15 **Town's right-of-ways as required by applicable federal and state**
16 **law.**
- 17 3. It is not the purpose or intent of this policy to:
- 18 (a) Prohibit or have the effect of prohibiting wireless communications
19 services; or
- 20 (b) ~~to~~ **Regulate** the placement, installation, or modifications of wireless
21 communications facilities on the basis of the environmental effects of
22 radio frequency emissions where it is demonstrated that the wireless
23 communications facilities do or will comply with the applicable FCC
24 regulations; or
- 25 (c) Unreasonably discriminate among providers of functionally equivalent
26 wireless communications services.
- 27 4. **Nothing in this policy is intended to waive, relinquish, modify, diminish,**
28 **or in any way affect the Town's police power authority provided by**
29 **applicable Colorado law.**
- 30 5. Nothing in this policy is intended to allow the Town to preempt any state or
31 federal law or regulation applicable to a wireless communications facility.

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- 1 6. The provisions of this policy are in addition to, and do not replace, obligations
2 a wireless communications facility permittee may have under franchises,
3 licenses, other permits issued by the Town, or any other agreement with the
4 Town.

5 B. EXCLUSIONS:

- 6 1. Except as specifically provided in the Spectrum Act, this policy does not
7 apply to and no wireless communications facilities permit shall be required
8 for: (i) ordinary maintenance of a WCF as defined in this policy; (ii) the siting
9 of Distributed Antenna Systems facilities located within a building, stadium,
10 or similar structure, or campus, and intended primarily to provide wireless
11 coverage within that building, stadium, or similar structure, or campus; (iii)
12 antennas used by residential households solely for broadcast radio and
13 television reception; (iv) satellite antennas used solely for residential or
14 household purposes; (v) amateur radio antennas; (vi) television and AM/FM
15 radio broadcast towers and associated facilities; (vii) WCFs placed for a
16 period of not more than 21 days for temporary uses related to special events if
17 authorized by a special events permit issued pursuant to chapter 13 of title 4 of
18 this code; (viii) WCFs owned by or exclusively operated for government
19 agencies, including the Town; and (ix) development as defined in Section 9-1-
20 5 that does not meet the definition of a WCF, which development is subject to
21 the other provisions of this chapter.
- 22 2. Except as provided by applicable law, ~~T~~his policy does not apply to the
23 Town when the Town is acting in its propriety capacity as owner of land. This
24 policy applies to the Town only when it acts as a land use regulator.

25 C. DEFINITIONS:

- 26 1. For the purposes of this policy, the following terms shall have the following
27 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. **Communications**~~
 ~~**equipment that transmits or receives**~~

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electromagnetic radio frequency signals used to provide wireless service.

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 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.

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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.

BROADBAND FACILITY:

Any infrastructure used to deliver broadband service or for the provision of broadband service.

BROADBAND SERVICE:

Has the same meaning as set forth in 7 U.S.C. sec. 950bb(b)(1) as of August 6, 2014, and for the purposes of this policy includes: (a) “cable service”, as defined in 47 U.S.C. sec. 522(6) as of August 6, 2014; (b) “telecommunications service”, as defined in 47 U.S.C. sec. 153 as of August 6, 2014; and (c) “wireless service”, which means data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as all of these terms are defined by federal law and regulations.

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~~

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~~structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.~~ **The mounting or installation of broadband service equipment on a tower, building, or structure with existing broadband service equipment for the purpose of transmitting 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 “hub” or “hotel,” where the DAS network is interconnected with one or more wireless service provider’s facilities to provide the signal transfer services.
- ELIGIBLE FACILITIES REQUEST: 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.
- ELIGIBLE SUPPORT STRUCTURE: 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.
- EXISTING: 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

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was lawfully installed, is existing for purposes of this chapter and policy.

FCC: The Federal Communications Commission.

LATTICE TOWER: An open framework structure used to support one or more antennas, typically with three or four support legs.

MICRO WIRELESS FACILITY: **A small wireless facility that is no larger in dimensions than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that has an exterior antenna, if any, that is no more than eleven inches in length.**

MONOPOLE: A single freestanding pole used to act as or support an externally mounted antenna or antenna arrays.

ORDINARY MAINTENANCE: 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, when such replacement antennas will not increase the overall height or footprint of the WCF; (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

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classified as an eligible facilities requests or otherwise.

- RF: Radio frequency.
- RADOME: A visually-opaque, radio frequency 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~~

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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 FACILITY:

A wireless service facility that meets both of the following qualifications:

(a) each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and (b) primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

“Small cell facility” includes a micro wireless facility.

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 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;

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(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 D1b or D2d of this policy.
<u>TOWER:</u>	<u>Any structure built for the sole or primary purpose of supporting antennas licensed or authorized by the Federal Communications Commission and the antennas' associated facilities, including structures that are constructed for wireless communications services including private, broadcast, and public safety services; unlicensed wireless services; fixed wireless services such as backhaul; and the associated site.</u>
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

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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 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.

A small cell facility is a WCF.

WIRELESS SERVICE FACILITY:

A facility for the provision of wireless services; except that “wireless service facility” does not include coaxial or fiber-optic cable that is not immediately adjacent to, or directly associated with, a particular antenna.

WCF ADJUSTMENT:

An authorization to deviate from the requirements of this policy granted by the

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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.

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- 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 or a small cell facility applications.
 - (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

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1 with an application for a permanent WCF; or (ii) that will be
2 operational for 180 days or longer unless the use of the Temporary
3 WCF is in response to and during the period a period of a declaration
4 of emergency by the Governor of the State of Colorado.

5 (c) All other applications to install, modify, or replace a WCF within the
6 Town that are not classified as a Class D - Major application pursuant
7 to subsection D2 or a Class D – Minor application pursuant to
8 subsection D3.-

9 2. Class D - Major ~~Development~~-WCF Permit.

10 (a) An application for an eligible facilities request.

11 (b) An application to install a new WCF at one of the preferred locations
12 as set forth in Section I4 of this policy if the application meets the
13 applicable design requirements of this policy.

14 (c) An application to install a new wall-or roof-mounted WCF if such
15 installation is preferred under Section J6 of this policy, and if the
16 application meets the applicable design requirements of this policy.

17 (d) An application for a temporary WCF that will be operational for a
18 period of time not longer than 30 days, whether in response to and
19 during the period a period of a declaration of emergency by the
20 Governor of the State of Colorado, or otherwise.

21 (e) An application to install a WCF that is part of a DAS ~~or small cell~~
22 ~~network~~, and is camouflaged consistent with the design requirements
23 contained in this policy.

24 ~~(a) An application to locate, collocate, replace, or modify a small~~
25 ~~cell facility or small cell network.~~

26 3. Class D- Minor WCF Permit.

27 (a) An application to locate, collocate, replace, or modify a small cell
28 facility or small cell network.

29 4. Director's Authority to Reclassify an Application. The Director's authority to
30 reclassify a development permit application as authorized by the definition of
31 "Classification" in Section 9-1-5 may only be used in connection with an
32 application filed under this policy to reclassify a Class D - Major application
33 to a Class A Development WCF application. The Director cannot's authority

~~to reclassify a Class D – Major application as a Class D – Minor, or Class D – Minor application as a 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, **right-of-way permits**, 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, **and shot clocks**, 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,

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1 but not limited to, documentation intended to illustrate the need for the WCFs
2 that are the subject of the application or to justify the business need to modify
3 such WCFs.

