



**TOWN OF
BRECKENRIDGE**

Town Council Regular Meeting
Tuesday, March 10, 2020, 7:00 PM
Council Chambers
150 Ski Hill Road
Breckenridge, Colorado

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF MINUTES

A. TOWN COUNCIL MINUTES - FEBRUARY 25, 2020

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS TO COUNCIL

- A. CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)
- B. BRECKENRIDGE TOURISM OFFICE UPDATE

V. CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2020 - PUBLIC HEARINGS

- 1. *COUNCIL BILL NO. 7, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE BY AMENDING THE INTERNATIONAL RESIDENTIAL CODE, 2018 EDITION, AND THE INTERNATIONAL ENERGY CONSERVATION CODE, 2018 EDITION*
- 2. *COUNCIL BILL NO. 8, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," CONCERNING ACCESSORY DWELLING UNITS*
- 3. *COUNCIL BILL NO. 9, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING DEVELOPMENT AGREEMENTS*

VI. NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2020

- 1. *COUNCIL BILL NO. 10, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," BY AMENDING POLICY 24 (ABSOLUTE) AND POLICY 24 (RELATIVE) CONCERNING HOUSING*
- 2. *COUNCIL BILL NO. 11, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," BY AMENDING POLICY 24 (RELATIVE) CONCERNING THE SOCIAL COMMUNITY AND POLICY 25*

CONCERNING TRANSIT

3. *COUNCIL BILL NO. 12, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 4 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE KNOWN AS THE "BRECKENRIDGE PUBLIC ACCOMMODATION TAX" ORDINANCE*

B. RESOLUTIONS, SERIES 2020

1. *RESOLUTION NO. 8, SERIES 2020 - A RESOLUTION APPROVING A COLLECTION AGREEMENT WITH THE USDA, FOREST SERVICE, WHITE RIVER NATIONAL FOREST (Indiana Creek Aquatic Organism Passage and Restoration Project)*
2. *RESOLUTION NO. 9, SERIES 2020 - A RESOLUTION CONCERNING THE ACQUISITION OF TWO HOUSING UNITS IN THE 8 TRAILS AT BERLIN PLACER TOWNHOMES*

VII. PLANNING MATTERS

- A. PLANNING COMMISSION DECISIONS
- B. EAST PEAK 8 HOTEL AND CUCUMBER GULCH PRESERVE PREVENTATIVE MAINTENANCE AREA (PMA) VARIANCE DE NOVO HEARING DECISION

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

- A. CAST/MMC (MAYOR MAMULA)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BERGERON)
- C. BRECKENRIDGE TOURISM OFFICE (MS. WOLFE)
- D. BRECKENRIDGE HERITAGE ALLIANCE (MS. OWENS)
- E. WATER TASK FORCE (MR. GALLAGHER)
- F. BRECKENRIDGE CREATIVE ARTS (MR. GALLAGHER)
- G. BRECKENRIDGE EVENTS COMMITTEE (MS. GIGLIELLO)
- H. MT 2030 (MS. WOLFE)

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

- A. SCHEDULED MEETINGS FOR MARCH AND APRIL

XII. ADJOURNMENT

I) CALL TO ORDER, ROLL CALL

Mayor Mamula called the meeting of February 25, 2020 to order at 7:00pm. The following members answered roll call: Mr. Bergeron, Ms. Gigliello, Ms. Owens, Mr. Gallagher, Mr. Carleton, Ms. Wolfe and Mayor Mamula.

II) APPROVAL OF MINUTES

A) TOWN COUNCIL MINUTES – FEBRUARY 11, 2020

Ms. Gigliello requested one change to the meeting minutes of February 11, 2020, which was to clarify that regarding the slash program she wanted specifically to highlight absentee homeowners and those renting homes who might not otherwise know about the program. Mayor Mamula declared the minutes would stand approved as amended.

III) APPROVAL OF AGENDA

Mr. Holman stated there were no changes to the agendas. Mayor Mamula declared the agenda approved as presented.

IV) COMMUNICATIONS TO COUNCIL

A) CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

Mayor Mamula opened Citizen's Comment.
There were no comments and Citizen's Comment was closed.

B) BRECKENRIDGE SKI RESORT UPDATE

Mr. John Buhler, COO of Breckenridge Ski Resort, stated this has been the snowiest February on record. He further stated that April 19 is the last day of all mountains open and they will start construction on the new lift on Peak 7 this spring. Mr. Buhler stated spring events will be centered around Peak 8, and the goal is to end on Memorial Day weekend for skiing. Mr. Buhler stated there will be spring events including a pond skim, and the ski resort is excited about MT 2030, and is working with the Town on the parking structure. Also, the ski resort's Epic Promise progress report is on the website and this year the resort has sent 39 tons of material to compost instead of the landfill.

V) CONTINUED BUSINESS

A) SECOND READING OF COUNCIL BILLS, SERIES 2020 - PUBLIC HEARINGS

1) COUNCIL BILL NO. 2, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH SAINT JOHN THE BAPTIST EPISCOPAL CHURCH OF BRECKENRIDGE, A COLORADO NONPROFIT CORPORATION (100 South French Street)

Mayor Mamula read the title into the minutes. Mr. Berry requested a continuance for the second reading until March 10, 2020, as a result of the conversation at the afternoon work session.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to continue COUNCIL BILL NO. 2, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH SAINT JOHN THE BAPTIST EPISCOPAL CHURCH OF BRECKENRIDGE, A COLORADO NONPROFIT CORPORATION (100 South French Street) to March 24, 2020. Mr. Carleton seconded the motion.

The motion passed 7-0.

2) COUNCIL BILL NO. 6, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH 203 BRIAR ROSE LLC, A COLORADO LIMITED LIABILITY COMPANY (203 Briar Rose Lane)

Mayor Mamula read the title into the minutes. Mr. Berry stated this ordinance has been revised as a result of the conversation at the Work Session, regarding the waiver of fees and some other section revisions. He further stated staff recommends approval in the form handed out at the meeting.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 6, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH 203 BRIAR ROSE LLC, A COLORADO LIMITED LIABILITY COMPANY (203 Briar Rose Lane) in the form handed out at the meeting. Ms. Gigliello seconded the motion.

The motion passed 7-0.

VI) NEW BUSINESS

A) FIRST READING OF COUNCIL BILLS, SERIES 2020

- 1) COUNCIL BILL NO. 7, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE BY AMENDING THE INTERNATIONAL RESIDENTIAL CODE, 2018 EDITION, AND THE INTERNATIONAL ENERGY CONSERVATION CODE, 2018 EDITION
Mayor Mamula read the title into the minutes. Mr. Eli Johnston stated this ordinance would change the Sustainable Energy Code and the Town's building code to include the Sustainable Energy Code.

Mayor Mamula opened the public hearing.

Mr. Neil Groundwater, a Breckenridge resident, stated he supports the Town's climate goals and additional EV charging stations in Town.

Mr. Blake Nudell, representing Summit County Builders Association, stated the Association does not support the new code, and would like more time to do more studies about its impacts. He further stated they believe the increase in cost will be 12-15% or higher for builders and they are concerned about having enough people available to do certifications before finishing the projects.

Ms. Tiernan Spencer, a Breckenridge homeowner, stated adoption of this code is important, and as the President of the Blue 52 Board of Directors, this will keep energy costs down in a more sustainable manner. He further stated we feel it's important to follow through with the Town's Sustainability Action Plan.

Mr. John Gregory, a window shop owner in Town, is concerned the new code is overdone, specifically for windows, where half of the product line will be taken out of circulation completely. He further stated the windows we are looking at will need lower ratings even than what we see in Eagle County and some windows may not even be able to be used anymore. He stated he represents Anderson windows and these windows may not be available under the new code. He also stated his concern is the dramatic price increase and the reduction of product available for use.

Mr. Matt Jansing, from Kentucky, stated there are four compliance paths in this new code, and some are performance-based, which allows for more flexibility. He further stated it is important to have a rater from the beginning and there is concern about not having enough raters in the county but there are some being trained right now, including himself and his coworker.

Mr. Michael Petzah, representing Deeper Green in Frisco, stated his staff are going through the rating training and there will be enough raters by July to handle the homes being built. He also stated that while the costs will be higher, the homes will be built better, and our homes are currently using more energy than homes on the Front Range.

Ms. Jen Shank, representing High Country Conservation Center, thanked the Council for adopting the Sustainability Action Plan. She further stated that in order to meet that goal we need to be net 0 by the year 2030. She stated HCCC has met with community groups, including the Builder's Association, and we have listened and done a cost-benefit analysis and have worked hard on this, including offering performance paths for different ways to do this. She also stated no one spoke up in opposition during the meetings, we had 70 builders in the room 2 weeks ago and didn't see many concerns. She stated HCCC has

trainings scheduled and we will be there to support builders and architects.

Ms. Angela Fisher, a Breckenridge resident, stated she is in favor of sustainable building codes, and as a sustainable engineer, LEED and Energy Star are the standard now. She further stated she is proud to live here and these steps are necessary if we want to be sustainable and there is a current climate crisis.

Mr. Cody Jensen, a local home energy expert who works at HCCC, stated he thinks we are ready for these code changes and he is eager to work with builders and architects as we start down this path, and can help them in the process. He further stated these codes are the future of Summit County.

Ms. Kasey Provorse, a Summit County resident, stated her home is built Energy Star Certified, and she is surprised through this discussion that there have been homes that haven't been built to this standard even more recently. She also stated home affordability is important, and she is the executive director of a company that supports bringing raters to Summit County with grants. She stated her company helps support partnerships to bring raters to this community and adopting this code is a key step in demonstrating commitment to the Climate Action Plan.

Mr. Mark Hogan, an architect in Summit County, stated he works with the builders and he has been on the committees that have talked about this. He stated he believes this code will increase the construction cost for new construction 5-10%, and it will impact workforce housing costs. He further stated other counties are having some problems with some of these requirements. Mr. Hogan stated existing buildings could make a bigger impact and save the most energy with changes. He stated the grace period he has talked about with Summit County is from July 2020-January 2021 and he would urge the Town to follow that same schedule. Also, workforce housing is something the Town is concerned about, and this will make it even more expensive to build, so he would recommend exempting workforce housing from this code.

Ms. Elena Scott, a landscape engineer and a volunteer for HCCC, stated the original sustainability checklist is now part of code, and she thanked the leadership at HC3 for keeping this going, and for bringing ideas for new construction and remodels.

There were no additional public comments and the public hearing was closed.

Ms. Wolfe stated we are now building on the McCain property and have set ambitious sustainability goals for that project. She further stated the project is totally offset by solar energy and is net zero, and she is prepared to support this ordinance.

Mr. Bergeron stated he moved into a home that wasn't very efficient and paid 10% to retrofit it and he is going to support this as well.

Ms. Gigliello stated she agrees with the ordinance and would like to see incentives to bring older homes up to code as well.

Mayor Mamula thanked those who came for this first reading, and he asked about including a grace period to match Summit County's. Staff stated they will look into it and pay attention to what Summit County is doing. He also stated that he would like to see a more accurate calculation of what the actual monetary impact is going to be, and understand the insulation problems in other counties, and what kind of grant money might be available to retrofit older homes.

Mr. Bergeron moved to approve COUNCIL BILL NO. 7, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE BY AMENDING THE INTERNATIONAL RESIDENTIAL CODE, 2018 EDITION, AND THE INTERNATIONAL ENERGY CONSERVATION CODE, 2018 EDITION. Ms. Wolfe seconded the motion.

The motion passed 7-0.

- 2) COUNCIL BILL NO. 8, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN

OF BRECKENRIDGE DEVELOPMENT CODE,” CONCERNING ACCESSORY DWELLING UNITS

Mayor Mamula read the title into the minutes. Mr. Berry stated this ordinance is defined in the memo in the packet and is regarding accessory dwelling units in Town Code. Mayor Mamula is still worried about enforcement of these units.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 8, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE DEVELOPMENT CODE,” CONCERNING ACCESSORY DWELLING UNITS. Ms. Gigliello seconded the motion.

The motion passed 7-0.

- 3) COUNCIL BILL NO. 9, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING DEVELOPMENT AGREEMENTS

Mayor Mamula read the title into the minutes. Mr. Truckey stated this ordinance would change the development agreement ordinance as defined by the memo in the packet.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 9, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING DEVELOPMENT AGREEMENTS. Mr. Carleton seconded the motion.

The motion passed 7-0.

- B) RESOLUTIONS, SERIES 2020

- 1) RESOLUTION NO. 5, SERIES 2020 - A RESOLUTION APPROVING A COMMUNITY SOLAR SUBSCRIPTION AGREEMENT WITH MOUNTAIN COMMUNITY SOLAR 1, LLC

Mayor Mamula read the title into the minutes. Mr. Berry stated this resolution would approve a community solar subscription agreement for the Town of Breckenridge

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 2, SERIES 2020 - A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2019 TOWN BUDGET. Ms. Wolfe seconded the motion.

The motion passed 7-0.

- 2) RESOLUTION NO. 6, SERIES 2020 - A RESOLUTION APPROVING A PRE-DISASTER MITIGATION GRANT CONTRACT FOR THE TOWN’S GOOSE PASTURE TARN DAM PROJECT

Mayor Mamula read the title into the minutes. Mr. Holman stated this resolution would allow the Town Manager to sign a federal grant document to receive a 10 million dollar award.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 6, SERIES 2020 - A RESOLUTION APPROVING A PRE-DISASTER MITIGATION GRANT CONTRACT FOR THE TOWN’S GOOSE PASTURE TARN DAM PROJECT. Mr. Gallagher seconded the motion.

The motion passed 7-0.

- 3) RESOLUTION NO. 7, SERIES 2020 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND SUMMIT COUNTY GOVERNMENT CONCERNING THE PROJECT THOR MIDDLE MILE BROADBAND NETWORK
Mayor Mamula read the title into the minutes. Ms. Haynes stated this resolution would allow the Town Manager to enter into an IGA at the "Meet Me Center" with Summit County and it specifies the expectation of services, among other things.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 7, SERIES 2020 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND SUMMIT COUNTY GOVERNMENT CONCERNING THE PROJECT THOR MIDDLE MILE BROADBAND NETWORK. Mr. Gallagher seconded the motion.

The motion passed 7-0.

- C) OTHER

VII) PLANNING MATTERS

- A) PLANNING COMMISSION DECISIONS
Planning Commission Decisions were approved as presented.

- B) EAST PEAK 8 HOTEL AND CUCUMBER GULCH PRESERVE PREVENTATIVE MAINTENANCE AREA (PMA) VARIANCE DE NOVO HEARING
Mayor Mamula read the project information into record at 8:00pm.