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

30 G. PROCEDURE FOR REVIEW OF WCF PERMIT APPLICATIONS:

- 31 1. Pre-Application Meetings Required; **Exception for Small Cell Facility**
32 **Application**; Submission of Application By Appointment Only.
- 33 (a) Except for eligible facilities requests **and small cell facilities**
34 **applications**, one pre-application meeting with Town staff is normally
35 required for an application for a WCF permit. At the meeting the
36 prospective applicant should be prepared to present to staff a service

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1 area map, description of the type of WCF sought, preliminary site
2 plan, and visual impact drawings. This meeting is not a public hearing
3 and is not subject to any public notification requirements. The Director
4 may require a second pre-application meeting if the first meeting did
5 not adequately address all relevant issues. The provisions of this
6 subsection G1 control over the pre-application meeting requirements
7 for a Class D-Major permit application set forth in Section 9-1-18-4-
8 1A.

9 (b) Prior to submitting an eligible facilities request of a small cell
10 facility application the applicant is encouraged to initiate and
11 schedule a pre-submittal meeting by contacting the Town's
12 Department of Community Development. However, a pre-
13 submittal meeting is not required for these applications, and will
14 only be held if the applicant requests one. By participating in the
15 pre-submittal meeting, the applicant agrees that the mandatory
16 review time stated in Section G5b, below, does not start until the
17 application is submitted, subject to the tolling provisions of
18 Section G5c.

19 (c) All WCF applications, including eligible facilities requests, may be
20 submitted to the Director only by appointment. Applications shall be
21 submitted in hard copy; e-mailed applications shall not be
22 accepted.

23 2. Procedure for Class A ~~Development~~-WCF Permit Application.

24 (a) The provisions of this subsection G2 control in the event of any
25 conflict between this subsection and the rules for processing a Class A
26 ~~D~~development ~~WCF~~ permit application set forth in Section 9-1-18-1.

27 (b) The presumptively reasonable time period for the Town to review and
28 act upon a Class A WCF permit application to collocate on or modify
29 an existing WCF that does not qualify as an eligible facilities request is
30 90 days.

31 (c) The presumptively reasonable time period for the Town to review and
32 act upon all other Class A WCF permit applications is 150 days.

33 (d) The 90 or 150-day period begins to run when the application is filed,
34 and may be tolled only by mutual agreement or in cases where the
35 Director determines that the application is incomplete.

- 1 (i) To toll the timeframe for incompleteness, the Director must
2 provide written notice to the applicant within 30 days of receipt of
3 the application, clearly and specifically delineating all missing
4 documents or information.
- 5 (ii) The timeframe for review begins running again when the
6 applicant makes a supplemental submission in response to the
7 Director's notice of incompleteness.
- 8 (iii) Following a supplemental submission, the Director will have 10
9 days to notify the applicant that the supplemental submission did
10 not provide the information identified in the original notice
11 delineating missing information. The timeframe is tolled in the
12 case of second or subsequent notices pursuant to the procedures
13 identified in this subsection G2d. Second or subsequent notices of
14 incompleteness may not specify missing documents or
15 information that were not delineated in the original notice of
16 incompleteness.
- 17 (e) A complete application submitted under this subsection G2 shall be
18 scheduled for a hearing before the Planning Commission as required
19 for Class A development permit applications by Section 9-1-18-1.
- 20 (f) Notice of the public hearing on an application submitted under this
21 subsection G2 shall be given in the same manner required for any
22 Class A development permit application under this chapter.
- 23 (g) Subject to the tolling provision described above, the Planning
24 Commission must issue a written decision approving, conditionally
25 approving, or denying an application submitted under this subsection
26 G2 within the 90 or 150-day period described above, whichever time
27 period is applicable to the application.
- 28 (h) Should the Planning Commission deny an application submitted under
29 this subsection G2, the Planning Commission shall provide written
30 justification for the denial. The denial must be based on substantial
31 evidence in the written record.
- 32 (i) A decision of the Planning Commission under this policy is subject to
33 call up by the Town Council as provided in Section 9-1-18-1E6 of this
34 chapter. Any decision by the Town Council shall be made within the
35 90 or 150-day period described above, whichever time period is
36 applicable to the application.

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1 3. Procedure for Class D - Major ~~Development~~ WCF Permit Application That Is
2 Not An Eligible Facilities Request ~~or a Small Cell Facility Application~~.

3 (a) The provisions of this subsection G3 control in the event of any
4 conflict between this subsection and the rules for processing a Class D
5 - Major development permit application set forth in Section 9-1-18-4-
6 1.

7 (b) The presumptively reasonable time period for the Director to review a
8 Class D - Major WCF permit application that is not an eligible
9 facilities request is 90 days.

10 (c) The 90-day period begins to run when the application is filed, and may
11 be tolled only by mutual agreement or in cases where the Director
12 determines that the application is incomplete.

13 (i) To toll the timeframe for incompleteness, the Director must
14 provide written notice to the applicant within 30 days of receipt of
15 the application, clearly and specifically delineating all missing
16 documents or information.

17 (ii) The timeframe for review begins running again when the
18 applicant makes a supplemental submission in response to the
19 Director's notice of incompleteness.

20 (iii) Following a supplemental submission, the Director will have 10
21 days to notify the applicant that the supplemental submission did
22 not provide the information identified in the original notice
23 delineating missing information. The timeframe is tolled in the
24 case of second or subsequent notices pursuant to the procedures
25 identified in this subsection (c). Second or subsequent notices of
26 incompleteness may not specify missing documents or
27 information that were not delineated in the original notice of
28 incompleteness.

29 (d) Subject to the tolling provisions described above, the Director must
30 issue a written decision approving, conditionally approving, or
31 denying an application submitted under this subsection within 90 days
32 of the submission of the initial application

33 (e) Should the Director deny an application submitted under this
34 subsection G3, the Director shall provide written justification for the
35 denial. The denial must be based on substantial evidence in the written
36 record.

1 (f) The Director’s decision approving, conditionally approving, or
2 denying an application submitted under this subsection G3 may be
3 appealed by the applicant to the Planning Commission and Town
4 Council. Such appeal shall be filed and processed in accordance with
5 the requirements of Section 9-1-18-4-1D. Any decision by the
6 Planning Commission or Town Council shall be made within the 90 or
7 150-day period described above, whichever time period is applicable
8 to the application.

9 4. Procedure for Eligible Facilities Request.

10 (a) The provisions of this subsection G4 control in the event of any conflict
11 between this subsection and the rules for processing a Class D - Major
12 development permit application set forth in Section 9-1-18-4-1.

13 (b) Upon receipt of an application for an eligible facilities request the Director
14 shall review such application to determine whether the application qualifies
15 as an eligible facilities request under the Spectrum Act, the Spectrum Act
16 rules, and this policy.

17 (c) Within 60 days of the date on which an applicant submits a request seeking
18 approval under this subsection G4, the Director shall approve the
19 application unless the Director determines that the application is not
20 covered by this subsection.

21 (d) The 60-day period begins to run when the application is filed, and may be
22 tolled only by mutual agreement or in cases where the Director determines
23 that the application is incomplete.

24 (i) To toll the timeframe for incompleteness, the Director must
25 provide written notice to the applicant within 30 days of receipt of
26 the application, clearly and specifically delineating all missing
27 documents or information. Such delineated information is limited
28 to documents or information necessary for the Director to
29 determine if the application qualifies as an eligible facilities
30 request under the Spectrum Act, the Spectrum Act rules, and this
31 policy.

32 (ii) The timeframe for review begins running again when the
33 applicant makes a supplemental submission in response to the
34 Director’s notice of incompleteness.

35 (iii) Following a supplemental submission, the Director will have 10
36 days to notify the applicant that the supplemental submission did

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1 not provide the information identified in the original notice
2 delineating missing information. The timeframe is tolled in the
3 case of second or subsequent notices pursuant to the procedures
4 identified in this subsection G4d. Second or subsequent notices of
5 incompleteness may not specify missing documents or
6 information that were not delineated in the original notice of
7 incompleteness.