Mr. Chris Kulick stated notice was adequately given about this project and the applicant is represented at the hearing today.

Mr. Kulick read the hearing rules into record.

Mayor Mamula stated the Town Attorney will be available to answer questions. Mr. Kulick introduced the application. He reviewed the location of the project, public access routes, traffic routes, height of the project, view corridors, building forms, landscaping. He also talked about calculating the density of the private club, a traffic study, and parking and traffic impacts.

The applicant did not have any questions for Mr. Kulick.

Mr. Bergeron asked about the 30% occupancy statistics cited in the report, and Mr. Kulick stated that is an average over the year, with a 60% utilization at peak times for the club memberships, and 100% occupancy in rooms. He also asked about comparable clubs in Eagle County and Pitkin County, and Mr. Kulick stated staff tried to look at everything and figure out what factors in to this club model. Mr. Bergerson asked what is the tipping point for increased lanes on Ski Hill Road and Park Avenue? Ms. Shannon Smith, Town Engineer, stated the mechanism for additional lanes would be through a CDOT permit, and the applicant would pay for those improvements. Ms. Gigliello asked what would require the applicant to pay for the improvements, and Mr. Kulick stated staff left the language of the agreement broad for the purpose of requiring some of these things if we see them as concerns, even if CDOT does not. Ms. Wolfe asked about the traffic study, and the number of daily trips of vehicles and shuttles required. Mr. Bergeron asked about where the shuttles would go. Ms. Wolfe asked about the number of spaces and how they are used. Mr. Kulick stated they would have different purposes, similar to the other projects in that area. Ms. Wolfe discussed her concerns about people driving up to try to find spaces even if they aren't available. Mr. Carleton stated he is concerned about daily use of the amenities and the traffic counts, and Ms. Smith stated there is a growth multiplier on the traffic data annually.

Ms. Owens asked about the traffic mitigation recommendations. Ms. Smith stated we can

only really control what we have control over (signal timing), and while CDOT is still looking at the entire corridor, history doesn't show this as something we should count on. Mr. Gallagher stated he wants us to be careful about not thinking there is a viable solution for turn lanes, etc. and that it is probably more unlikely CDOT will do major work. Ms. Smith stated that adding the club wasn't the tipping point for the traffic study, it was the entire development that impacted the traffic study.

Ms. Wolfe asked about the points and the amenity space. Mr. Kulick stated this project will have the most amenities and the biggest variety of amenities compared to other projects in the area, and the code incentivizes amenities. Mr. Kulick clarified that the current precedent is to reward variety and size of amenities with positive points. Mr. Carleton asked about the precedent to calculate occupancy and club use, which changes commercial square footage.

Mayor Mamula asked about the amenity space for calculating commercial square footage for the club. He also asked about room size and family occupancy. Ms. Owens asked about where the traffic count will take place. Mr. Kulick stated it will take place at the entrance to the garage, and the garage will be all valet-parked.

Ms. Elena Scott, representing the applicant, thanked the staff and the Planning Commission for their work on this project. She presented images representing the project, pointing out view corridors, plaza connections and pedestrian access areas, among other things. Ms. Scott showed the public plaza area by the hotel, and pointed out BOEC access at the lobby level for their programs. She also spoke about the drainage ponds.

Mr. Curtis Rowe, a traffic engineer, stated his firm prepared the traffic study and the past one as well. He noted that the club model doesn't generate a significant amount of additional traffic to the project as a whole. He presented exhibits with the recommended improvements to improve traffic operations. Mr. Ricardo Dunin, the applicant, stated he believes many of the club members will already be Breckenridge loyalists, and that will allow them to have a reservation system for parking. He also stated they will limit use for families, and they would be willing to do the traffic improvements as part of this project and as recommended by the traffic engineers. He also thanked Council for its consideration, and stated he believes Breckenridge can use an upscale facility like this one.

Mr. Bergeron asked if there was a photo from Ski Hill Road looking east, and Ms. Scott stated she did not have one. Ms. Wolfe asked about striping the roads in the winter and pointed out that you can't see it with snow on the roads.

Ms. Wolfe asked about the number of employees necessary for the club in addition to the hotel. She also asked where they would park. Mr. Dunin stated they will be shuttled from a parking lot somewhere else. She also asked about much memberships will cost and Mr. Dunin stated they will be \$50,000-\$150,000 to buy in with most likely an additional yearly fee.

Ms. Owens asked if there is a way to ensure we are not diverting groundwater away from Cucumber Gulch. The applicant stated the drainage unit will be at most 10' x 8' in size, which should be less of a footprint than what we are taking up now.

Ms. Gigliello asked about the app to reserve parking, and Mr. Dunin stated there may be better technology in 4-5 years when he has the app working.

Ms. Wolfe asked about why the club wasn't brought up at the public open houses. Mr. Dunin stated it was always in the plans, and he didn't think it was a big deal.

Mayor Mamula asked about the shadows on Ski Hill Road, and Mr. Kulick showed the shadow study. Ms. Scott stated the hotel would need to maintain the sidewalk.

Ms. Gigliello asked about the 70 parking spots referenced by the applicant. Staff stated it's not part of a development agreement.

Mayor Mamula opened public comments. The comments in favor went first.

Mr. Daniel Teodoru, legal counsel of the One Ski Hill Place board, stated he is speaking on behalf of the HOA board in that capacity. He further stated that when the project started they had many concerns and there was a lack of communication, but within the last 6 months there have been a lot of concessions made to work with the HOA and our key concerns have been answered. Mr. Teodoru stated they have been able to reduce the issues and they support the project as it stands with the modifications discussed. He also stated he would like to stress for the record that the 47-foot minimum separation view corridor is important to us and we are focused on traffic and are glad the traffic study was done. He also stated the memberships should be per household and the focus needs to remain on overnight guests and overnight parking, and we like the covenant and staging of the memberships. Mr. Teodoru stated that he hopes that we continue to work with the applicant, such as with an easement behind the building. He thanked everyone for their work on this.

Mr. Graham Frank, representing Breckenridge Grand Vacations, stated we support the project, but would like to clarify some things: The club was included in the plans from the very beginning when BGV was involved, and there are no memberships at BGV, only fee real estate ownership interest. He further stated that if you have ownership, you can use the amenities.

Mr. Scott Lyson, the General Manager of Residence Inn, stated he supports this project because hotels are very different from timeshares. He further stated his caution is about parking and traffic, and encouraged the applicant not to rely on traffic studies. He also stated the guest will be dissatisfied if they arrive with multiple vehicles and you can't provide a good product.

Then the comments against the project followed.

Mr. Neil Groundwater, a Breckenridge resident, stated he is concerned about the view of Ski Hill Road, restaurant parking, the "Barnes Dance" crossing at Main Street, and the left turn lane at Ski Hill Road. He stated he lives near the Nordic Center and has dealt with speeding and traffic on Ski Hill Road. He also stated uphill ski traffic won't flow when there are accidents, and the current properties contribute to congestion. He stated emergency services get stuck in traffic, so he is asking Council to vote against the private club and the additional traffic it may cause.

Mr. Paul Weller, the HOA President of Christie Heights, asked Council if they had recently driven Ski Hill Road, and then stated the quality of life for those on Ski Hill is decreasing, and the visitor experience isn't good when they are waiting for traffic on that road. He is also concerned emergency services can't get through and is worried about the overall impact on Ski Hill Road of this whole project. He stated he would like to be confident that traffic won't be impacted by this project.

Mr. Stephen Kneller, Board member of Crystal Peak Lodge, stated he wants to express concern about congestion and traffic on Ski Hill Road. He stated that at Crystal Peak the Lodge owners were promised parking for accessing the hill, but that didn't necessarily happen. He stated he also has concerns about the climate action plan and allowing excessive snow melt for that building, as that goes against the climate action plan.

Ms. Lindsey Stapay, a Breckenridge resident, stated she is concerned about the size of the project and how people will move within the space. She stated she is particularly concerned about the pedestrian connections within that area.

Mr. Mike Humphrey, a Breckenridge resident, stated he agrees with the others who oppose the project.

Mr. Dan Corwin, a Breckenridge Resident, stated he feels there are still a lot of questions we don't have answers to. He also stated he doesn't think the other properties provide transportation for employees, only guests. Mr. Corwin stated the club looks like it's adding density to that area because the guests are going there and using the space.

Ms. Heather Humphrey, a Breckenridge resident, stated she agrees with neighbors who oppose this project. She stated parking is limited on Peak 8 and suggested some other ideas to help relieve the parking situation. She stated she is also concerned about the skier experience.

Mr. Robert Shelley, a homeowner at One Ski Hill Place, stated it's a large project, and he is concerned about Ski Hill Road under winter conditions, and while he has attended meetings and written letters about this project, he just wants to make sure there's a mechanism for the future when things change and there is even more traffic on that road.

Mr. Chris John, a Breckenridge resident, stated he is concerned about the impact on traffic that comes specifically from the club and stated he is against the increased traffic that will come from the club. He clarified that he's not opposed to the project, just the club.

With no additional public comments, the public hearing was closed.

Mr. Bergeron asked if there was a mention of a club in any past agreement for this property. Council agreed they hadn't heard about it before the issue was raised in the fall of 2019. Staff also stated they first learned about the club in October.

Ms. Wolfe stated she is still concerned about the increased number of cars on Ski Hill Road and she remembers when the Town and the Ski Area agreed on the gondola as a traffic mitigation method. Mayor Mamula stated the Master Plan addresses this and the reason for limiting the parking spaces at the base of Peak 8 was to limit the cars. He further stated it's difficult to believe that adding the club memberships isn't going to add extra cars. Mr. Carleton stated that is also why the Town has increased parking at the gondola, to decrease cars on Ski Hill Road. Mr. Bergeron stated we have reached a tipping point in that area where it's over programmed and too congested and he's worried about the impact on the people who live on Ski Hill Road. He stated it would be nice to have a four-star hotel, but the club could be the "straw that breaks the camel's back". Ms. Gigliello stated it seems we need to do the traffic recommendations and try to work with CDOT. She also stated that with some of these membership workarounds, it's going to fall on staff's shoulders to make sure things are happening in the right way, and it's too much to ask for us to enforce these things. She also stated it sounds loud and clear that our community doesn't want the membership. Mr. Carlton stated when we first looked at this project density was our concern and he think this looks like adding density and it's a hugely profitable model. He stated that he would need to remove the membership/club piece to be comfortable with the project. Mayor Mamula stated the formula for club usage doesn't work and it could mean added density for that space. Council also discussed the positive 6 points, the additional 70 parking spaces, and how it relates to the Master Plan. Mr. Gallagher stated he was surprised about the club membership component of this project. He further stated he is prepared to lose the project at this point and the community really doesn't want it because Ski Hill Road travel is difficult most of the time. Mayor Mamula stated the condo sales were going to be what drives the hotel, not the club. Ms. Owens stated this seems like a completely unfair deal to our community.

Council agreed they liked the architecture of the hotel itself, and the club is a deal-breaker and they are prepared to deny the project based on the club.

After some discussion and a brief recess, the applicant proposed dropping the club proposal. The applicant also stated that 10 of the parking spaces are for BOEC use. Council agreed to drop the club and to add a condition to disallow the use of paid parking for skiers, the details of which would be approved at the next Town Council meeting.

Mr. Bergeron moved to approve EAST PEAK 8 HOTEL AND CUCUMBER GULCH PRESERVE PREVENTATIVE MAINTENANCE AREA (PMA) VARIANCE with the conditions noted by the Town Attorney related to no paid parking for skier day use and no club. Ms. Gigliello seconded the motion.

The motion passed 7-0.

VIII) REPORT OF TOWN MANAGER AND STAFF

Reports of Town Manager and Staff were covered in the afternoon work session.

IX) REPORT OF MAYOR AND COUNCIL MEMBERS

The reports of Mayor and Council Members were covered in the afternoon Work Session.
A. Cast/MMC

B. Breckenridge Open Space Advisory Committee

C. Breckenridge Tourism Office

D. Breckenridge Heritage Alliance

E. Breckenridge Creative Arts

F. Breckenridge Events Committee

G. MT 2030

X) OTHER MATTERS

Other matters were covered as part of the afternoon Work Session.

XI) SCHEDULED MEETINGS

A) SCHEDULED MEETINGS FOR FEBRUARY AND MARCH

XII) ADJOURNMENT

With no further business to discuss, the meeting adjourned at 11:35pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor

DRAFT



Memo

To: Town Council

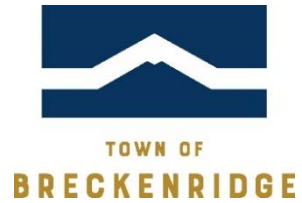
From: Eli Johnston, Chief Building Official

Date: 3/2/2020

Subject: Second Reading of the Sustainable Energy Code to March 24th

Summary:

During the February 25th First Reading of the Sustainable Energy Code, the Summit County Builders Association brought up concerns regarding the proposed energy codes. I would like to request that the Council continue the Second Reading to March 24th in order for staff to address their concerns.



Memo

To: Mayor and Town Council Members
From: Tim Berry, Town Attorney
Date: 3/5/2020
Subject: Accessory Dwelling Unit Ordinance

The second reading of the ordinance amending the Development Code with respect to accessory dwelling units is scheduled for your meeting on March 10th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – MARCH 10**

2
3 **NO CHANGE FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 8

9
10 Series 2020

11
12 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
13 TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE DEVELOPMENT CODE,”
14 CONCERNING ACCESSORY DWELLING UNITS

15
16 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
17 COLORADO:

18
19 Section 1. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
20 the following definitions:
21

KITCHEN: A room or portion of a room available for the preparation or cooking of food that may include a refrigerator, dishwasher, cooktop, and/or cupboards. Only one (1) kitchen is allowed per dwelling unit.

PRIMARY UNIT: The main unit located on any residential property. This includes single-family, duplex, multi-unit, and/or townhouse residential uses.

WET BAR: An area of a common room (living room, great room, dining room, entertainment room, etc.) within a dwelling unit used for the storage of food that may include (but not required to install) a refrigerator, a sink, and/or a countertop, but shall not include a cooktop or oven. Wet bars shall be within common rooms with areas larger than 300 square feet. Hallways shall not be considered in calculation of square footage and a wet bar shall not be located within a hallway.

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Section 2. The definition of “Accessory Dwelling Unit” which is part of the definition of “Residential Use” in Section 9-1-5 of the Breckenridge Town Code are amended to read as follows:

ACCESSORY DWELLING UNIT Apartment:

A residential **dwelling** unit located on the same parcel of land as a ~~single-family~~ **primary** unit, ~~which~~ **that** is secondary in size and use to the ~~single-family~~ **primary** unit and meets the following criteria: **An accessory dwelling unit may have a separate kitchen from the primary unit and may be attached or detached from the primary unit. Only one accessory dwelling unit is allowed per primary unit. An accessory dwelling unit apartments shall meet the following criteria:**

~~1.A.~~ The total ~~dwelling~~ area of the unit **accessory dwelling unit** is no greater in size than one-third (1/3) of the total ~~dwelling~~ area **density** of the ~~single-family~~ **primary** unit.

~~2.B.~~ The total ~~dwelling~~ area of the unit **accessory dwelling unit** is no greater in size than one thousand two hundred (1,200) square feet.

~~3.C.~~ Legal title to the accessory **dwelling unit** ~~apartment~~ and ~~single-family~~ **primary** unit is held in the same name.

~~4.D.~~ With the exception of subsection D1 of this definition, **An** accessory **dwelling unit** ~~apartments~~ may only be occupied by persons employed at least thirty (30) hours per week in Summit County with a lease term of not shorter than ~~six (6)~~ **three (3)** months.

~~1.~~ Accessory ~~apartments~~ may be occupied by ~~persons with disabilities or persons sixty five (65) years or older.~~

5.2. All permits issued for accessory dwelling units ~~apartments~~ shall include the requirement that the property owner record a covenant restricting the use and occupancy of the property ~~with the requirements set forth under subsections D (introductory text) and D1 of this definition.~~ The covenant shall grant enforcement power to the Town of Breckenridge or an authorized designee approved by the Town.

6. An accessory dwelling unit shall not be occupied by a family member unless said individual meets the employment requirement in subsection 5 of this definition.

7. Accessory dwelling units shall not be used as a short term rental as defined under Lodging Services within Chapter 3-1-2 of this code.

8. All detached structures containing density shall be considered an accessory dwelling unit, for purposes of this Code, unless no domestic water service is provided.

9. Attached additions which contain both density and an exterior entrance shall be considered an accessory dwelling unit, unless an interior connection to the primary unit is provided.

~~Units that meet all of the criteria will be classified as a portion of the single family unit, while those that do not meet all the criteria specified shall be classified as either a duplex (if attached) or a second home (if detached).~~

1
2 Section 3. The following definitions in Section 9-1-5 of the Breckenridge Town Code
3 are amended to read as follows:
4

DWELLING UNIT:

Any structure or part thereof, designed to be occupied as living quarters for any period of time. A dwelling unit may be a primary unit and/or an accessory dwelling unit.

LIMITED KITCHEN:

Allowed only in Hotel/Lodging/Inn uses only, this mMay include a refrigerator, dishwasher, cooktop, and cupboards. Gas piping and two hundred twenty

(220) volt electrical service may not be provided or roughed-in in a limited kitchen.

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

Section 5. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers contained in the Breckenridge Town Charter.

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

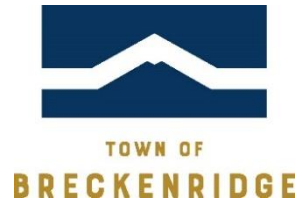
INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of ____, 2020. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2020, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk



Memo

To: Mayor and Town Council Members
From: Tim Berry, Town Attorney
Date: 02/28/20
Subject: Council Bill No. 9 (Amendments to Development Agreement Ordinance)

The second reading of the ordinance amending the Town's Development Agreement Ordinance is scheduled for your meeting on March 10th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – MARCH 10**

2
3 **NO CHANGE FROM FIRST READING**

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

9
10 Series 2020

11
12 AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 9 OF THE BRECKENRIDGE
13 TOWN CODE CONCERNING DEVELOPMENT AGREEMENTS

14
15 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
16 COLORADO:

17
18 Section 1. Section 9-9-5 of the Breckenridge Town Code is amended to read as follows:

19
20 9-9-5: DEVELOPMENT AGREEMENTS; GENERAL:

21
22 ~~A. A development agreement may be approved by the town council either in~~
23 ~~connection with the approval of a development permit or as a separate approval at~~
24 ~~the election of the applicant.~~ The decision by the town council to enter into a
25 development agreement with an applicant is always discretionary; nothing in this
26 code shall be interpreted or construed as requiring the town council to approve a
27 development agreement under any circumstances. ~~If a request for approval of a~~
28 ~~development agreement is combined with an application for a development~~
29 ~~permit, the application for the development permit shall be reviewed under the~~
30 ~~applicable policies, standards and criteria of this code, including the point analysis~~
31 ~~provisions of this code if applicable, but the approval or conditional approval of~~
32 ~~the application for development permit shall not require the approval of the~~
33 ~~accompanying request for a development agreement.~~ There is never an
34 entitlement on the part of the applicant to the approval of a development
35 agreement.

36
37 **B. An application for a development permit that is based upon a**
38 **development agreement may not be submitted until the development**
39 **agreement has been approved by the Town Council.**

40
41 **C. A development agreement may provide for the specific manner in which a**
42 **development permit application will be treated under the various absolute**
43 **and relative polices of the development code, or the policies of the subdivision**
44 **standards. This includes how points will be awarded or assessed under the**
45 **various relative polices of the development code, and the authority to waive**

1 **required compliance with any absolute development code policy or policy of**
2 **the subdivision standards.**
3

4 Section 2. Section 9-9-8 of the Breckenridge Town Code is amended to read as follows:
5

6 9-9-8: FEE:
7

8 ~~If an application for approval of a development agreement is not included as a~~
9 ~~part of a development permit application, a~~ An application for approval of a
10 development agreement shall be accompanied by a ~~separate,~~ nonrefundable fee in
11 an amount equal to the fee for a Class A development permit application. Such
12 fee is determined by the Town Council to reasonably reimburse the Town for the
13 direct and indirect costs incurred by the Town in processing such an application.
14 ~~No extra fee shall be required if an application for approval of a development~~
15 ~~agreement is included as part of a development permit application.~~
16

17 Section 3. Section 9-9-9 of the Breckenridge Town Code is amended to read as follows:
18

19 9-9-9: SUBMITTAL REQUIREMENTS:
20

21 A completed application for approval of a development agreement shall be
22 submitted a minimum of twenty eight (28) days prior to the requested work
23 session with the Town Council. The development agreement application, whether
24 included as part of a development permit application or submitted as a separate
25 application, shall include the following information and documentation:
26

27 A. Proof of ownership of the land to be included within the development
28 agreement, ~~which includes an updated or current title insurance policy or title~~
29 ~~commitment issued no more than thirty (30) days before submission of the~~
30 ~~application.~~
31

32 B. A properly acknowledged letter of authorization from the owner of the land to
33 be included within the development agreement permitting a designated
34 representative to process the application.
35

36 C. A properly acknowledged statement of consent to proceed with the proposed
37 development agreement, executed by all owners of fee title to the land to be
38 included within the development agreement.
39

40 D. A narrative description describing the nature of the application's compliance
41 with the applicable threshold criteria under the code section authorizing the
42 execution of the development agreement.
43

44 E. A description of the commitments proposed by the applicant as described in
45 section 9-9-4 of this chapter.
46

1 F. A draft agreement in compliance with the mandatory development agreement
2 provisions set forth in section 9-9-12 of this chapter.

3
4 ~~G.~~ Such other reasonable information as the Director may require.

5
6 Section 4. Section 9-9-12 of the Breckenridge Town Code is amended by the addition of
7 a new subsection J, which shall read as follows:

8
9 **J. In connection with an application for a development permit to develop the**
10 **real property that is the subject of a development agreement the application**
11 **shall not receive an award of positive points under the Development Code for**
12 **any commitment offered to the Town by the applicant pursuant to Section**
13 **9-9-4, or any other obligation or requirement of the applicant under the**
14 **development agreement.**

15
16 Section 5. Section 9-9-14 of the Breckenridge Town Code is amended to read as follows:

17
18 9-9-14: RECORDING OF DEVELOPMENT AGREEMENT:

19
20 Within thirty (30) days of ~~the effective date of the ordinance~~ final adoption of
21 ~~the approving a development agreement and authorizing ordinance,~~ the
22 applicant shall submit a copy of the approved development agreement to the
23 director for execution by the town and subsequent recording, together with the
24 required recordation fees. ~~The development agreement shall become effective~~
25 ~~upon recordation.~~

26
27 Section 6. Chapter 9 of Title 9 of the Breckenridge Town Code is amended by the
28 addition of a new Section 9-9-15, which shall read as follows:

29
30 **9-9-15: AMENDMENT OF DEVELOPMENT AGREEMENT:**

31
32 **A development agreement may be amended by a written agreement**
33 **approved by a nonemergency ordinance adopted by the Town Council in**
34 **accordance with the procedures set forth in section 5.10 of the Town Charter.**
35 **No notice other than the notice required by subsection 5.10(d) of the Town**
36 **Charter shall be required in connection with the adoption of an ordinance**
37 **approving an amendment to a development agreement.**

38
39 Section 7. The Town Council hereby finds, determines and declares that this ordinance is
40 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
41 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
42 thereof.

43
44 Section 8. The Town Council hereby finds, determines and declares that it has the power
45 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
46 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal

1 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
2 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
3 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
4 contained in the Breckenridge Town Charter.
5

6 Section 9. This ordinance shall be published and become effective as provided by Section
7 5.9 of the Breckenridge Town Charter.
8

9 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
10 PUBLISHED IN FULL this ____ day of _____, 2020. A Public Hearing shall be held at the
11 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
12 _____, 2020, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
13 Town.
14

15 TOWN OF BRECKENRIDGE, a Colorado
16 municipal corporation
17

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19
20 By: _____
21 Eric S. Mamula, Mayor
22

23 ATTEST:
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28 _____
29 Helen Cospolich, CMC,
30 Town Clerk
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Memo

To: Town Council

From: Nichole Rex

Date: 3/4/2020 for 3/10/2020 meeting

Subject: AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE DEVELOPMENT CODE,” BY AMENDING POLICY 24 (ABSOLUTE) AND POLICY 24 (RELATIVE) CONCERNING HOUSING

In October of 2018, staff presented some options for revisions to Policy 24 (Housing) to the Town Council. Options included a housing mitigation methodology, where the required mitigation is based on the number of employees generated by the project, instead of the current methodology, which is based on a percentage of gross floor area (GSFA) regardless of the use. The employee generation methodology is more equitable as the employee housing demand varies significantly based on the use.

Since October, staff has been working with the Housing Committee on a revision to Policy 24 (Housing) to require all new development mitigate a certain percentage of the employees that are generated by the project. Attached are the key elements of proposed revisions to Policy 24. This code amendment is presented for first reading and we are asking for Council comments/approval on each element to insure the draft is consistent with your goals:

- Employee Housing Impact Mitigation will be an absolute policy. The policy will require developers provide housing for a percentage of the employees that are generated by new development focusing solely on a development's impact as related to employee generation and not taking into account secondary impacts.
- The Employee Housing Impact Mitigation policy will apply to all new commercial and some types of residential development. Single family residential, duplexes, townhomes, and any deed restricted Employee Housing will remain exempt. The policy will also apply to change of use if there is an increase in the employee housing generation associated with the change of use.
 - The Council should note that as drafted this policy will apply to market rate multi-family residential projects including condominium and townhomes, as well as accommodation and lodging units. Is the Council comfortable including all of these types of market rate multi-family projects?
 - The Council should also note that as drafted this policy will apply to new development. The new mitigation requirement cannot be accessed on existing development that predates the adoption of this revised policy. It will apply to any new development including additions or redevelopment that increases the

gross square footage. The obligation would also apply if existing structures are demolished and replaced with new construction.

- Please note that the mitigation requirement does not include different rates for different levels of service for hotels. All hotels are assessed the same employee generation rates, but with additional research, this may be something to consider in the future.
- Staff recommends that this policy set the employee mitigation rate at 25 %. The employee mitigation rate is the percentage of employees that must be mitigated under this policy. Please see Exhibit A for calculations and examples of other rates. Also, note that the existing SCHA Impact Fee/Sales Tax does provide some funds for mitigation, but the amount generated by the Impact Fee/Sales Tax is extremely low relative to the housing needs generated by the development (except in case of Single Family development). The Impact Fee/Sales Tax was taken into consideration in recommending a mitigation rate of 25% in the Absolute Policy.
- The size and building requirements for Employee Housing are determined by the number of employees that can be housed in a certain unit type. The following table illustrates the number of employees by unit type and the minimum square footage for each unit type. The minimum requirement is 350 S.F. of housing per employee.

Type Of Unit	Minimum Size (GFA)	Number Of Employees Housed
Studio	438	1.25
1 bedroom	613	1.75
2 bedroom	788	2.25
3 or more bedroom	1,225	3.5

- There are four ways for a project to satisfy their housing requirement. The options are:
 1. On-site unit mitigation: All projects will be required to provide at least half (1/2) of their Employee Housing requirement by constructing on-site deed restricted units. The remainder of the obligation can be satisfied by providing off-site units. The Council has the ability and full discretion to grant exceptions to this requirement if on-site mitigation is not feasible or appropriate.
 2. Off-site unit mitigation: A portion of a project's Employee Housing requirement may be satisfied with off-site units. This includes new construction of off-site deed restricted units or by deed restricting existing market rate unit (s). Off-site units must be located within the Upper Blue Basin.
 3. Land-in-lieu: An applicant may convey suitable real property to the Town provided there are no covenants, restrictions or issues that would limit the construction of Employee Housing, at the sole discretion of the Town Council. This method does not mitigate the on-site unit requirements.

4. Fee in-lieu: An applicant may provide a payment of fee in-lieu only for a fractional remainder of the Employee Housing requirement totaling less than 1.0 employee (amount of fee to be determined and adopted by Council).
- In addition to the Absolute Policy, staff recommends to further incentivize the development of Employee Housing through a Relative Policy that provides positive points for Employee Housing that is in addition to the Absolute Policy requirement. See Exhibit B.

Staff Recommendation: In summary, the code revision that staff is recommending includes changes to Policy 24 Absolute and Relative Policy. The methodology for calculating the required Employee Housing is based on employee generation associated with different uses based on gross square foot or number of units. This will ensure that the amount of housing required is relative to the actual impact of the development. We are looking forward to your direction and feedback on the specific bullet points as well as the policy in general.