- 8 (e) The Director shall not approve an eligible facilities request that does not
9 comply with the Spectrum Act, the Spectrum Act rules, or the applicable
10 requirements of this policy. Without limiting the generality of the
11 preceding sentence, the Director shall not approve an application for an
12 eligible facilities request that substantially changes the dimensions of the
13 eligible support structure that is the subject of the application.
- 14 (f) Should the Director deny the application, the Director shall provide written
15 justification for the denial. The denial must be based on substantial
16 evidence in the written record.
- 17 (g) An application for an eligible facilities request that has been denied by the
18 Director may be refiled at the applicant's discretion as a Class A WCF
19 permit application.
- 20 (h) If the Director fails to approve, conditionally approve, or deny an
21 application for an eligible facilities request within the applicable timeframe
22 (accounting for any tolling), the request shall be deemed granted. The
23 deemed grant does not become effective until the applicant notifies the
24 Director in writing after the review period has expired (accounting for any
25 tolling) that the application has been deemed granted.
- 26 (i) The Director's decision on an application submitted under this subsection
27 G4 may be appealed by the applicant to the Planning Commission and
28 Town Council. Such appeal shall be filed and processed in accordance with
29 the requirements of Section 9-1-18-4-1D.

30 5. **Procedure for a Small Cell Facility Application.**

- 31 (a) **The provisions of this subsection G5 control in the event of any**
32 **conflict between this subsection and the rules for processing a**
33 **Class D - Majorinor development permit application set forth in**
34 **Section 9-1-18-4-1.**

- 1 (b) The presumptively reasonable time period for the Director to
 2 review a small cell facility application that is not an eligible
 3 facilities request is 90 days.
- 4 (c) The Director shall review a small cell facility application for
 5 completeness and respond to the applicant within ten (10) days of
 6 the date of submission of the application with a report identifying
 7 any items missing from the application. The mandatory review
 8 periods provided in subsection G5d, below, shall be deemed tolled
 9 pending the applicant's complete submission of any missing item
 10 identified in the Director's completeness report. If the applicant
 11 fails to submit all of the missing items identified in the Director's
 12 completeness report within such reasonable time as the Director
 13 shall require in the report, the application shall be denied without
 14 prejudice.
- 15 (d) The Director will complete his or her review of a small cell facility
 16 application and either approve, conditionally approve, or deny the
 17 application within ninety (90) days from the date of submission of
 18 the application, or from the date of submission of the completed
 19 application if tolled due to an incomplete submission as provided
 20 above, whichever is the later date.
- 21 (e) Should the Director deny an application submitted under this
 22 subsection G5, the Director shall provide written justification for
 23 the denial. The denial must be based on substantial evidence in the
 24 written record.
- 25 (f) The Director's decision on a small cell facility application may be
 26 appealed by the applicant to the Planning Commission and Town
 27 Council. Such appeal shall be filed and processed in accordance
 28 with the requirements of Section 9-1-18-4-~~1DC~~.
- 29 (g) If the Director approves a small cell facility application all other
 30 permits required by the Town to authorize the installation of a
 31 small cell facility in the Town ROW shall also be approved within
 32 the same ninety (90) day period described in subsection G5b.

- 33 6. Appeal to Court. The 30 day period to appeal the Town's decision on an
 34 application for a WCF permit provided in 47 U.S.C. §332(c)(7)(B)(v) shall
 35 commence as follows:

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1 (a) With respect to a Class D – Minor application or a Class D - Major
2 ~~WCF permit~~-application, upon the final decision made by the Director
3 if the Director’s decision is not appealed, or upon the final decision of
4 Planning Commission or the Town Council, whichever last rules on
5 the application; or

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

11 H. RULES FOR APPROVAL OR DENIAL OF APPLICATION:

12 1. Pursuant to Section 9-17-6, it is the applicant’s burden to show by a
13 preponderance of the evidence that a WCF permit submitted under this
14 policy should be granted.

15 2. In evaluating an application for a WCF permit, except an application for a
16 small cell facility or an eligible facilities request, all relevant absolute and
17 relative development policies of this chapter shall be considered by the
18 reviewing authority; provided, however:

19 (a) Policies 9-1-19-6A “Policy 6 (Absolute) Building Height” and 9-1-19-
20 6R “Policy 6 (Relative) Building Height” shall not apply to an
21 application to install a WCF; and

22 (b) Although density must be provided for a WCF to be installed pursuant
23 to this policy, no negative points shall be assessed against a WCF
24 permit application under Policy 9-1-19-3R “Policy 3 (Relative)
25 Compliance With Density/Intensity Guidelines.”

26 (c) Notwithstanding subsection 2b of this Section, no density shall be
27 required for:

28 (i) an underground mechanical room installation;

29 (ii) an installation in an existing interior space; or

30 (iii) an outdoor equipment cabinet.

31 3. Except as otherwise provided in this policy, this chapter, or other applicable
32 law, an application submitted under this policy, except an application for a

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1 small cell facility or an eligible facilities request, may be lawfully denied
2 for any of the following reasons:

- 3 (a) The application does not implement all affected absolute policies of
4 this chapter (subject to variance);
- 5 (b) The applicant has not shown that the application conforms to the
6 applicable requirements of this policy; or
- 7 (c) The applicant has not provided to the Town all of the information
8 required by this policy to WCF permit the reviewing authority to
9 approve, conditionally approve, or deny the application taking into
10 account legal deadlines affecting the Town's consideration of the
11 application.

12 4. Except as to an eligible facilities request, or an application for a small cell
13 facility, and when the Town is prohibited from considering a matter by
14 applicable law, in determining whether to approve, conditionally approve, or
15 deny an application, the reviewing authority may consider the following and
16 such other matters as the reviewing authority may be entitled or required to
17 consider as a matter of law:

- 18 (a) Whether the applicant is authorized to file the application;
- 19 (b) Whether the WCF and support structure additions and modifications
20 proposed will adversely affect or alter the unique aesthetic character,
21 beauty, and historic charm of the Town. If the application is for a
22 location in the Conservation District, the reviewing authority shall also
23 consider Section 9-1-19-5A, "Policy 5 (Absolute)(Architectural
24 Compatibility)"; Section 9-1-19-5R, "Policy 5 (Relative)(Architectural
25 Compatibility)"; and the "Handbook of Design Standards/Handbook
26 of Design Standards For the Historic and Conservation Districts;"
- 27 (c) Whether the WCF and support structure modifications and additions
28 proposed comply with the design standards of this policy, and other
29 applicable provisions of this policy or chapter;
- 30 (d) Whether the WCF and support structure modifications and additions
31 proposed comply with generally applicable building, structural,
32 electrical and other safety codes and laws, interfere with the public's
33 use of right-of-way, or create undue risks to persons or property;
- 34 (e) Whether the applicant has or will have necessary local, state, or federal
35 regulatory approvals required in connection with the WCF; and

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1 (f) Whether alternative designs or locations would minimize the impact of
2 the WCF and support structure modifications and additions required.

3 5. **The rules for the approval or denial of a small cell facility application**
4 **shall be as set forth in the Director’s administrative rules and regulations**
5 **promulgated pursuant to Section 9-1-28 of this chapter.**

6 6. Notwithstanding any other provision of this policy or chapter to the contrary,
7 the reviewing authority may approve an application for a WCF permit under
8 this policy, notwithstanding that the evidence supported denial of the
9 application, if the reviewing authority makes a finding that the applicant has
10 demonstrated that the refusal to approve the application would prohibit or
11 have the effect of prohibiting **or effectively prohibiting** the provision of
12 personal wireless services within the meaning of 47 U.S.C. Section
13 332(c)(7)(B)(i)(II), or finds that the Town authority to deny the application is
14 otherwise preempted or prohibited by state or federal law.