Exhibit A. Employee Housing Requirement Examples

To calculate the number of employees that will be required to be housed by a project, the following formula will be used:

For projects calculated by square footage:

$$([\text{TOTAL S.F. OF PROJECT}/1,000 \text{ S.F.}] \times [\text{EMPLOYEE GENERATION RATE}]) \\ = \text{TOTAL NEW EMPLOYEES GENERATED}$$

$$\text{NEW EMPLOYEES GENERATED} \times \text{MITIGATION RATE (\%)} = \text{TOTAL NUMBER OF EMPLOYEES TO BE HOUSED}$$

EXAMPLE CALCULATION FOR A 2,000 S.F. RESTAURANT:

$$([2,000 \text{ S.F.}/1,000 \text{ S.F.}] \times [10.2]) = 20.4 \text{ EMPLOYEES GENERATED} \\ ([20.4] \times [0.25]) = \mathbf{5.1 \text{ EMPLOYEES TO BE HOUSED.}}$$

For calculated by number of rooms:

$$([\text{TOTAL NUMBER OF ROOMS}] \times [\text{EMPLOYEE GENERATION RATE}]) \\ = \text{TOTAL NEW EMPLOYEES GENERATED}$$

$$\text{NEW EMPLOYEES GENERATED} \times \text{MITIGATION RATE (\%)} = \text{TOTAL NUMBER OF EMPLOYEES TO BE HOUSED}$$

EXAMPLE CALCULATION FOR A 100 ROOM HOTEL

$$([100] \times [0.6]) = 60 \text{ EMPLOYEES GENERATED} \\ ([60] \times [0.25]) = \mathbf{15 \text{ EMPLOYEES TO BE HOUSED}}$$

The following is the proposed employee generation rates by type of use. These numbers have been determined based on the Town's, Vail's, Aspen's, and Telluride's employee generation rates. The numbers from this table will be used in calculating the employee housing requirements using different mitigation rates. Please note that the mitigation rates vary among the mountain communities with Vail proposing 25% and Aspen applying a 65% mitigation rate.

FIGURE1. Employee Generation Rates By Type Of Use Table:

<u>Type Of Use</u>	<u>Employee Generation Rate</u>
Hotel/Lodging/Inn, Bed and Breakfast, Boarding House, Timeshared Unit, Divisible Unit	0.6 employee per room
Multi-Family Housing and Condominiums	0.33 employee dwelling unit
Business office and professional office (including real estate and property management office)	3.2 employees per 1,000 square feet of net floor area
Conference facility	0.8 employee per 1,000 square feet of net floor area
Eating and drinking establishment/restaurants and bars	10.2 employees per 1,000 square feet of net floor area
Health club	0.96 employee per 1,000 square feet of net floor area
Retail store/personal service/repair shop	2.4 employees per 1,000 square feet of net floor area
Spa	2.1 employees per 1,000 square feet of net floor area

FIGURE2. Examples of Different Employee Mitigation Rates for Hotel/Lodging/Inn and Eating and Drinking Establishments:

Use Type	Total # of Units or S.F.	Mitigation Rate*	Employee Housing Requirement**	Total Amount of S.F Required (350 S.F Per Employee)	Estimated Cost of Employee Housing (\$300/S.F.)
Hotel/Lodging/Inn	100 units	25%	15 employees	5,250	\$1,575,000
Eating and Drinking Establishments	2,000 S.F	25%	5.1 employees	1,785	\$535,500
Hotel/Lodging/Inn	100 units	30%	18 employees	6,300	\$1,890,000
Eating and Drinking Establishments	2,000 S.F	30%	6.12 employees	2,142	\$642,600
Hotel/Lodging/Inn	100 units	50%	30 employees	10,500	\$3,150,000
Eating and Drinking Establishments	2,000 S.F	50%	10.2 employees	3,570	\$1,071,000

*The mitigation rate is the percent of total employees generated that an applicant is required to provide housing for.

** The actual number of employees that an applicant is required to provide housing for.

Exhibit B. Policy 24R Employee Housing Mitigation Table

The following table illustrates Policy 24R (Housing) that would allow an applicant to gain positive points if they provide housing in excess of the employee housing requirement. This table is based on a 25% mitigation rate.

FIGURE 3. Employee Housing Mitigation Table (Relative Policy)

Points	Percentage Of Employees Mitigated
1	25.1-34.0
2	33.1-42.0
3	42.1-55.0
4	55.1-60.0
5	60.0-69.0
6	69.1-78.0
7	78.1-87.0
8	87.1-96.0
9	96.1-99.9
10	100

1 **FOR WORKSESSION/FIRST READING – MARCH 10**

2
3 Additions To The Current Breckenridge Town Code Are
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5
6 COUNCIL BILL NO. _____

7
8 Series 2020

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE DEVELOPMENT CODE,”
12 BY AMENDING POLICY 24 (ABSOLUTE) AND POLICY 24 (RELATIVE)
13 CONCERNING HOUSING

14
15 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
16 COLORADO:

17
18 Section 1. Section 9-1-5 of the Breckenridge Town Code in amended by the addition of
19 the following definition:

20
EMPLOYEE HOUSING IMPACT MITIGATION: **An obligation that requires developers to provide housing for a certain number of new employees that are generated by the developer’s development, focusing solely on a development’s impact as related to employee generation and not taking into account secondary impacts.**

21
22 Section 2. Section 9-1-19-24A, “Policy 24 (Absolute) Social Community,” of the
23 Breckenridge Town Code is amended by the addition of the following:

24
25 **C. EMPLOYEE HOUSING IMPACT MITIGATION:**

26
27 **(1) The purpose of this Section C is to ensure that new development and in the Town provide for a reasonable amount of Employee Housing to mitigate the impact on Employee Housing caused by such development.**

28
29 **(2) Subsections C – L, inclusive, of this policy shall apply to all new development and of the following land uses:**

30
31
32 **a. Commercial Use**

33 **b. Industrial Use**

34 **c. Mixed Use**

35 **d. Recreation and Leisure Amenities**

1 **e. The following Residential Uses:**

- 2 i. **Boarding House**
- 3 ii. **Condominium**
- 4 iii. **Divisible Unit**
- 5 iv. **Hotel/Lodging/Inn**
- 6 v. **Multi-Unit Residential**
- 7 vi. **Timeshared Unit**

8 **(3) The requirements of this policy shall be in addition to all other requirements of this**

9 **Code.**

10 **(4) When any provision of this policy conflicts with any other provision of this Code,**

11 **the provision of this policy shall control.**

12 **D. EMPLOYEE GENERATION AND MITIGATION RATES:**

13

14 **(1) The employee generation rates found in the “Employee Generation Rates By Use**

15 **Table,” below, shall be applied to each type of use listed in section 9-1-19-24AC2. For**

16 **any use not listed, the Director shall determine the applicable employee generation rate**

17 **by consulting the Town’s then-current current nexus study.**

1
2
3

EMPLOYEE GENERATION RATES BY TYPE OF USE TABLE

<u>Type Of Use</u>	<u>Employee Generation Rate</u>
<u>Hotel/Lodging/Inn, Bed and Breakfast, Boarding House, Timeshared Unit, Divisible Unit</u>	<u>0.6 employee per room</u>
<u>Multi-Family Housing and Condominiums</u>	<u>0.33 employee per dwelling unit</u>
<u>Business office and professional office (including real estate and property management office)</u>	<u>3.2 employees per 1,000 square feet of net floor area</u>
<u>Conference facility</u>	<u>0.8 employee per 1,000 square feet of net floor area</u>
<u>Eating and drinking establishment/restaurants and bars</u>	<u>10.2 employees per 1,000 square feet of net floor area</u>
<u>Health club</u>	<u>0.96 employee per 1,000 square feet of net floor area</u>
<u>Retail store/personal service/repair shop</u>	<u>2.4 employees per 1,000 square feet of net floor area</u>
<u>Spa</u>	<u>2.1 employees per 1,000 square feet of net floor area</u>

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(2) If an applicant submits competent evidence demonstrating that the employee generation rates contained in table “Employee Generation Rates By Type Of Use Table,” above, do not accurately reflect the number of employees generated by the proposed development and the Planning Commission finds that such evidence warrants a deviation from those employee generation rates, the Planning Commission shall allow for such a deviation as the Planning Commission deems appropriate.

(3) Each development shall mitigate its impact on Employee Housing by providing Employee Housing for twenty-five percent (25%) of the employees generated, pursuant to table “Employee Generation Rates By Type Of Use Table,” above, in accordance with the requirements of this policy.

For example, for a development proposing two thousand five hundred (2,500) square feet of new net floor area for an eating and drinking establishment/restaurant and bar, the required Employee Housing would be calculated as follows:

$([2,500 \text{ square feet} / 1,000 \text{ square feet}] \times [10.2]) = 25.5 \text{ new employees generated} \times 25\% = 6.37 \text{ employees to be housed}$

1
2 **E. SIZE AND BUILDING REQUIREMENTS: The “Size of Employee Housing Table,”**
3 **below, establishes the minimum size of Employee Housing units and the number of**
4 **employees that must be able to be housed in each Employee Housing unit. All Employee**
5 **Housing units shall meet or exceed the minimum size of gross floor area (GFA)**
6 **requirements. Each employee shall be assessed at 350 square feet per employee.**
7

8 **SIZE OF EMPLOYEE HOUSING TABLE**
9

<u>Type Of Unit</u>	<u>Minimum Size (GFA)</u>	<u>Number Of Employees Housed</u>
<u>Studio</u>	<u>438</u>	<u>1.25</u>
<u>1 bedroom</u>	<u>613</u>	<u>1.75</u>
<u>2 bedroom</u>	<u>788</u>	<u>2.25</u>
<u>3 or more bedroom</u>	<u>1,225</u>	<u>3.5</u>

10
11 **(1) All Employee Housing units shall contain:**

12 **a. a kitchen facility or kitchenette; and**

13 **b. a bathroom.**

14 **(2) Each Employee Housing unit shall have its own entrance. There shall be no interior**
15 **access from any Employee Housing unit to any dwelling unit to which it is attached.**

16 **F. METHODS OF MITIGATION:**
17

18 **(1) For all new construction (i.e., development that does not affect any existing buildings**
19 **or structures) and demo/rebuild projects, no less than one-half (1/2) the mitigation of**
20 **Employee Housing required by this policy shall be accomplished with on-site units.**

21 **a. Exceptions: At the sole discretion of the Planning Commission, an exception**
22 **may be granted from this subsection F1 based upon one of the following**
23 **findings:**

24 **i. Implementation of the on-site unit mitigation method would be**
25 **contrary to the intent and purpose of the applicable use.**

1 ii. Implementation of the on-site unit mitigation method would be
2 contrary to the goals of the applicable elements of the Town's
3 comprehensive plan and the Town's development objectives.

4 iii. Exceptional or extraordinary circumstances or conditions apply to the
5 site that prevents the implementation of the on-site unit mitigation
6 method.

7 iv. The method of mitigation proposed better achieves the general and
8 specific purposes of this policy than the on-site mitigation unit method.

9 b. On-Site Employee Housing: All on-site Employee Housing shall be deed
10 restricted in accordance with the Town's Housing Guidelines and Subsection I of
11 this policy.

12 d. Fees In-Lieu: An applicant may provide a payment of fees in-lieu of
13 providing required Employee Housing only for any fractional remainder of the
14 requirement generated under this policy totaling less than 1.0 employee.

15 e. Remaining Portion of Requirement: Any remaining portion of the mitigation
16 requirement not provided with on-site units shall be provided in accordance
17 with Subsection 2 of this section.

18 (2) For all development projects except those mitigated by Subsection F1, the mitigation
19 of Employee Housing required by this policy shall be accomplished through one or any
20 combination of the methods further described in this section. Unless otherwise
21 regulated by this policy, the choice of method(s) used to mitigate the Employee Housing
22 requirements of this policy shall be at the sole discretion of the applicant.

23 a. On-Site Units:

24 i. All on-site Employee Housing shall be deed restricted in accordance with
25 the Town's Housing Guidelines and Subsection I of this policy.

26 b. Conveyance Of Vacant Property On-Site: An applicant may convey on-site
27 real property to the Town on which no covenants, restrictions, or issues exist
28 that would limit the construction of Employee Housing, at the sole discretion of
29 the Town Council. This method does not mitigate the on-site unit requirements
30 of Subsection F1 of this Policy.

31 c. Off-Site Units: The required number of Employee Housing units, or a
32 portion thereof, may be provided off-site within the Upper Blue Basin, provided
33 that such Employee Housing units are deed restricted in accordance with this
34 policy.

35 d. Payment Of Fees In-Lieu:

1 i. The fee in-lieu for each employee to be housed shall be established
2 annually by Resolution of the Town Council, provided that, in calculating
3 that fee, the Town Council shall include the net cost (total cost less the
4 amount covered by rental or sale income) of real property and all related
5 planning, design, site development, legal, construction and construction
6 management costs of the project, in current dollars, which would be
7 incurred by the Town to provide housing for the employee to be housed
8 in that year.

9 ii. An administrative fee, established by Resolution of the Town Council,
10 shall be added to the amount set forth in this Subsection F(2)d.

11 iii. Fees in-lieu shall be due and payable prior to the issuance of a
12 building permit for the development.

13 iv. The Town shall use monies collected from fees in-lieu only to provide
14 additional Employee Housing units.

15 v. An applicant may provide a payment of fees in-lieu only for any
16 fractional remainder of the requirement generated under this policy
17 totaling less than 1.0 employee.

18 e. Conveyance Of Vacant Property Off-Site: The Town Council may, at its sole
19 discretion, accept the conveyance of vacant property off-site in lieu of requiring
20 the provision of Employee Housing, provided that no covenants, restrictions or
21 issues exist on such property that would limit the construction of Employee
22 Housing.

23 G. ADMINISTRATION: Each application for development review shall include an
24 Employee Housing Plan which includes the following:

25
26 (1) Calculation Method: The calculation of employee generation and the mitigation
27 method by which the applicant proposes to meet the requirements of this policy;

28 (2) Plans: A dimensioned site plan and architectural floor plan that demonstrates
29 compliance with Subsection E, "Size And Building Requirements", of this policy;

30 (3) Lot Size: The average lot size of the proposed Employee Housing and the average lot
31 size of other dwelling units in the commercial development, if any;

32 (4) Schedules: A time line for the provision of any off-site Employee Housing;

33 (5) Off-Site Units: A proposal for the provision of any off-site Employee Housing shall
34 include a brief statement explaining the basis of the proposal;

35 (6) Off-Site Conveyance Request: A request for an off-site conveyance shall include a
36 brief statement explaining the basis for the request;

1 (7) Fees In-Lieu: A proposal to pay fees in-lieu shall include a brief statement
2 explaining the basis of the proposal; and

3 (8) Written Narrative: A written narrative explaining how the Employee Housing Plan
4 meets the purposes of this policy.

5 H. REVIEW:
6

7 (1) The Planning Commission shall approve, approve with modifications, or deny an
8 Employee Housing Plan unless the Plan involves a total mitigation requirement of
9 less than 1 employee or the plan includes a request to convey property.

10 (2) The Town Council shall approve, approve with modifications, or deny an Employee
11 Housing Plan requesting to convey property.

12 (3) Before granting approval of an Employee Housing Plan, the Planning Commission
13 shall make findings that the Employee Housing Plan conforms to the general and
14 specific purposes of this policy, and that the plan is complies with this Code and the
15 development objectives of the Town.

16 (4) Employee Housing Plan Modification: If modifications to a submitted application
17 for development review change the obligations of the applicant under this policy, the
18 applicant shall submit a modified Employee Housing Plan. A modification to an
19 Employee Housing Plan shall be reviewed by the body that reviewed the initial
20 Employee Housing Plan, in accordance with the provisions of this policy.

21 (5) Approved Employee Housing Plan: An approved Employee Housing plan shall
22 become part of the approved application for development review for the affected
23 site.

24 I. OCCUPANCY AND DEED RESTRICTIONS:
25

26 (1) Employee Housing shall not be subdivided or divided into any form of timeshare
27 unit or fractional fee club unit.

28 (2) Employee Housing shall not be leased for a period less than ninety (90) consecutive
29 days.

30 (3) Employee Housing may be sold or transferred as a separate unit on the site.

31 (4) Employee Housing shall not remain vacant for a period in excess of three (3)
32 consecutive months unless, despite reasonable and documented efforts to occupy the
33 Employee Housing, efforts are unsuccessful.

34 (5) Employee Housing shall be occupied at all times by a person eighteen (18) years of
35 age or older who, during the entire period of his or her occupancy of the Employee
36 Housing, earns his or her living by working for a business located in and serving in

1 Summit County, Colorado, an average of at least thirty (30) hours per week, together
2 with such person’s spouse and minor children, if any.

3 (6) Each year, the owner of an Employee Housing unit shall submit an affidavit of
4 compliance to the Town, or its assignee, containing the following information:

5 a. Evidence to establish that the Employee Housing unit has been occupied
6 throughout the year by an employee;

7 b. The rental rate (unless owner occupied);

8 c. The employee’s employer; and

9 d. Evidence to demonstrate that at least one person residing in the Employee
10 Housing is an employee.

11 J. TIMING: All Employee Housing required by this policy shall be ready for
12 occupancy prior to the issuance of a Certificate of Occupancy for the affected
13 development.

14 K. REVIEW:

15 (1) Purpose: The Town Council intends that the application of this policy not result in
16 an unlawful taking of private property without the payment of just compensation, and
17 therefore, the Town Council adopts the review procedures set forth in the Town
18 Development Code.

19 L. ACKNOWLEDGEMENT OF SUMMIT COUNTY HOUSING AUTHORITY
20 IMPACT FEE: In connection with the adoption of this policy the Town Council
21 considered the “Housing Development Impact Fee For Affordable Housing Purposes”
22 adopted by the Summit Combined Housing Authority on December 6, 2006.

23 Section 3. Subsection A of 9-1-19-24R, “Policy 24 (Relative) Social Community,” of the
24 Breckenridge Town Code is amended to read as follows:
25

26 A. Employee Housing: It is the policy of the Town to encourage the provision of employee
27 housing units in connection with commercial, industrial, and multi-unit residential developments
28 to help alleviate employee housing impacts created by the proposed uses. An applicant may
29 construct Employee Housing in addition to the Employee Housing Impact Mitigation
30 requirements set forth in Policy 9-1-19-24A-C to receive positive points. The schedule for
31 positive points is based on the percentage of employees that a project mitigates. Any
32 project that mitigates more than the required mitigation rate, can receive positive points.
33 Single-family, duplex, and townhome residential projects shall not be assessed non-
34 provision of employee housing, but such projects may be awarded positive points in
35 accordance with the table set forth below.
36
37
38
39

1

Points	Percentage Of Project Density In Employee Housing	Examples Of Square Footage Conversion Of Percentage From Second Column Size Of Project In Square Feet (Density) (Point awards for actual projects shall be calculated using the first 2 columns of this table)				
		**4,000	5,000	10,000	20,000	50,000
-10	0.0	n/a	0	0	0	
-9	0.01 - 0.5	n/a	n/a	n/a	n/a	*250
-8	0.51 - 1.0	n/a	n/a	n/a	n/a	400
-7	1.01 - 1.5	n/a	n/a	n/a	*250	600
-6	1.51 - 2.0	n/a	n/a	n/a	400	900
-5	2.01 - 2.5	n/a	n/a	*250	500	1,100
-4	2.51 - 3.0	n/a	n/a	300	600	1,400
-3	3.01 - 3.5	n/a	n/a	350	700	1,600
-2	3.51 - 4.0	n/a	n/a	400	800	1,900
-1	4.01 - 4.5	n/a	n/a	450	900	2,200
0	4.51 - 5.0	n/a	*250	500	1,000	2,400
1	5.01 - 5.5	n/a	275	550	1,100	2,700
2	5.51 - 6.0	*250	300	600	1,200	2,900
3	6.01 - 6.5	275	325	650	1,300	3,200
4	6.51 - 7.0		350	700	1,400	3,400
5	7.01 - 7.5	300	375	750	1,500	3,600
10***	100	***	***	***	***	***

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3

<u>Points</u>	<u>Percentage Of Employees Mitigated</u>
<u>1</u>	<u>25.1-34.0</u>
<u>2</u>	<u>34.1-42.0</u>
<u>3</u>	<u>42.1-55.0</u>
<u>4</u>	<u>55.1-60.0</u>
<u>5</u>	<u>60.1-69.0</u>
<u>6</u>	<u>69.1-78.0</u>
<u>7</u>	<u>78.1-87.0</u>
<u>8</u>	<u>87.1-96.0</u>
<u>9</u>	<u>96.1-99.9</u>
<u>10*</u>	<u>100</u>

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*** Development projects that are built with 100 percent of the units deed restricted for employee housing or mitigate %100 of their employees may receive 10 positive points.**

1 **provided they meet the following criteria: (i) All units must meet the definition of Employee**
2 **Housing; and (ii) all deed restrictions must comply with the Town's current deed**
3 **restriction standards as set in section 9-1-19-24AK and the Town's Housing Guidelines.**
4

5 (2) General Provisions:

6 a. The square footage of the employee housing units provided under this section shall
7 be assessed against the allowed density and mass in the same manner as all other
8 residential units, or square footage within the project.

9 b. All employee housing units provided under this section shall be designed and
10 planned in conjunction with the remainder of the project and shall not be designed as
11 an add on to an existing building unless in conjunction with a larger addition.

12 c. Employee housing units provided under this section may be on or off site, but shall
13 be within the Town or an unincorporated area of the Upper Blue River Basin.

14 d. For the purpose of determining whether a development shall be awarded or
15 assessed points under this policy, only square footage approved pursuant to a
16 development permit the application for which was filed subsequent to December 18,
17 1997, shall be used to calculate the total density or gross dwelling area of a
18 development.

19 e. The provisions of this policy, as amended by Council bill no. 29, series 1997, shall
20 not apply to development permits approved prior to December 18, 1997; and no
21 development permit approved prior to December 18, 1997, shall be modified to
22 reduce the amount of employee housing approved in connection with the issuance of
23 such development permit.

24 f. Each employee housing unit for which positive points are awarded under this
25 policy shall be encumbered by a properly recorded restrictive covenant in a form
26 acceptable to the Town Attorney. The terms of such restrictive covenant shall be
27 consistent with this policy, and such restrictive covenant shall not be subordinate to
28 any senior lien or encumbrance, except the lien of the General Property Taxes.

29 (3) Exemptions: The following developments and uses are exempt from an assessment of
30 negative points provided for in this section:

31 a. Change of use for buildings of historic and architectural significance.

32 b. Churches.

33 c. Governmental entities exempt from the Town's planning regulations.

34 ~~Mixed use projects where the combined total square footage is less than five thousand~~
35 ~~(5,000) square feet.~~
36

1 d. Other governmental or public buildings such as public museums, public libraries,
2 or Post Offices, where the building is owned and operated by a governmental agency.

3 e. Public and private schools.

4 (4) Restrictive Covenants: The owner of an employee housing unit which is restricted by a
5 restrictive covenant as described in subsection A(2)f of this section shall have the right to obtain
6 the release of the restrictive covenant by substituting for the restricted unit another unit or
7 property located in the Town or an unincorporated area of the Upper Blue River Basin which
8 satisfies the definition of “employee housing” set forth in section 9-1-5 of this chapter. Such
9 right of substitution shall be subject to the Town’s approval of such substitute unit or property as
10 being of comparable size and condition using the Class D minor development permit process.
11 No such substitution shall be permitted unless the substitute unit or property shall be subjected to
12 a restrictive covenant as required by subsection A(2)f of this section.

13 (5) Summer Seasonal Housing: Between May 1 and September 30 of any year, an employee
14 housing unit may be lawfully occupied for a period not to exceed twelve (12) consecutive weeks
15 by any person participating in or employed by the summer programs sponsored by a nonprofit
16 organization or the Town. Such occupancy shall be authorized by a Class D minor development
17 permit.

18 Section 4. The Town Council hereby finds, determines and declares that this ordinance is
19 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
20 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
21 thereof.

22
23 Section 5. The Town Council hereby finds, determines and declares that it has the power
24 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
25 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
26 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
27 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
28 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
29 contained in the Breckenridge Town Charter.

30
31 Section 6. This ordinance shall be published and shall become effective as provided by
32 Section 5.9 of the Breckenridge Town Charter.

33
34 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
35 PUBLISHED IN FULL this ____ day of ____, 2020. A Public Hearing shall be held at the
36 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
37 ____, 2020, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
38 Town.

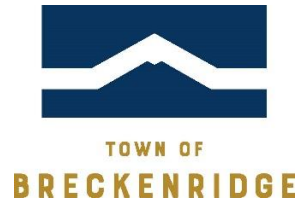
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40 TOWN OF BRECKENRIDGE, a Colorado
41 municipal corporation
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By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk



Memo

To: Town Council
From: Julia Puester, AICP, Assistant Community Development Director
Date: 3/4/2020 (for March 10, 2020 meeting)
Subject: First Reading- Policy 24A/R Social Community Regarding Amenities and Policy 25R Transit Positive Point Modifications

Background

Staff has heard several concerns from the Town Council regarding the amount of positive points available in the Development Code for additional amenity space in Policy 24/R and the awarding of positive points for the provision of a lodging shuttle service in Policy 25/R. The concerns stem from the fact that under the current business models for larger sized accommodations like hotels and condo/hotels, developers are likely to provide large amounts of amenity spaces and shuttle services for their guests in order to attract clients and remain competitive. Staff has reviewed the existing policies with the Planning Commission at their March 3rd meeting and has proposed the following changes.

Staff Analysis and Recommendation

Policy 24/R Social Community:

Staff is recommending that the *'recreation or leisure amenity space'* be removed from the Relative policy. As clarification, amenity spaces would still be allowed at the required minimum 1:35 ratio (compared to overall project density) and projects could provide up to 200% of this requirement. However, no positive points would be awarded for providing the amenity spaces. The Planning Commission unanimously supported removing the positive points for additional recreation or leisure amenity space.

The policy also allows for positive points for meeting and conference facilities beyond the 1:35 ratio in the absolute policy. Staff has not heard any Council concern regarding positive points available for the meeting and conference room facilities to date. However, staff asked the Planning Commission to weigh in on whether meeting and conference rooms should receive positive points under this policy. The majority of the Commission (5-2) thought that the positive points for the meeting and conference rooms should also be removed from the policy. The two dissenting Commissioners thought that there were not enough meeting spaces in Town and that the positive points could provide an incentive to do so. Should the Council desire that meeting and conference rooms be removed from the policy for positive points, staff will make that change prior to the second reading.

Policy 25/R Transit:

The Transit policy was revised in 2019 to reduce the number of positive points from positive four (+4) points to positive two (+2) points for provision of transit, such as a lodging shuttle service. Staff is now recommending that the policy be revised to only allow for positive points if the transit is located on the applicant's property and is available to the general public. Zero (0) points would be awarded for a private guest lodging shuttle service. This is based on the assumption that most lodging facilities routinely provide shuttle service as an expected service to their guests. At their March 3rd meeting, the Planning Commission agreed unanimously with this recommendation.

Staff Recommendation

Staff recommends that the Town Council approve the first reading to amend Policy 24/A Social Community regarding Amenities and Policy 24/R Transit attached.

Staff will be available at the meeting to answer any questions that the Town Council may have.

1 **FOR WORKSESSION/FIRST READING – MARCH 10**

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

5
6 COUNCIL BILL NO. _____

7
8 Series 2020

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE DEVELOPMENT CODE,”
12 BY AMENDING POLICY 24 (RELATIVE) CONCERNING THE SOCIAL COMMUNITY
13 AND POLICY 25 CONCERNING TRANSIT

14
15 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
16 COLORADO:

17
18 Section 1. Subsection D of Section 9-1-19-24R, “Policy 24 (Relative) Social
19 Community,” of the Breckenridge Town Code is amended to read as follows:
20

3 x D. Meeting And Conference Rooms ~~Or Recreation And Leisure Amenities:~~
(0/+2) The provision of meeting and conference facilities ~~or recreation and leisure amenities~~, over and above that required in section 9-1-19-24A, "Policy 24 (Absolute) The Social Community", subsection A, of this chapter is strongly encouraged. (These facilities, when provided over and above that required in section 9-1-19-24A, "Policy 24 (Absolute) The Social Community", subsection A, of this chapter, shall not be assessed against the density and mass of a project when the facilities **meeting spaces** are legally guaranteed to remain as meeting and conference facilities ~~or recreation and leisure amenities~~, and they do not equal more than 200 percent of the area required under section 9-1-19-24A, "Policy 24 (Absolute) The Social Community", subsection A, of this chapter.)

21
22 Section 2. Section 9-1-19-25R, “Policy 25 (Relative) Transit,” of the Breckenridge
23 Town Code is amended to read as follows:
24

2 x (-/+4) Nonauto Transit System: The inclusion of or the contribution to a permanent nonauto transit system, designed to facilitate the movement of persons to and from Breckenridge or within the Town, is strongly encouraged. Nonauto transit system elements include buses and bus stops, both public and private, air service, trains, lifts, and lift access that have the primary purpose of providing access from high density residential areas or major parking lots of the Town to the mountain, etc. Any development which interferes with the community's ability to provide

nonauto oriented transportation elements is discouraged. Positive points shall be awarded under this policy only for the inclusion of or the contribution to nonauto transit system elements which are located on the applicant's property. ~~Higher p~~Point assignments will be considered only for transit systems available to the general public. Higher point assignments will be given to large scale solutions.