15 I. LOCATION CRITERIA FOR WCFs: The purpose of this Section I is to provide
16 guidance to prospective applicants as they seek appropriate WCF locations within
17 the Town. This Section I does not express a preference for any category of
18 technology. **This Section I does not apply to the location of a small cell facility**
19 **which shall be located in accordance with the location criteria contained in the**
20 **Director’s administrative rules and regulations promulgated pursuant to**
21 **Section 9-1-28 of this chapter.**

22
23 1. WCFs are encouraged to be located on existing buildings and structures
24 because of aesthetics and land use compatibility.

25
26 2. WCFs shall be collocated with existing WCFs, if within 1,500 feet of an
27 existing WCF, unless the Town determines that doing so would create
28 excessive visual clutter.

29 3. No WCF permit to install a new freestanding WCF shall be granted unless the
30 applicant first demonstrates that no existing wireless tower or structure can
31 accommodate the applicant’s needs.

32 4. Unless subsection I5 applies, WCFs shall be located outside of the
33 Conservation District. The preferred locations for WCFs outside of the
34 Conservation District are listed below in order of preference:

35 (a) Collocation to existing WCF facilities located in non-residential land
36 use districts;

- 1 (b) Town property;
- 2 (c) Other publicly owned property and facilities;
- 3 (d) Rights-of-way;
- 4 (e) Public and private utility installations;
- 5 (f) Land use districts where commercial uses are recommended; and
- 6 (g) Community facilities (such as places of worship, community centers,
- 7 etc.).

8 5. Notwithstanding subsection I4, and except for a wall-mounted WCF, an
 9 application to locate a new WCF in the following areas of Town: (i) in the
 10 Town's Conservation District; (ii) in Land Use Districts where single-family
 11 residential uses are a recommended use; (iii) in any land use district that
 12 contains a legally established single family residential use; (iv) on vacant
 13 land; (v) on an environmentally sensitive habitat; (vi) on a ridgeline; or (vii)
 14 any other area of the Town not specifically described as a preferred location
 15 for the placement of a WCF in subsection I4, may be granted if the applicant
 16 demonstrates that all of the following factors exist:

- 17 (i) a significant gap in the provider's service exists;
- 18 (ii) the proposed WCF is the least visually intrusive means to close
- 19 the significant gap;
- 20 (iii) no feasible alternative exists to close the significant gap; and
- 21 (iv) the provider's existing WCFs lacks the capacity to service the
- 22 wireless users except by the installation of one or more WCF sites
- 23 in the otherwise restricted locations described in this subsection
- 24 I5.

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

28
 29 J. DESIGN STANDARDS: The design standards set forth in this Section J shall apply
 30 to the location of all WCFs that are subject to this policy; provided, however, that
 31 this Section J shall not apply to a small cell facility which shall be subject to the
 32 design standards contained in the Director's administrative rules and
 33 regulations promulgated pursuant to Section 9-1-28 of this chapter. ~~†The~~

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1 reviewing authority may waive any design standard if it determines the overall intent
2 of this policy will not be served by the implementation of the particular design
3 standard with respect to a particular WCF or application.

4 1. All WCFs shall be designed to comply with current standards and regulations
5 of the Federal Aviation Administration, the FCC, the National Environmental
6 Policy Act, and any other agency of the state or federal government with the
7 authority to regulate WCFs.

8 2. All WCFs shall be designed to comply with all applicable laws, rules, and
9 regulations, including, but not limited to, the FCC's RF emission safety rules.

10 3. A WCF shall be designed and located to minimize the impact on the
11 surrounding neighborhood, and to maintain the unique aesthetic character,
12 beauty, and historic charm of the Town, consistent with other provisions of
13 this chapter. To that end, WCFs should:

14 (a) Employ the least intrusive design for the proposed location in terms of
15 size, mass, visual and physical impact, and effects on properties from
16 which the WCF is visible, and, if located within the Conservation
17 District, be located on a structure that is non-historic and non-
18 contributing as defined by Town policy or ordinance; and

19 (b) Accommodate collocation consistent with the other design
20 requirements of this policy; and

21 (c) Be consistent with the Town's Master Plan.

22 4. Unless an adjustment is granted pursuant to Section K, no WCF, or tower or
23 other structure designed or intended to be used for the placement of one or
24 more antennas, may be approved outside the Conservation District at a height
25 that is taller than the maximum height for nonresidential structures and
26 multifamily structures provided in Section D (Exceptions) in the definition of
27 "Building Height Measurement" in Section 9-1-5 of this Chapter. Unless an
28 adjustment is granted pursuant to Section K, no WCF, or tower or other
29 structure designed or intended to be used for the placement of one or more
30 antenna may be placed on the roof of any structure within the Conservation
31 District.

32 5. DAS networks and ~~small cell networks~~ are encouraged WCF facilities under
33 this policy.

34 6. Wall- or roof-mounted WCFs and DASs are preferred over freestanding
35 WCFs and DASs outside the Conservation District. Within the Conservation

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1 District wall-mounted WCFs and DASs are preferred. An applicant proposing
2 to install a freestanding WCF that is not a DAS must first demonstrate that a
3 wall- or roof-mounted WCF is not feasible or is inadequate to provide service.
4 The Town may require that an alternative WCF that reflects the character of
5 the surrounding property (developed or undeveloped) be employed.

6 7. No new lattice tower may be approved under this policy.

7 8. All WCFs shall be concealed or camouflaged. The installation of an
8 uncamouflaged WCF is prohibited. Without limiting the foregoing, all
9 portions of a WCF affixed to a support structure shall be designed to blend in
10 or be screened from view in a manner consistent with the support structure's
11 architectural style, color, and materials, when viewed from any part of the
12 Town. WCFs shall be painted and textured or otherwise camouflaged to match
13 the color and finish of the support structure on which they are mounted.
14 Where the support structure is a building, the WCF support equipment,
15 including, without limitation, base station cabinets, remote transmitters and
16 receivers, and antenna amplifiers, shall be placed within the building or
17 mounted behind a parapet screened from public view unless that is not
18 feasible. If the Director determines that such in-building placement is not
19 feasible, the equipment shall be roof-mounted in an enclosure or otherwise
20 screened from public view as approved by the Director.

21 9. A WCF that is not a small cell facility that is proposed to be located in the
22 right-of-way shall:

23 (a) If to be located on a street light, be compatible with the design of the
24 existing street lights;

25 (b) With respect to its pole-mounted components, be located on an
26 existing utility pole serving another utility;

27 (c) Be concealed consistent with other existing natural or manmade
28 features in the right-of-way near the location where the WCF is to be
29 located;

30 (d) With respect to its pole-mounted components, be located on a new
31 utility pole where other telephone distribution lines are aerial, if there
32 are no reasonable alternatives, and the applicant is authorized to install
33 new utility poles;

34 (e) Be installed and maintained so as not to obstruct or hinder the usual
35 travel on such right-of-way, or required maintenance or snow removal
36 within the right-of-way; and/or

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- 1 (f) Be painted a dark color to blend in with the surrounding area.
- 2 10. The pole-mounted components of a WCF on a utility pole shall, whether in or
3 outside of the right-of-way, be consistent with the size and shape of pole-
4 mounted equipment installed by communications companies on utility poles
5 near the WCF.
- 6 11. To the extent a WCF is permitted aboveground, a WCF shall otherwise be
7 appropriately screened, landscaped, and camouflaged to blend in with the
8 surroundings, and non-reflective paints shall be used.
- 9 12. Unless it is determined by the reviewing authority that there is no less
10 intrusive alternative available to close a significant gap in the service provided
11 by a WCF, or it is determined that the Town is legally required to approve an
12 application, the height of the WCF may not exceed the minimum height that is
13 necessary from an engineering perspective to allow the WCF to function
14 properly.
- 15 13. If an application proposes the construction of improvements to the surface of
16 the roof of a building for the purpose of locating the utility box or cabinet that
17 will hold the mechanical equipment required to operate the WCF, such
18 improvements must:
- 19 (a) be made of the same materials that exist on the building;
- 20 (b) be of a height no taller than is necessary from an engineering
21 perspective in order for the WCF to function properly; and
- 22 (c) must have density, subject to the provisions of Section H2b.
- 23 14. Unless it is determined by the Town that there is no less intrusive alternative
24 available to close a significant gap in the service provided by a WCF, or it is
25 determined that the Town is legally required to approve an application, the
26 Town shall not approve an application for a WCF where the application
27 proposes a design that would require extensions from any support structure
28 inconsistent in size with the extensions otherwise WCF permitted under this
29 policy.
- 30 15. WCFs shall not be lighted except with the authorization of the reviewing
31 authority. The reviewing authority may permit lighting at the lowest intensity
32 necessary:
- 33 (a) For proximity-triggered and/or timer-controlled security lighting;

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1 (b) To comply with regulations for the illumination of any flag attached to
2 a WCF; or

3 (c) Where such lighting is required to protect public health or welfare, or
4 as part of the camouflage for a particular design.

5 Any approved lighting shall comply with Section 9-1-19-46A, "Policy 46
6 (Absolute)(Exterior Lighting)."

7
8 16. No advertising signage shall be displayed on any WCF, except for
9 government-required signs shown in the WCF permit application. Additional
10 site identification, address, warning, and similar information plates may be
11 WCF permitted where approved by the Director.

12 17. The WCF shall be designed so that it does not operate by a generator except
13 when the permanent power to the WCF is temporarily interrupted.

14 18. The WCF shall not inconvenience the public (including without limitation,
15 persons with disabilities) in its use of any structure, or any portion of the
16 right-of-way.

17 K. ADJUSTMENTS TO STANDARDS:

18 1. Applicability. Except as otherwise provided in this policy, no WCF shall be
19 used or developed contrary to any applicable development standard of this
20 policy unless an adjustment has been granted pursuant to this Section K. The
21 provisions of this Section apply exclusively to WCFs, and shall control over
22 the variance criteria set forth in Section 9-1-11 of this title. **Provided,**
23 **however, that this Section K shall not apply to a small cell facility**
24 **application which shall be subject to the administrative waiver provisions**
25 **of the Director's administrative rules and regulations promulgated**
26 **pursuant to Section 9-1-28 of this chapter.**

27 2. Application Classification. An application for a WCF adjustment is classified
28 as a Class A ~~Development~~ WCF application.

29 3. Submittal Requirements. In addition to the general submittal requirements for
30 a ~~Class A Development WCF application~~ Class A WCF application, an
31 application for a WCF adjustment shall include:

32 (a) a written statement demonstrating how the requested adjustment would
33 meet the criteria;

34 (b) a site plan that includes:

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- 1 (i) a description of the proposed facility’s design and dimensions, as
2 it would appear with and without the adjustment;
- 3 (ii) elevations showing all components of the WCF as it would appear
4 with and without the adjustment;
- 5 (iii) color simulations of the WCF after construction demonstrating
6 compatibility with the vicinity, as it would appear with and
7 without the adjustment; and
- 8 (iv) such other information as is required by the Director;
- 9 4. Criteria. An application for a WCF adjustment shall be granted if applicant
10 demonstrates that:
- 11 (a) the adjustment is consistent with the purpose of the development
12 standard for which the adjustment is sought;
- 13 (b) based on a visual analysis, the design significantly minimizes the
14 visual impacts to residential zones through mitigating measures,
15 including, but not limited to, building heights, bulk, color, and
16 landscaping; and
- 17 (c) the applicant demonstrates the existence of either of the following:
- 18 (i) Gap in Service.
- 19 (A) A gap in the coverage, capacity, frequency, or technologies of the
20 service network exists such that users are regularly unable to connect
21 to the service network, or are regularly unable to maintain a
22 connection, or are unable to achieve reliable wireless coverage within
23 a building;
- 24 (B) The gap can only be filled through an adjustment to one or more
25 of the standards in this policy; and
- 26
27 (C) The adjustment is narrowly tailored to fill the service gap such
28 that the WCF conforms to this policy’s standards to the greatest
29 extent possible.
- 30
31 (ii) Minimization of Impacts.
- 32
33 The adjustment would significantly minimize or eliminate negative
34 impacts to surrounding properties and their uses, through a utilization

1 of existing site characteristics, including, but not limited to, the site's
2 size, shape, location, topography, improvements, and natural features.
3 Negative impacts are minimized or eliminated if there is:

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

9
10 L. STANDARD WCF PERMIT CONDITIONS: The following conditions shall be
11 included in each WCF permit issued by the Town, unless otherwise approved by the
12 Town Attorney for good cause:

- 13 1. The term of a Class A WCF permit granted pursuant to this policy shall be 10
14 years from the date of issuance, unless sooner revoked or terminated as
15 provided in this policy. The term of a Class D-Major WCF permit granted
16 pursuant to this policy shall be as provided in Section 9-1-17-8, unless sooner
17 revoked or terminated as provided in this policy.
- 18 2. As a condition of every WCF permit issued pursuant to this policy, the
19 Director may establish a reasonable installation build-out period for a WCF.
- 20 3. The WCF shall be operated in compliance with: (i) the terms of the permit; (ii)
21 all other applicable requirements of this chapter and policy; and (iii) all
22 applicable laws, rules, and regulations, including, but not limited to, the
23 FCC's RF emission safety rules.
- 24 4. The permittee shall obtain and maintain all other applicable WCF permits,
25 approvals, and agreements necessary to install and operate the WCF in
26 conformance with federal, state, and local laws, rules, and regulations.
- 27 5. Within 30 days after installation of a WCF, the permittee shall demonstrate to
28 the Director that its WCF as installed and normally-operating fully complies
29 with all of the conditions of the WCF permit, including, but not limited to,
30 height and size restrictions, and applicable building and safety codes. The
31 demonstration shall be provided in writing to the Director containing all
32 technical details to demonstrate such compliance, and certified as true and
33 accurate by a qualified professional engineer or, in the case of height or size
34 restrictions, by a qualified surveyor. This report shall be prepared by the
35 permittee and reviewed by the Town at the sole expense of the permittee. The
36 Director may require additional proofs of RF emission compliance on an
37 ongoing basis to the extent the Town may do so consistent with federal law.

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1 6. The Town may inspect WCF permitted facilities and property and may enter
2 onto a site to inspect WCF facilities upon reasonable notice to the permittee.
3 In case of a bona fide emergency or risk of imminent harm to persons or
4 property within the vicinity of WCF permitted facilities, the Town has the
5 right, but not the duty, to enter upon the site of the facilities and to support,
6 disable, or remove those elements of the facilities posing an immediate threat
7 to public health and safety. Prior to taking any action pursuant to this
8 subsection, the Town shall make a reasonable effort to locate the permittee
9 and advise it of the existence and nature of the emergency. The
10 reasonableness of Town’s efforts to locate the permittee shall be determined
11 based upon the nature of the emergency and the Town’s efforts to locate and
12 notify the permittee. If, after reasonable efforts, the permittee cannot be
13 located, the Town shall have the right to enter the property and perform any
14 needed emergency repairs as herein provided and, upon demand, the permittee
15 shall reimburse Town for the reasonable and necessary costs of such
16 emergency repairs. Failure of the permittee to pay to the Town upon demand
17 the costs of such emergency repairs shall constitute a default event under the
18 WCF permit.