1
2 Section 3. The Town Council hereby finds, determines and declares that this ordinance
3 is necessary and proper to provide for the safety, preserve the health, promote the prosperity,
4 and improve the order, comfort and convenience of the Town of Breckenridge and the
5 inhabitants thereof.
6

7 Section 4. The Town Council hereby finds, determines and declares that it has the power
8 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
9 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
10 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
11 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
12 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
13 contained in the Breckenridge Town Charter.
14

15 Section 5. This ordinance shall be published and become effective as provided by Section
16 5.9 of the Breckenridge Town Charter.
17

18 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
19 PUBLISHED IN FULL this ____ day of _____, 2020. A Public Hearing shall be held at the
20 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
21 _____, 2020, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
22 Town.
23

24 TOWN OF BRECKENRIDGE, a Colorado
25 municipal corporation
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27

28
29 By: _____
30 Eric S. Mamula, Mayor
31

32 ATTEST:
33
34
35

36 _____
37 Helen Cospolich, CMC,
38 Town Clerk
39

40 500-419\Policies 24R and 25R Ordinance (02-28-20)(First Reading)



Memo

To: Breckenridge Town Council Members
From: Revenue Services Administrator – Heather Pezzella
Date: 03/04/2020
Subject: Town of Breckenridge Accommodation Tax Ordinance Amendment- 1st Reading

Purpose

In an effort to address the final court decision in the litigation, *Town of Breckenridge vs. Egencia, LLC*, Town and Legal staff have drafted an amendment to Title 3, Chapter 4 of the Municipal Code, 'Breckenridge Public Accommodation Tax'. The intent of these revisions is to emulate the language that the City and County of Denver uses in their Lodger's Tax Ordinance. Staff has chosen to move forward with utilizing the language from the City's Lodger's Tax Ordinance due to the City prevailing in a similar lawsuit in the Colorado Supreme Court with Online Travel Commissions (OTCs) in 2017.

To address the Courts decision, staff is proposing amendments to the code that use Denver's Lodger's Tax Ordinance language. In the Lodger's Tax Ordinance OTCs are considered vendors of lodging and therefore should collect tax on the entire purchase price of lodging. The Town's Finance and Legal staff have evaluated these changes to ensure revenue neutrality as well as compliance with TABOR.

Conclusion

Attached for review is the draft ordinance. Staff will be present during the March 10th Work Session to respond to any questions Council may have at that time. This item will be up for first reading at the evening meeting.

1 **FOR WORKSESSION/FIRST READING – MARCH 10**

2
3 COUNCIL BILL NO. _____

4
5 Series 2020

6
7 AN ORDINANCE AMENDING CHAPTER 4 OF TITLE 3 OF THE BRECKENRIDGE
8 TOWN CODE KNOWN AS THE “BRECKENRIDGE PUBLIC ACCOMMODATION TAX”
9 ORDINANCE

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

13
14 Section 1. The Town Council finds, determines, and declares as follows:

15 A. The Town of Breckenridge is a home rule municipal corporation organized existing
16 under Article XX of the Colorado Constitution.

17
18 B. The electors of the Town adopted the Breckenridge Town Charter on April 1, 1980.

19
20 C. Section 12.1 of the Breckenridge Town Charter provides that the Town Council of the
21 Town may, by ordinance, levy and collect excise taxes for municipal purposes.

22
23 D. The Town Council has heretofore enacted various municipal excise taxes, each of
24 which is currently codified in Title 3 of the Breckenridge Town Code.

25
26 E. In 1992 the electors of the state approved Article X, §20 of the Colorado Constitution,
27 commonly known as the “TABOR Amendment.”

28
29 F. The Town is a “district” as defined in TABOR.

30
31 G. Section 7(b) of TABOR establishes a formula for the calculation of a local district’s
32 (such as the Town’s) allowed annual fiscal year spending.

33
34 H. Section 7(d) of TABOR provides that local electors may approve a “voter-approved
35 revenue change” to the local district’s allowed annual fiscal year spending.

36
37 I. By Ordinance No. 28, Series 1995, the Town Council of the Town of Breckenridge
38 referred to the electors of the Town the following ballot question:

39
40 SHALL THE TOWN OF BRECKENRIDGE BE AUTHORIZED,
41 COMMENCING IN 1994 AND CONTINUING ANNUALLY THEREAFTER,
42 TO COLLECT AND RETAIN WHATEVER AMOUNTS ARE RAISED
43 ANNUALLY FROM ALL SOURCES, WITHOUT LIMITATION, AND THE
44 AUTHORITY TO EXPEND SUCH REVENUES FOR THE PURPOSES OF
45 PROVIDING FOR THE HEALTH, SAFETY AND WELFARE OF THE

1 PEOPLE OF THE TOWN OF BRECKENRIDGE, AS A VOTER-APPROVED
2 REVENUE CHANGE AND EXCEPTION TO THE LIMITS WHICH WOULD
3 OTHERWISE APPLY, PURSUANT TO ARTICLE X, SECTION 20 OF THE
4 COLORADO CONSTITUTION (ALSO KNOWN AS “TABOR” AND
5 ‘AMENDMENT ONE’); PROVIDED THAT NO TOWN TAX RATE OR MILL
6 LEVY SHALL BE INCREASED AND NO NEW TAX SHALL BE CREATED
7 WITHOUT FURTHER VOTER APPROVAL?
8

9 J. At a special municipal election held on November 7, 1995 the electors of the Town
10 approved the ballot question set forth in Section I, above.
11

12 K. In 2009 the Colorado Supreme Court issued its opinion in the case of Mesa County
13 Bd. of Comm’rs v State, 203 P.3d 519 (Colo. 2009). In its opinion the Supreme Court held that
14 when a municipality subject to TABOR has approved a broadly worded measure such as the
15 Town did in 1995, the municipality may thereafter amend its tax ordinance(s) without a new
16 election because, in the language of the Court’s opinion, “such a requirements would create
17 unnecessary redundancy.”
18

19 L. Pursuant to the Colorado Supreme Court’s holding in the case mentioned in Section K,
20 the adoption of this ordinance does not result in a “tax policy change” requiring approval of the
21 Town’s electors under TABOR.
22

23 M. The adoption of the ordinance does not create a new tax or tax rate.
24

25 Section 2. Chapter 4 of Title 3 of the Breckenridge Town Code is amended to read as
26 follows:

27 CHAPTER 4

28 BRECKENRIDGE PUBLIC ACCOMMODATION TAX

29 SECTION:

- 30
31
32
33 3-4-1: TITLE
34 3-4-2: LEGISLATIVE INTENT
35 3-4-3: DEFINITIONS
36 3-4-4: IMPOSITION OF TAX
37 3-4-5: EXEMPTIONS
38 3-4-6: COLLECTION OF TAX
39 3-4-7: VENDOR RESPONSIBLE FOR PAYMENT OF TAX
40 3-4-8: DUTY TO KEEP BOOKS AND RECORDS
41 3-4-9: CONSOLIDATION OF RETURNS
42 3-4-10: TRUST STATUS OF TAX IN POSSESSION OF VENDOR
43 3-4-11: COLLECTION AND REFUND OF DISPUTED TAX
44 3-4-12: REFUND PROCEDURE
45 3-4-13: EXAMINATION OF RETURNS; REFUNDS; CREDITS; AND
46 DEFICIENCIES

- 1 3-4-14: INTEREST ON LATE PAYMENTS; PENALTY
- 2 3-4-15: PENALTIES FOR DEFICIENCY CAUSED BY FRAUD
- 3 3-4-16: INVESTIGATION OF VENDOR’S BOOKS
- 4 3-4-17: AUDIT; ESTIMATED OF TAXES; PENALTY; INTEREST;
- 5 NOTICE; ASSESSMENT
- 6 3-4-18: REVIEW BY FINANCE DIRECTOR
- 7 3-4-19: REVIEW OF FINANCE DIRECTOR’S FINAL ORDER OR
- 8 DECISION
- 9 3-4-20: TAX LIEN
- 10 3-4-21: SALE UPON DISTRAINT
- 11 3-4-22: RELEASE OF LIEN
- 12 3-4-23: MANAGER MAY WAIVER PENALTY
- 13 3-4-24: LICENSE AND TAX IN ADDITION TO ALL OTHER TAXES
- 14 3-4-25: VIOLATIONS; EVASION OF COLLECTION OR PAYMENT OF
- 15 TAX

16
17 3-4-1: TITLE:

18
19 This Chapter shall be known as and referred to as the REVISED
20 BRECKENRIDGE PUBLIC ACCOMMODATION TAX.

21
22 3-4-2: LEGISLATIVE INTENT:

23
24 A. It is hereby declared to be the legislative intent of the Town Council that, for
25 the purposes of this Chapter, every person who purchases in the Town any
26 lodging is exercising a taxable privilege.

27
28 B. It is hereby declared to be the legislative intent of the Town Council that, for
29 the purposes of this Chapter, every vendor who shall make a sale of lodging to a
30 purchaser in the Town shall collect the tax imposed by this Chapter to the total
31 purchase price charged for such lodging furnished at any one (1) time by or to
32 every customer or buyer, in the manner set forth in this Chapter. It is the
33 legislative intent of the Town Council that the term “vendor” as used in this
34 Chapter shall include, without limitation, online travel companies to the
35 maximum extent permitted by law.

36
37 3-4-3: DEFINITIONS:

38
39 In addition to the definitions in Chapter 1 of this Title, when used in this Chapter
40 the following words shall have the following meanings unless the context requires
41 otherwise:

42
43 (1) Gross taxable sales means the total amount received in money, credits,
44 property or other consideration valued in money from sales and purchases of
45 lodging that is subject to the tax imposed in this Chapter.

46

1 (2) Lodging shall mean rooms or accommodations for overnight use furnished by
2 any person or the representative of any person to any person who for
3 consideration uses, possesses, occupies or has the right to use, possess or occupy
4 any such room or accommodation in a hotel, condominium hotel, apartment hotel,
5 condominium, lodging house, motel, motor hotel, guest house, guest ranch, resort,
6 mobile home, mobile home park, auto court, inn, trailer court, trailer park or
7 hotel, under any concession, permit, lease, contract, license to use or other similar
8 arrangement.

9
10 (3) Purchase or sale means the acquisition or furnishing for consideration by any
11 person of lodging within the Town.

12
13 (4) Purchaser means any person exercising the taxable privilege of purchasing
14 lodging.

15
16 (5) Tax means either the tax payable by the purchaser or the aggregate amount of
17 taxes due from a vendor during the period for which the vendor is required to
18 report collections under this Chapter.

19
20 (6) Vendor means a person making sales of or furnishing lodging to a purchaser in
21 the Town.

22
23 3-4-3: IMPOSITION OF TAX:

24
25 There is hereby levied and shall be collected and paid a tax by every person
26 exercising the taxable privilege of purchasing lodging as in this Chapter defined
27 an excise tax of three and four-tenths percent (3.4%) on the purchase price paid of
28 charged for such lodging.

29
30 3-4-4: EXEMPTIONS:

31
32 There shall be exempt from this Chapter the following:

33
34 (1) All lodging as defined in this Chapter furnished to any person who resides
35 continuously for a period of thirty (30) consecutive days or more in rooms or
36 accommodations or has the right to so reside pursuant to any written concession,
37 permit, contract, license to use or other written arrangement;

38 (2) All sales to the United States government; to the State of Colorado, its
39 departments or institutions, and the political subdivisions thereof, in their
40 governmental capacities only; and all sales to the Town and any department
41 thereof;

42 (3) All sales to charitable organizations that are:

- 43 a. Billed directly to the charitable organization;
44 b. Paid directly from funds of the charitable organization; and
45 c. Used exclusively for the charitable organization's organizational or operational
46 purposes.

1
2 3-4-5: COLLECTION OF TAX:
3

4 A. Every vendor making sales to a purchaser in the Town, which are taxable
5 under the provisions of this Chapter, at the time of making such sales is required
6 to collect the tax imposed by Section 3-4-3 from the purchaser.
7

8 B. The tax to be collected as provided by Section A of this Section shall be stated
9 and charged separately from the sale price and shown separately from the sale
10 price on any record thereof at the time when the sale is made or at the time when
11 evidence of the sale is made or at the time when evidence of the sale is issued or
12 employed by the vendor; provided, that when added such tax shall constitute a
13 part of such purchase price or charge and shall be a debt from the purchaser to the
14 vendor until paid and shall be recoverable at law in the same manner as other
15 debts. The tax shall be paid by the purchaser to the vendor, as trustee for and on
16 account of the Town, and the vendor shall be liable for the collection thereof and
17 on account of the Town.

18 C. Taxes paid on the amount of gross sales which are represented by accounts
19 which are found to be worthless and are actually and properly charged off as bad
20 debts for the purpose of the income tax imposed by the laws of the state may be
21 credited upon a subsequent payment of the tax herein provided; but if any such
22 accounts are thereafter collected by the taxpayer, a tax shall be paid upon the
23 amount so collected.
24

25 3-4-6: VENDOR RESPONSIBLE FOR PAYMENT OF TAX:
26

27 A. Amount. Every vendor shall add the tax imposed by Section 3-4-3 to the
28 purchase price or charge for lodging, and the vendor shall be liable and
29 responsible to the Town for the payment on a monthly basis of an amount
30 equivalent to such tax on all gross taxable sales, and also liable and responsible to
31 the Town for any collection in excess of that equivalent amount. Every vendor
32 shall on its return round each calculation, as directed on such form as the Finance
33 Director may require, to the nearest whole dollar and remit the rounded amount.
34 In rounding under this section, any amount of forty-nine cents (\$0.49) or less shall
35 be rounded down, and any amount of fifty cents (\$0.50) or higher shall be
36 rounded up.
37

38 B. Returns. Every vendor shall on or before the twentieth day of each month make
39 a return to the Finance Director for the preceding calendar month and remit to the
40 Finance Director simultaneously therewith the total amount due the Town as
41 provided by subsection (a). Returns of the vendor, or the Vendor's duly
42 authorized agent, shall contain such information and be made in such a manner
43 and upon such forms as the Finance Director may prescribe, and the Finance
44 Director may, by regulation duly adopted, extend the time up to one (1) year for
45 making returns and paying the tax due.
46

1 3-4-7: DUTY TO KEEP BOOKS AND RECORDS

2
3 It shall be the duty of every vendor hereunder to keep and preserve suitable
4 records of all sales made by the vendor and such other books or accounts as may
5 be necessary to determine the amount of the tax for the collection or payment of
6 which such vendor is liable under this Chapter. It shall be the duty of every
7 vendor to keep and preserve for a period of three (3) years following the due date
8 of the return or the payment of the tax all such books, invoices and other records
9 necessary to determine the tax and the same shall be open for examination by the
10 Finance Director. Upon demand by the Finance Director the vendor shall make
11 the books, invoices, accounts or other records it maintains available at the office
12 of the Finance Director or some other place designated by the Finance Director
13 for examination, inspection and audit by the Finance Director. The Finance
14 Director, in the Finance Director's discretion, may make, permit or cause to be
15 made the examination, inspection or audit of books, invoices, accounts and other
16 records so kept or maintained by the vendor. When the vendor shall have entered
17 into a binding agreement with the Town to reimburse it for all costs and expenses
18 incurred by the Town in order to have such examination, inspection or audit at a
19 place other than the place designated by the Finance Director, then such
20 examination, inspection or audit shall be made where such records are kept or
21 maintained by the vendor or as otherwise designated in the agreement.
22