19 7. The permittee shall maintain on file with the Town and onsite at the WCF
20 current and updated contact information of all parties responsible for
21 maintenance of the WCF.

22 8. The permittee shall defend, indemnify, and hold harmless the Town, its
23 agents, officers, officials, and employees: (i) from any and all damages,
24 liabilities, injuries, losses, costs and expenses, and from any and all claims,
25 demands, lawsuits, and other actions or proceedings brought against the Town
26 or its agents, officers, officials, or employees to challenge, attack, seek to
27 modify, set aside, void, or annul the Town’s approval of the WCF permit; and
28 (ii) from any and all damages, liabilities, injuries, losses, costs and expenses
29 and any and all claims, demands, lawsuits, or causes of action and other
30 actions or proceedings of any kind or form, whether for personal injury, death
31 or property damage, arising out of or in connection with the permittee’s or the
32 permittee’s agents, employees, licensees, contractors, subcontractors, or
33 independent contractors, activities, or performance related to the WCF
34 contractors ((i) and (ii) collectively are “Actions”). If the Town becomes
35 aware of any such Actions , the Town shall promptly notify the permittee and
36 shall reasonably cooperate in the defense. It is expressly agreed that the Town
37 shall have the right to approve, which approval shall not be unreasonably
38 withheld, the legal counsel providing the Town’s defense, and the property
39 owner and/or permittee (as applicable) shall reimburse Town for any costs and
40 expenses directly and necessarily incurred by the Town in the course of the
41 defense. The indemnity obligation described in this subsection L8 shall

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1 survive the expiration or termination of the WCF permit, and shall continue to
2 be enforceable thereafter, subject to any applicable statute of limitation.

3 9. The permittee shall file with the Town, and shall maintain in good standing
4 throughout the term of the WCF permit, proof that the permittee has a policy
5 of commercial general liability insurance with minimum limits of liability of
6 not less than One Million Dollars (\$1,000,0000) per claim and One Million
7 Dollars (\$1,000,0000) aggregate, or such other limits as may be reasonably
8 acceptable to the Director. The Town shall be named as an additional insured
9 under such insurance policy.

10 10. If determined to be necessary by the Director in order to adequately protect
11 the Town, the permittee shall file with the Town, and maintain in good
12 standing throughout the term of the WCF permit, a performance bond or other
13 surety or another form of security acceptable to the Town Attorney to pay for
14 the removal of the WCF in the event that the use is abandoned; the WCF
15 permit expires, is revoked, or is otherwise terminated; or the permittee is
16 otherwise financially unable to pay for the removal of the WCF. If required,
17 the security shall be in the amount equal to one hundred fifteen percent
18 (115%) of the cost of physically removing the WCF and all related facilities
19 and equipment on the site.

20 11. The permittee shall make a good faith effort to minimize project-related
21 disruptions to adjacent properties. Without limiting the generality of the
22 preceding sentence, site improvement and installation work, including set-up,
23 loading, or unloading of materials or equipment, performed as part of the
24 installation of the approved this project are subject to the provisions of Section
25 5-8-6 of this code. Emergency maintenance and repairs are exempt from the
26 restricted hours. Violation of this condition may result in issuance of a Stop
27 Work Order or other appropriate enforcement action by the Town.

28 M. OPERATIONAL REGULATIONS:

29 1. All WCFs within the Town shall be designed, maintained, and operated at all
30 times to comply with the provisions of this policy, the terms and conditions of
31 the WCF permit, and the following additional requirements:

32 (a) Conditions of any license for the WCF issued by a local, state, or
33 federal agency, which has jurisdiction over the WCF;

34 (b) Rules, regulations, and standards of the state and federal governments,
35 including, but not limited to the FCC, and the Town, including, but not
36 limited to, this chapter and policy;

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1 (c) Easements, covenants, conditions, and/or restrictions on or applicable
2 to the underlying real property; and

3 (d) All other laws, codes, and regulations applicable to the WCF.

- 4 2. All WCFs shall be maintained in good working condition and to the visual
5 standards established at the time of approval over the life of the WCF permit.
6 The WCF and surrounding area shall remain free from trash, debris, litter,
7 graffiti, and other forms of vandalism. Any damage shall be repaired as soon
8 as is practicable, and in no instance more than 30 days from the time of
9 notification by the Town or after discovery by the permittee, weather
10 permitting. If landscaping was required by the WCF permit, the landscaping
11 must be maintained by the permittee.

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

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

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

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1 expiration of the current WCF permit, the director may reclassify such application as
2 a Class A WCF Permit pursuant to Section D3 of this policy. **No renewal is**
3 **required for a WCF Permit that was originally issued as a Class D – Minor**
4 **development permit.**

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

- 6 1. Any permittee who abandons or discontinues use of a WCF for a continuous
7 period of 180 days shall notify the Director by certified mail within 30 days
8 after the end of the 180 day period. If there are two or more permittees
9 collocated on a single WCF, this Section shall not apply until all permittees
10 cease using the WCF for a continuous period of 180 days.
- 11 2. If the Director believes a WCF has been abandoned or discontinued for a
12 continuous period of 180 days, the Director shall send a notice of proposed
13 abandonment or discontinuation to the permittee stating why the Town
14 believes the WCF to be abandoned or discontinued. Failure of the permittee to
15 reply to the Director in writing within 30 days after receiving, rejecting, or
16 returning the Town’s certified letter shall entitle the Director to make a
17 determination that the WCF is, in fact, abandoned or discontinued.
- 18 3. Upon declaration of the Director pursuant to Section P2 that the WCF is
19 abandoned or discontinued, the permittee or, if located on private property, the
20 owner of the affected real property, shall have 90 days from the date of the
21 declaration, weather permitting, or a further reasonable time as may be
22 approved by the Director, within which to complete one of the following
23 actions:
- 24 (a) Reactivate use of the WCF;
 - 25 (b) Transfer the rights to use the WCF to another entity (who shall be
26 subject to all the provisions of this policy and the permit) in the
27 manner provided in Section R of this policy; or
 - 28 (c) Remove the WCF and any supporting structures installed solely in
29 connection with the WCF, and restore the site to be consistent with the
30 then-existing surrounding area.
- 31 4. If the permittee disputes that the WCF has been abandoned or discontinued for
32 a continuous period of 180 days, the Town Council shall hold a public hearing
33 to consider such matter and the evidence related thereto. Except where
34 inconsistent with the terms of this policy, any public hearing conducted by the
35 Town Council pursuant to this Section P shall be governed by chapter 19 of
36 title 1 of this code. If the evidence supports such decision by a preponderance

1 of the evidence, the Town Council may declare that the WCF is deemed
2 abandoned. If such a declaration is made, the Director shall provide notice of
3 such finding to the permittee and to the wireless provider last known to use
4 the WCF and, if applicable, to the owner of the affected private real property,
5 requiring such parties to complete one of the following actions within 30 days
6 from the date of the notice:

7 (a) Reactivate use of the WCF, subject to the terms and conditions of the
8 applicable WCF permit;

9 (b) Transfer the rights to use the WCF to another entity (who shall be
10 subject to all the provisions of this policy and the permit) in the
11 manner provided in Section R of this policy; or

12 (c) Remove the WCF and any supporting structures installed solely in
13 connection with the WCF, and restore the site to be consistent with the
14 then-existing surrounding area.

15 5. If there is no reactivation, transfer, or removal as set forth in subsection P4,
16 the Town may thereafter remove the abandoned WCF, repair any and all
17 damages to the premises caused by such removal, and otherwise restore the
18 premises as is appropriate to be in compliance with applicable codes. If the
19 Town removes the WCF, the Town may, but shall not be required to, store the
20 removed WCF or any part thereof, and may use it, sell it, or dispose of it in
21 any manner deemed by the Town to be appropriate. The entity that abandoned
22 the WCF, or its successor in interest, and if on private property, the private
23 property owner, shall be jointly and severally liable for the entire cost of such
24 removal, repair, restoration, and storage and shall remit payment to the Town
25 promptly after demand therefor is made. In addition, the Town Council, at its
26 option, may utilize any financial security required in conjunction with
27 granting the WCF permit to recover such costs.

28 6. Until the cost of removal, repair, restoration, and storage is paid in full, a lien
29 shall be placed on the WCF, and any related personal property and any private
30 real property on which the WCF was located for the full amount of the cost of
31 removal, repair, restoration, and storage. The Town Clerk shall cause a notice
32 of the Town's lien under this subsection P6 to be recorded with the Summit
33 County, Colorado Clerk and Recorder. The Town's lien provided by this
34 subsection may be foreclosed in the manner provided by Colorado law for the
35 foreclosure of a mortgage.

36 7. If an existing utility pole that hosts a WCF must be replaced, the permittee
37 shall, at no cost to the Town and within 30 days after the installation of the

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1 replacement pole, either relocate its WCF in the same configuration on the
2 replacement pole, or remove the prior-existing WCF rather than relocate it,
3 notify the Director of the removal, and surrender its WCF permit for
4 cancellation by the Director.

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

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

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

27 Section 2-Section 3. Except as specifically amended hereby, the Breckenridge Town
28 Code, and the various secondary codes adopted by reference therein, shall continue in full force
29 and effect.

30
31 Section 3-Section 4. The Town Council hereby finds, determines and declares that this
32 ordinance is necessary and proper to provide for the safety, preserve the health, promote the
33 prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and
34 the inhabitants thereof.

35
36 Section 4-Section 5. The Town Council hereby finds, determines and declares that it has
37 the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control
38 Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S.
39 (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal

WIRELESS COMMUNICATIONS FACILITIES ORDINANCE

1 police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) Section
2 31-15-702, C.R.S. (concerning municipal streets and alleys); (vi) Section 38-5.5-106, C.R.S.
3 (concerning consent necessary to use of streets); (vii) the authority granted to home rule
4 municipalities by Article XX of the Colorado Constitution; (viii) the powers contained in the
5 Breckenridge Town Charter; (ix) 47 U.S.C. §332(c)(7); and (x) 47 U.S.C. §1455(a).

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

9
10 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
11 PUBLISHED IN FULL this ____ day of _____, 2019. A Public Hearing shall be held at the
12 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
13 _____, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
14 Town.
15
16

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich
Town Clerk



TOWN OF BRECKENRIDGE TOWN COUNCIL

August 13 Town Council Meeting



Welcome to the newsletter summarizing The Town of Breckenridge's latest Council Meeting. Our goal is to provide our citizens with thorough and reliable information regarding Council decisions. We welcome any feedback you may have and hope to see you at the meetings.

Managers Report

Fiber9600

- The remaining construction work for 2019 Phase 1a project includes concrete work in Wellington and Lincoln Park, Xcel joint trenching/restoration of Wellington Road/French Street, highway 9 crossings at Huron Rd/Airport Rd, the hut site build, and the fiber cable pulling and splicing.

- A Town subgroup, guided by the Allo design team, recommends that the 2020 build continue to focus on “lighting up” residents/businesses in the downtown core and along the feeder route constructed in 2019.
- A comprehensive 5 year fiber plan is being developed for presentation to the Council at the October retreat. This plan would provide a recommended construction sequence and budget for providing fiber service to the remaining areas of the town.
- Subgroup discussed drops of fiber to the home. Staff is waiting for more information before having a larger discussion about the drops. Will maintain the status quo of the Town paying for drops and will come back later in 2020 to have discussion about them.
- **2020 plan is to include public wifi in the core of Town that will also hopefully reduce the load on the cellular network and increase phone capacity. Vail has seen an improvement in cell service after instituting public wifi.**
- Town will be hosting an informational meeting with a panel of experts to talk about cellular service, fiber, and the future of technology in Breckenridge in mid-September. The goal is create a foundation of knowledge about fiber technology and why the Town is pursuing it.

Transit

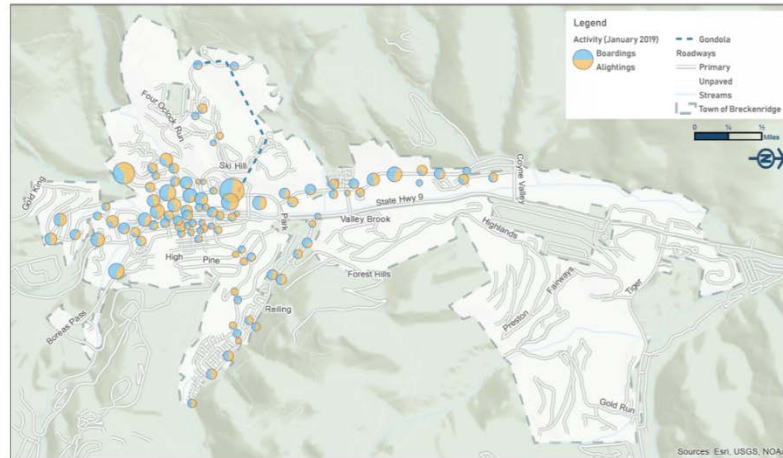
- July 2019 ridership is up over July 2018 with 17,887 passengers. Year to date is up 18.5% compared to 2018. Trolley route is up 71.4% over July 2018. The Free Ride has consistently achieved double digit monthly growth for over the past year.

Other Presentations

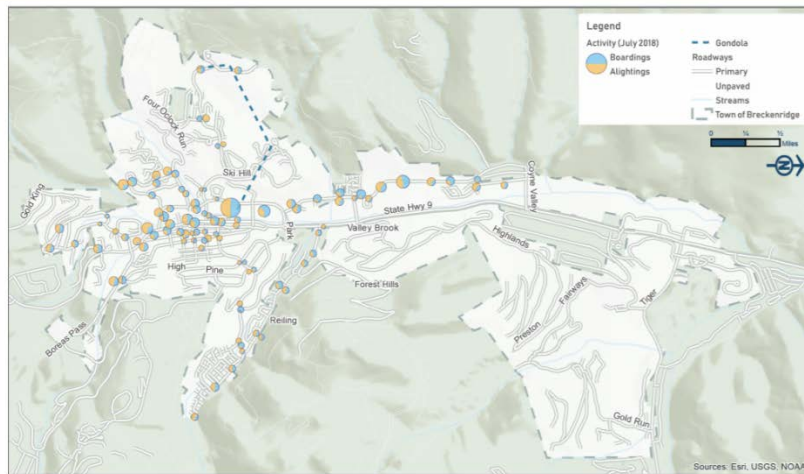
Transit Master Plan Update

- Consultants were on hand to present initial findings to Town Council regarding the Transit survey. The consultants and Town staff will work on developing a draft of the master plan for Town Council's review. See several key findings below.

Where are people getting on and off the bus in the winter?



Where are people getting on and off the bus in the summer?