23 3-4-8: CONSOLIDATION OF RETURNS:

24
25 A vendor doing business in two (2) or more places or locations, whether in or
26 without the Town, and collecting taxes under this Chapter may file one (1) return
27 covering all such places or locations, when accompanied by a supplemental report
28 showing the gross and net taxable sales and taxes collected thereon for each such
29 place or location.
30

31 3-4-10: TRUST STATUS OF TAX IN POSSESSION OF VENDOR:

32
33 All sums of money paid by the purchaser to the vendor as taxes imposed by this
34 Chapter shall be and remain public money, the property of the Town, in the hands
35 of such vendor, and the vendor shall hold the same in trust for the sole use and
36 benefit of the Town until paid to the Finance Director as herein provided, and for
37 failure so to pay to the Finance Director, such vendor shall be punished for a
38 violation hereof.
39

40 3-4-11: COLLECTION AND REFUND OF DISPUTED TAX:

41
42 Should a dispute arise between the purchaser and vendor as to whether or not the
43 sale of lodging is exempt from taxation under this Chapter, nevertheless, the
44 vendor shall collect and the purchaser shall pay such tax, and the vendor shall
45 thereupon issue to the purchaser a receipt or certificate, on forms prescribed by
46 the Finance Director, showing the names of the purchaser and vendor, the date,

1 price, amount of tax paid, and a brief statement of the claim of exemption. The
2 purchaser thereafter may apply to the Finance Director for a refund of such taxes,
3 and it shall be the duty of the Finance Director to determine the question of
4 exemption, subject to review by the courts.
5

6 3-4-12: REFUND PROCEDURE:
7

8 A. Generally. A refund shall be made or credit allowed for the tax paid under
9 dispute by any purchaser who has an exemption as provided in this Chapter.
10 Interest shall be paid on refunds, but not credits, for overpayments. Interest shall
11 accrue from the time the overpayment is made. The rate of interest shall be fixed,
12 and shall be the average monthly rate earned by the Town on the general fund for
13 the calendar year immediately preceding the year in which the refund is made.
14 Such refund shall be made by the Finance Director after compliance with the
15 conditions of this Chapter.
16

17 B. Application. Applications for a refund must be made within sixty (60) days
18 after the purchase of the lodging on which the exemption is claimed and must be
19 supported by the affidavit of the vendor accompanied by the original paid invoice
20 or sales receipt and a certificate issued by the vendor, and be made upon such
21 forms as shall be prescribed and furnished by the Finance Director, which forms
22 shall contain such information as the Finance Director shall prescribe.
23

24 C. Decisions. Upon receipt of such application, the Finance Director shall
25 examine the same with all due speed and shall give notice to the applicant by an
26 order in writing of the decision thereon.
27

28 D. Refunds not assignable. The right of any person to a refund under this Chapter
29 shall not be assignable, and application for refund must be made by the same
30 person who purchased the lodging and paid the tax thereon as shown in the
31 invoice of the sale thereof.
32

33 E. Penalty for violating refund provisions. Any applicant for refund under the
34 provisions hereinabove, or any other person, who shall make any false statement
35 in connection with an application for a refund of any tax shall be deemed guilty of
36 a violation of this Chapter.
37

38 F. Violations of refund provisions to be used as evidence of fraudulent intent. If
39 any person be convicted under the provisions of subsection (f), such conviction
40 shall be prima facie evidence that all refunds received by such person during the
41 current year were obtained unlawfully, and the Finance Director is hereby
42 empowered and directed to bring appropriate action for recovery of such refund.
43 A brief summary of the above mentioned penalties shall be printed on each form
44 application for refund.
45

1 G. Burden of proof. The burden of proof that sales of lodging on which tax
2 refunds are claimed are exempt from taxation under this Chapter shall be on the
3 one making such claim and such proof shall be by a preponderance of evidence.
4

5 3-4-13: EXAMINATION OF RETURNS; REFUNDS; CREDITS; AND
6 DEFICIENCIES.
7

8 As soon as practicable after the return is filed, the Finance Director shall examine
9 it and:
10

- 11 (1) If it then appears that the correct amount of tax to be remitted is greater or less
12 than that shown in the return, the tax shall be recomputed;
13 (2) If the amount paid exceeds that which is due, the excess shall be refunded with
14 interest pursuant to [insert interest section number], or credited, against any
15 subsequent remittance from the same person, provided, however, that a claim for
16 refund or credit is made within three (3) years of the date the return is filed or, if
17 the three-year period for assessment of tax has been extended as provide in this
18 Title, then a claim for refund or credit may be made within such extended period;
19 (3) If the amount paid is less than the amount due, the difference, together with
20 interest thereon at the rate of one (1) percent per month from the time the return
21 was due, shall be paid by the taxpayer within thirty (30) days after written notice
22 and demand to the taxpayer from the Finance Director.
23

24 3-4-14: INTEREST ON LATE PAYMENTS; PENALTY.
25

26 A. In any case in which a taxpayer fails to file a return or pay over the tax within
27 the time required by this Chapter, but without the intent to defraud, there shall be
28 added as a penalty fifteen (15) percent of the total amount of the deficiency, but
29 not less than twenty-five dollars (\$25.00), and interest in such cases shall be
30 collected at the rate of one (1) percent each month, or fraction thereof, on the
31 amount due on the deficiency from the time the return was due to the date the tax
32 is paid, which interest and addition shall become due and payable within thirty
33 (30) days after the written notice and demand by the Finance Director, and such
34 interest shall be assessed, collected and paid in the same manner as the tax itself.

35 B. Payments of part but less than all of a deficiency, including interest, or interest
36 and penalty, shall be first applied to penalty, if any, secondly to accrued interest
37 and, lastly, to the tax itself.
38

39 3-4-15: PENALTIES FOR DEFICIENCY CAUSED BY FRAUD:
40

41 If any part of the deficiency is due to fraud with the intent to evade the tax, then
42 there shall be added fifty (50) percent of the total amount of the deficiency, and in
43 such case the whole amount of the tax unpaid, including the additions, shall
44 become due and payable thirty (30) days after written notice and demand by the
45 Finance Director, and an additional one (1) percent per month on such amounts
46 shall be added from the date the return was due until paid.

1
2 3-4-16: INVESTIGATION OF VENDOR'S BOOKS.
3

4 For the purpose of ascertaining the correctness of a return or for the purpose of
5 determining the amount of tax due from any person, the Finance Director may
6 hold investigations and hearings concerning any matters covered by this Chapter
7 and may examine any relevant books, papers, records or memoranda of any such
8 person and may require the attendance of such person, or any officer or employee
9 of such person, or of any person having knowledge of such sales, and may take
10 testimony and require proof for their information. The Finance Director shall have
11 power to administer oaths to such persons.
12

13 3-4-17: AUDIT; ESTIMATE OF TAXES, PENALTY, AND INTEREST;
14 NOTICE; ASSESSMENT.
15

16 A. The Finance Director is authorized to examine, inspect and audit the books,
17 invoices, accounts and other records kept or maintained by the taxpayer for the
18 collection of the taxes imposed by this Chapter. If the Finance Director
19 determines that any taxpayer neglects or refuses to make a timely return in
20 payment of the taxes or to pay or to correctly account for any taxes as required by
21 this Chapter, the Finance Director shall make an estimate, based upon such
22 information as may be available, with or without employing investigative powers
23 vested in the Finance Director by this Chapter, of the amount of the taxes due for
24 the period or periods for which the taxpayer is delinquent; and upon the basis of
25 such estimated amount, compute and assess in addition thereto a penalty equal to
26 fifteen (15) percent thereof, together with the interest on such delinquent taxes at
27 the rate of one (1) percent each month, or a fraction thereof, from the date when
28 due until the date paid.
29

30 B. Promptly thereafter the Finance Director shall notify the delinquent taxpayer in
31 writing and demand payment thereof of such estimated taxes, penalty and interest.
32 (c) Such estimated amounts shall thereupon become an assessment, and such
33 assessment shall be final and due and payable from the taxpayer to the Town
34 thirty (30) days from the date of the notice and demand; provided, however, that
35 within said thirty-day period the delinquent taxpayer may petition the Finance
36 Director in writing for review of the assessment as provided in the applicable
37 provisions of this Title. The filing of a petition shall not toll the accrual of interest
38 on the amount of taxes due.
39

40 3-4-18: REVIEW BY FINANCE DIRECTOR:
41

42 A. Petitions. Petitions submitted to the Finance Director shall be in writing and
43 shall contain a statement of facts and reasons for and the amount of the requested
44 changes in the assessment or decision to deny or reduce a refund claim, and shall
45 otherwise comply with the applicable rules promulgated by the Finance Director
46 relating to petitions and hearings.

1
2 B. Time limit for filing petitions. Petitions shall be submitted to the Finance
3 Director within thirty (30) days from the date of the assessment or decision to
4 deny or reduce a refund claim. If a petition is not submitted within this time, the
5 assessment or decision is final and no further review is available.
6

7 C. Notice of hearing. The Finance Director shall notify the taxpayer in writing of
8 the time and place within the Town fixed for hearing.
9

10 D. Hearings. A hearing, if any, shall be conducted in accordance with applicable
11 rules promulgated by the Finance Director relating to petitions and hearings.
12

13 E. Finance Director may appoint designee. A hearing, if any, shall be before the
14 Finance Director or its designee, who is authorized to administer oaths, to take
15 testimony, to hear arguments, and to issue all necessary and appropriate orders
16 and decisions.
17

18 F. Burden of proof. The burden of proof that sales of lodging upon which refunds
19 of taxes are claimed, or for which modifications or cancellations of assessments
20 are sought, are exempt from or not subject to taxation under this Chapter shall be
21 on the taxpayer and such proof shall be by a preponderance of evidence.
22

23 G. Final order or decision. The final order or decision of the Finance Director or
24 its designee shall be in writing and notice thereof shall be mailed to the taxpayer
25 forthwith.
26

27 3-4-19: REVIEW OF FINANCE DIRECTOR'S FINAL ORDER OR DECISION.
28

29 A. Should the taxpayer be aggrieved by a final order or decision of the Finance
30 Director, the taxpayer may proceed to have same reviewed under Colorado Rules
31 of Civil Procedure 106(a)(4) by the district court for the fifth judicial district of
32 the state. The petition or complaint for review must be filed within thirty (30)
33 days from the date of the final order or decision. Any party, including the Town,
34 may appeal the final order or decision of the Finance Director and, also, the
35 decision of the district court (or such other tribunal having jurisdiction), using all
36 judicial, appellate, and extraordinary proceedings available.
37

38 B. Before filing a petition or complaint for review under Colorado Rules of Civil
39 Procedure 106(a)(4), the taxpayer shall file with the Finance Director a bond in
40 twice the amount of the taxes, interest and other charges audited and stated in the
41 final order or decision of the Finance Director, with surety as is provided in other
42 cases of appeal, or may deposit lawful money of the United States in the same
43 manner as herein provided.
44

45 3-4-20: TAX LIEN.
46

1 A. The tax imposed by this Chapter, together with the interest and penalties herein
2 provided and the costs of collection which may be incurred, shall be and, until
3 paid, remain a first and prior lien superior to all other liens upon the goods,
4 merchandise, furniture and fixtures, tools and equipment of any taxpayer, or used
5 by any taxpayer in conducting his business under lease, title retaining contract or
6 other contract arrangement, within the Town and shall take precedence on all such
7 property over other liens or claims of whatsoever kind or nature and may be
8 foreclosed by seizing under distraint warrant and selling so much of said goods,
9 merchandise, furniture and fixtures, tools and equipment as may be necessary to
10 discharge said lien.

11
12 B. The real or personal property of an owner who has made a bona fide lease to a
13 taxpayer shall be exempt from the lien created in this section (1) if such property
14 can reasonably be identified from the lease description and (2) if the lessee is
15 given no right to become the owner of the property leased. This exemption shall
16 be effective from the date of the execution of the lease until its termination if the
17 lease is filed or recorded, within ten (10) days after the execution of the lease,
18 with either the executive director of the state department of revenue or the clerk
19 and recorder of the Town. Where the lessor and lessee are blood relatives,
20 relatives by law, or have twenty-five (25) percent or more common ownership, a
21 lease between them shall not be considered bona fide for the purpose of this
22 section.

23
24 C. Any taxpayer who is in possession of property under the terms of a lease,
25 which property is exempt from lien as provided in this section, may be required
26 by the manager to make return of and pay over taxes collected at more frequent
27 intervals than monthly, or may be required to furnish security for the proper
28 payment of taxes whenever the collection of taxes appears to be in jeopardy.