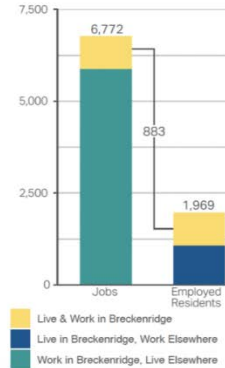


Commute Trends

- 45% of employed residents work in Breck
- Existing transit mode share is high
- Residents commute less than those of Summit County

	Drive Alone	Carpool	Transit	Bike/Other	Walk	Work at Home
Town of Breckenridge	44%	2%	16%	1%	28%	10%
Summit County	79%	4%	7%	8%	2%	N/A

Source: 2017 American Community Survey 5-Year Estimates



19

5

What encourages more transit use?

Frequency

Direct access

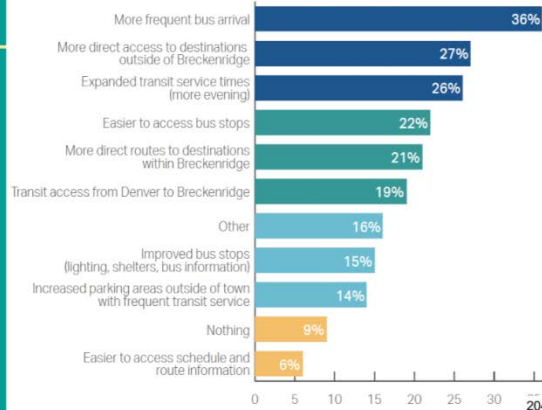
- Nearby residents and frequent visitors identified most

Expanded service time

- Employees & frequent riders identified

Improved bus stops

- Visitors identified more



10

Solar Production Update

- In total, the Town has invested \$1.8M in solar assets, and is realizing a blended rate of return of 8.23%. This compares favorably with our investment market rate of return, which is currently 3-4%. **The Town is offsetting 1.1M kilowatt hours per year, the equivalent of 778 metric tons of CO2 emissions.**
- The high rates of return that the Town is realizing on solar assets are due in large part to the incentives offered by Xcel at the time of acquisition. These incentives are no longer being offered. The Town was fortunate to have been able to get in early on these programs with the

help of partners RSBF and CEC. TOB continues to look for new opportunities to participate in solar energy programs.

Colorado Communities for Climate Action Policy Statement

- Staff recommended the Council approve the Colorado Communities for Climate Action 2019-2020 Policy Statement.
- The following general principles guide the specific policies that Colorado Communities for Climate Action advocates for:
 - Supports collaboration between state and federal government agencies and Colorado's local governments to advance local climate protection.
 - Supports state and federal programs to reduce carbon pollution, including adequate and ongoing funding of those programs.
 - Supports analyses, financial incentives, and enabling policies for the development and deployment of clean energy technologies.
 - Supports locally driven and designed programs to support communities impacted by the clean energy transformation.
 - Supports prioritizing policies that put people at the center of decision-making, do not exacerbate or create disparities in growing the green economy, and enhance equitable outcomes for all.

U.S. Forest Service Referral: Peak 7 Chairlift Proposal

- Staff was able to participate in a site visit to the proposed lift location on Wednesday, August 7th, and have assembled a set of preliminary concerns and comments in a draft letter to the USFS.
- "Despite this project being included as an amendment to the BSR Master Development Plan in March, Town was not afforded the benefit of advance notice of this proposal... USFS website only provides 2013 BSR Master Development plan, further hindering our ability to stay informed."
- "Because the location of this lift is uphill of Cucumber Gulch and the bottom terminal is surrounded by wetlands, this project is particularly important to us, and we want the opportunity to ensure adequate protection of those resources."
- **Main Town concerns:** the impact of the groundwater in the Cucumber Gulch wetlands below the new lift, concern about erosion and sediment from the road and drainage management, forest disturbance and removal of older trees, & concern with summer usage and wildlife travel.
- USFS: "We take your comments very seriously & into consideration. We feel that we have an understanding of the impacts but we always want to hear other potential issues we may have missed."
- **USFS will extend comment period until Sept 1.** [Comment here.](#)

- John Buhler: "Thank you for coming to the site visit. I am committed to ensuring that you all are kept up to speed on this project. It is important to us that you all feel comfortable with this process. This will really help the experience of Peak 6/7 and to disperse people."
- Because of the extended comment period, council will talk to constituents, potentially revise the letter, and review at the next meeting before submitting. Staff will work on receiving answers to the questions concerning wetlands, drainage, and erosion.
- "It's important for everyone to get out there and see the site before the project. Projects like these can be done without negatively impacting the environment but need to be monitored. Then, we can better understand the impacts from seeing it before/after," Council member Kelly Owens.

Regular Council Meeting

Legislative Review

- **Historic District Design Standards Modification (Second Reading):** After presenting the stakeholder group recommendations for the Handbook of Design Standards to Town Council on June 25th, staff proceeded to draft the proposed changes. The proposed language in the ordinances would both end the temporary moratorium, and make the changes to the Design Standards become effective immediately. The emergency ordinance action would end the moratorium some six weeks prior to the end date of the six month time frame enacted in the original ordinance (September 26th). **(Passed 7-0)**
- **Policy 4 Mass Modification (Second Reading):** Additional above ground square footage may be allowed over and above the 23 intensity/density calculation based on the listed formulas for accessory uses 24 such as garages, meeting rooms, lobbies, hallways, recreational areas, etc. **(Passed 7-0)**
- **Sales Tax Standard Definitions (Second Reading):** In the Town's continued effort to be part of the larger state-wide conversation on sales tax simplification with home rule municipalities, staff is recommending changes to the sales tax section of the municipal code for adoption of the updated standardized definitions. The standardized definitions project is a Colorado Municipal League (CML) initiative that is a result of a request from the business community and the General Assembly. **(Passed 7-0)**
- **Electric Scooter Rental Business Ordinance (Second Reading):** While electric scooters (e-scooters) are being used in many communities as both a last mile solution and recreation amenity, we know from those experiences that scooters can be difficult to operate safely in areas crowded with vehicles and pedestrians. As a result of these concerns, staff has heard from

Council a desire to prohibit e-scooter rental businesses in Town. The attached ordinance, if approved, would prohibit the issuance of a BOLT license to an operator of an electric scooter rental business. **(Passed 7-0)**

- **Minimum Tobacco Product Age Ordinance (First Reading):** This ordinance raises the consumption age of tobacco and nicotine products to 21 years old in the Town of Breckenridge. **(Passed 7-0)**
- **Retail Tobacco Business Licensing Ordinance (First Reading):** This ordinance will allow the Town Clerk to license all retailers selling tobacco products, including all nicotine products, smoking devices, and any accessory used for the consumption of tobacco products. **(Passed 7-0)**.
- **Resolution to Approve the Nicotine Tax IGA with Summit County (Resolution):** A county-wide tax and coordinated efforts between all jurisdictions will decrease the use of nicotine and tobacco products in our community. The Resolution will allow the Mayor to sign an Intergovernmental Agreement (IGA) to govern the collaborate efforts associated with the implementation of the tax. **(Passed 7-0)**
 - Discussion about whether the tax should apply to cigar products. Council would like to talk to the BOCC about specialty cigar products. Some members feel that this is outside of the goal to reduce nicotine use in teens. Also questions about whether this prohibits those under 21 from working at places that sell the nicotine/tobacco products. "For me this is really about stopping kids from vaping and smoking, not really penalizing adults who can make their own decisions," Mayor Eric Mamula.
- **Resolution Approving a Revocation of Declaration (Resolution):** As a result of the recent acquisition of the Breckenridge Professional Building, the Town now owns three of the four properties that are subject to a document recorded back in 1990 by the original developer. The Declaration is outdated, obsolete, and no longer necessary or appropriate. **(Passed 7-0)**