29
30 3-4-21: SALE UPON DISTRAINT:

31
32 A. Causes. The Finance Director may issue a warrant directed to the Summit
33 County Sheriff , sometimes in this section referred to collectively as “agent,”
34 commanding the agent to distraint, seize and sell the goods, merchandise, furniture
35 and fixtures, tools and equipment of, or used by, the taxpayer, except such
36 personal property as is exempted from execution and sale by any statute of the
37 United States, for the payment of the tax due together with penalties and interest
38 accrued thereon and cost of execution, including thirty dollars (\$30.00) for every
39 warrant issued under this section, upon the happening of any one (1) of the
40 following:

41 (1) When any deficiency in tax is not paid within thirty (30) days from the
42 Finance Director’s final decision thereon and no petition for review from such
43 determination has been filed with the district court for the fifth judicial district
44 within the period of time allowed by law for such review;

1 (2) When any amount of tax, penalty or interest is not paid within thirty (30) days
2 from the mailing or personal service of demand for payment thereof and no
3 protest thereof has been filed with the Finance Director within said period; or
4 (3) Immediately upon making of a jeopardy assessment or of the issuance of a
5 demand for payment, as provided in this section.
6

7 B. Notices. The agent charged with the collection shall make or cause to be made
8 an account of the property distrained, a copy of which, signed by the agent
9 making such distraint, shall be served, by leaving it with the owner or possessor
10 of the property or with some member of such person's family over the age of
11 eighteen (18) years, or at the person's usual place of abode or, if the person is a
12 business entity within the Town, with any officer, manager, accountant,
13 bookkeeper, general agent, registered agent, or agent for process, together with a
14 copy of said warrant stating the sum demanded. In lieu of the foregoing
15 provisions of this subsection for serving said account and warrant, if the owner or
16 possessor cannot be readily located, or has no dwelling or place of business within
17 the Town, the account and warrant may be served by mailing by certified mail to
18 the last known address of the owner or possessor. Said agent shall cause to be
19 published a notice of the time and place of sale, together with a description of the
20 property to be sold, in some newspaper of general circulation within the Town
21 and the agent shall cause such notice to be publicly posted at the location of the
22 property and place of sale, at the Denver courthouse, and in at least two (2) other
23 places within the Town. The taxpayer and those having possession of, or of public
24 record a security interest in, the property shall be notified of the time and place of
25 sale either in person or by certified mail, or, if that is impractical, by first class
26 mail. The time fixed for the sale shall not be less than ten (10) days nor more than
27 sixty (60) days from the date of such notification, and notification by mail shall be
28 presumed upon mailing.
29

30 C. Management of sale. Said sale may be adjourned from time to time by said
31 agent if he deems it advisable but not for a time to exceed in all ninety (90) days
32 from the date first fixed for the sale. When any property is advertised for sale
33 under distraint as aforesaid, the agent making the seizure shall proceed to sell
34 such property at public auction, offering the same at not less than a fair minimum
35 price, including the expenses of making the seizure, storing the property and of
36 advertising the sale, and if the amount bid for the property at the sale is not equal
37 to the fair minimum price so fixed, the agent conducting the sale may declare the
38 same to be purchased by him for the Town. The property so purchased may be
39 sold by the agent under such terms as the Finance Director may approve or
40 declared to be surplus property subject to disposition by the Finance Director of
41 general services. In any case of distraint for the payment of taxes, the property so
42 distrained shall be restored to the owner or possessor if, prior to the sale, the
43 amount due is paid together with the fees and other charges, or the property may
44 be so redeemed before sale by any person having a legal or equitable interest in
45 the property.
46

1 D. Certificate of title; return of surplus. In all cases of sale, the agent making the
2 sale shall issue a certificate of sale to each purchaser, and such certificate shall be
3 prima facie evidence of the right of the agent to make such sale and conclusive
4 evidence of the regularity of the proceedings in making the sale and shall transfer
5 to the purchaser all right, title and interest in and to the property sold. Any surplus
6 remaining above the taxes, interest, penalties, costs and expenses of making the
7 seizure and of advertising the sale shall be returned upon demand made within
8 one (1) year from the sale to the owner. Surplus remaining at the end of one (1)
9 year from the sale shall be deposited to the general fund.

10
11 E. Filing of notice of lien. Any agent to whom warrant has been issued may serve
12 a notice of lien in such form as the Finance Director may prescribe with the
13 person in possession of any personal property or rights to property, without regard
14 to its use in the business of the taxpayer, belonging to the taxpayer or file said
15 notice with the secretary of state and the clerk and recorder, and the service or
16 filing of such notice shall operate to perfect a lien upon such personal property or
17 rights to property from the date of such service or filing. The Finance Director
18 may release said lien as to any part or all of the property or rights to property
19 covered by any such lien upon such terms as he may deem proper.

20
21 F. Recurring distraint. If any taxpayer liable for the payment of any tax pursuant
22 to this Chapter repeatedly fails, neglects, or refuses to pay said tax within the time
23 required by this Chapter and the Finance Director has been required to issue
24 distraint warrants to enforce the collection of the tax due from such taxpayer, the
25 Finance Director is authorized to assess and collect the amount of the taxes due,
26 together with all interest and penalties thereon provided by law, and also an
27 additional penalty of one hundred dollars (\$100.00) each for the second and
28 following distraint warrant regarding the taxpayer that is issued by the Finance
29 Director pursuant to this Chapter.

30
31 G. When collection in jeopardy. If the Finance Director finds that collection of the
32 tax will be jeopardized by delay, in his discretion, he may declare the taxable
33 period immediately terminated, determine the tax, and issue notice and demand
34 for payment thereof; and having done so, the tax shall be due and payable
35 forthwith, and the Finance Director may proceed immediately to collect such tax
36 by distraint, levy and sale or as otherwise provided in this section. Collection by
37 seizure and sale may be stayed if the taxpayer gives such security for payment as
38 shall be satisfactory to the Finance Director. The taxpayer or other person entitled
39 to notice under this Title may request a hearing in writing before the Finance
40 Director regarding the jeopardy determination and the amount of the assessment.
41 A request for hearing must be made within seven (7) days after the notice and
42 demand for payment or distraint warrant is issued. The hearing shall be held
43 within fifteen (15) days of the request. The hearing shall be informal and need not
44 comply with the requirements of the applicable provisions of this Title, nor with
45 the applicable rules and regulations promulgated by the Finance Director relating
46 to hearings. The burden of proof shall be on the taxpayer or other person

1 requesting the hearing, and such proof shall be by a preponderance of evidence.
2 The Finance Director shall enter his decision within thirty (30) days after the
3 hearing and shall furnish a copy to the taxpayer or other person requesting the
4 hearing. If the taxpayer is aggrieved by the decision of the Finance Director, the
5 taxpayer may seek review pursuant to the applicable provisions of this Title. A
6 request for hearing under this section shall not stay collection proceedings unless
7 such request is accompanied by a bond or other security as shall be satisfactory to
8 the Finance Director.

9
10 3-4-22: RELEASE OF LIEN:

11
12 Any lien for taxes as shown on the records of the county clerks and recorders as
13 herein provided in this Chapter shall, upon the payment of all taxes, penalties and
14 interest covered thereby, be released by the manager of finance in the same
15 manner as mortgages or judgments are released.

16
17 3-4-23: MANAGER MAY WAIVE PENALTY:

18
19 The Finance Director is hereby authorized to waive, for good cause shown, any
20 penalty assessed as in this Chapter provided, and interest imposed in excess of
21 one (1) percent each month or fraction thereof of the tax deficiency, from the date
22 the tax is due until the date paid.

23
24 3-4-24: LICENSE AND TAX IN ADDITION TO ALL OTHER TAXES:

25
26 The tax imposed by this Chapter shall be in addition to all other taxes imposed by
27 law, except as otherwise provided in this Chapter.

28
29 3-4-25: VIOLATIONS; EVASION OF COLLECTION OR PAYMENT OF
30 TAX:

31
32 It shall be a violation of this Chapter for any vendor to refuse to make any return
33 provided to be made in this Chapter, or to make any false or fraudulent return, or
34 any false statement in any return, or to fail or refuse to make payment to the
35 Finance Director of any taxes collected or due the Town, or in any manner to
36 evade the collection and payment of the tax, or any part thereof, imposed by this
37 Chapter, or for any person or purchaser to fail or refuse to pay such tax or evade
38 the payment thereof, or to aid or abet another in any attempt to evade the payment
39 of the tax imposed by this Chapter. Any corporation making a false return or a
40 return containing a false statement shall be guilty of a violation of this Chapter.
41 Any person convicted of a violation of any provision of this Chapter shall be
42 punished as provided in Section 1-4-1 of this Code.

43
44 Section 3. The Town Council finds, determines, and declares that it has the power to
45 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
46 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.



Memo

To: Town Council
From: Julia Puester, AICP, Assistant Community Development Director
Date: 3/4/2020 (for March 10, 2020 meeting)
Subject: Resolution to Approve a Collection Agreement with the USDA, Forest Service for the Indiana Creek Aquatic Organism and Restoration Project

Background

The Town's water source is the Goose Pasture Tarn (Tarn), located in the Indiana Gulch watershed, just south of the Town boundary and adjacent, in part, to United States Forest Service (USFS) lands. Because it serves as our primary water source, the Town is concerned with potential impacts should a wildfire occur near this water source.

After numerous studies of the area's watershed, the Town hired Tetra Tech to take these studies and provide further analysis and recommendations to produce a Wildfire Prevention & Restoration Plan. The Plan is intended to aid in both pre and post wildfire planning in areas that have high potential to affect the Tarn. The Plan identifies measures that would reduce the impacts of ash, sediment and debris loading in the Tarn that if severe enough, would affect water availability. The Town subsequently approached the USFS to determine the best course of action to have the Plan recognized by the USFS, which resulted in a Memorandum of Understanding (MOU) approved by the Town Council and USFS in 2017. The Town and USFS continue to work together on various forest health and wildfire prevention initiatives identified in the Plan.

Collection Agreement

One upcoming project to assist in stream health and road improvements to provide better access to fight a wildfire is the aquatic passage project. Staff secured a grant for \$30,000 of the \$40,000 total project gap cost from the Summit County Wildfire Protection Plan (CWPP) Grant program in 2019. The Town has agreed to contribute the remaining gap of \$10,000 towards the project. Total project cost is \$107,240, with the USFS and other grants covering the remainder. This project work will take place in the summer and fall of 2020 when the creek flow is low to reduce any adverse effects on wildlife and sedimentation. The attached Resolution and Collection Agreement formalizes the payback of the \$30,000 from the CWPP grant and the \$10,000 from the Town.

Staff Recommendation

Staff recommends that the Town Council adopt the Resolution attached to formalize the monetary Collection Agreement between the Town and the USFS.

Staff will be available at the meeting to answer any questions that the Town Council may have.



FS Agreement No. 20-CO-11021500-009

Cooperator Agreement No. _____

COLLECTION AGREEMENT
Between The
TOWN OF BRECKENRIDGE
And The
UNITED STATES DEPARTMENT OF AGRICULTURE,
U.S. FOREST SERVICE
WHITE RIVER NATIONAL FOREST

This COLLECTION AGREEMENT is hereby entered into by and between the Town of Breckenridge, hereinafter referred to as “the Cooperator”, and the United States Department of Agriculture (USDA), Forest Service, White River National Forest, hereinafter referred to as the “U.S. Forest Service,” under the provisions of the Cooperative Funds Act of June 30, 1914 (16 USC 498 as amended by Pub. L. 104-127).

Background: The U.S. Forest Service, as an agency of the United States of America, is responsible for management of National Forest System (NFS) lands and therefore, is responsible for the management, use, and stewardship of natural and cultural resources on national forests and grasslands. The Cooperative Funds Act of 1914 allows the U.S. Forest Service to collect contributions for forest investigation, protection, management and improvement work on the NFS lands that is the responsibility of the U.S. Forest Service.

The purpose of this Collection Agreement is to assign responsibility for U.S. Forest Service costs associated with stream health, water quality protection, aquatic organism passage, and aquatic resource improvements at Pennsylvania Connect Road crossing located on the White River National Forest which will improve the Town of Breckenridge's municipal drinking water.

This Agreement is not a commitment to or approval of any activities that are subject to completion of environmental analysis, NEPA and other procedures; project work associated with this agreement are consist with forest protection, recreation use, and natural resource management of the National Forest System.

Title: Indiana Creek Aquatic Organism Passage and Restoration Project (Stream health, Water Quality Protection, Aquatic Organism Passage, and Aquatic Resource Improvements)

I. PURPOSE: The purpose of this agreement, and incorporated Financial Plan, is to document the voluntary contribution of funds from the Cooperator to the U.S. Forest Service to improve watershed health within the Cooperator's watershed by replacing the open ford crossing with an aquatic organism passage. Projects incorporated in this agreement are consistent with the goals and objectives agreed to MOU signed on February 24, 2017, FS Agreement No. 17-MU-11021510-004. This project is considered to be mutually beneficial



to the Cooperator and the U.S. Forest Service. As such, the U.S. Forest Service agrees to waive the recovery of indirect costs.

II. THE TOWN OF BRECKENRIDGE SHALL:

- A. LEGAL AUTHORITY. The Cooperator shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.
- B. Perform in accordance with the Financial Plan.
- C. Upon presentation of a Bill for Collection, reimburse the U.S. Forest Service the amount agreed to in the Financial Plan.
- D. Acknowledge and understand that: (a) the U.S. Forest Service will conduct its operations in an independent manner and (b) nothing in this agreement shall be construed in any manner as an obligation by the Government to guarantee a favorable decision to the Cooperator or to obligate the Government to any future action.

III. THE U.S. FOREST SERVICE SHALL:

- A. REIMBURSABLE BILLING. The maximum total cost liability to The Cooperator for this agreement is \$40,000.00. The U.S. Forest Service shall bill the Cooperator **annually** for funds sufficient to cover the costs for the specific payment period. All reimbursement billings must be completed within the same fiscal year as U.S. Forest Service expenditures. Overhead is not assessed.

Billings must be sent to:

Town of Breckenridge
 Att.: Rick Holman, Town Manager
 PO Box 168
 Breckenridge, CO 80424
 Email: rickh@townofbreckenridge.com

The U.S. Forest Service is required to issue bills for expenditures incurred under reimbursable agreements at the end of or prior to the end of each fiscal year. Therefore, an out-of-cycle bill may be received by the Cooperator.

If payment is not received to the satisfaction of the U.S. Forest Service by the date specified on the Bill for Collection (Form FS-6500-89), the U.S. Forest Service shall exercise its rights regarding the collection of debts owed to the United States.

- B. SPECIAL BILLING REQUIREMENTS – FINANCIAL DOCUMENTATION. Reimbursable billings shall be issued at the prescribed frequency based on expenditures



recorded in the U.S. Forest Service accounting system for work performed. Bills for Collection reflect an aggregate amount for the billing period. U.S. Forest Service Transaction Register listing itemized expenses will be provided upon request at the end of a project or annually for long-term agreements. Provision of the Transaction Register or other supporting documentation accompanying individual bills will be limited to agreements over \$2,500.00, and only when the Cooperator requirements are clearly defined within this clause.

The special billing requirements are: **Upon Project Completion.**

- C. SPECIAL BILLING REQUIREMENTS – PROGRAM DOCUMENTATION. The U.S. Forest Service Program Manager shall provide the Cooperator with a written report that meets the Cooperator’s specific documentation requirements.
- D. Perform in accordance with the attached Financial Plan
- E. Perform in accordance with the attached Operating Plan.

IV. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:

- A. The Cooperator’s contributions are made voluntarily to the U.S. Forest Service for work that is the responsibility of the U.S. Forest Service on National Forest System land.
- B. The Cooperator’s contributions are not solicited by the U.S. Forest Service.
- C. Parties shall establish separate instrument(s), where appropriate, with the U.S. Forest Service to support planning, implementation, and maintenance projects and activities that benefit National Forest System lands. Acceptance of services, equipment, materials, and supplies are not authorized under this Agreement.
- D. This Agreement may be modified in the future by mutual consent of both parties. See provision X of this section.
- E. ANNUAL APPROPRIATION. Town confirms that funds necessary to allow the Town to meet its financial obligations under this Agreement have been or will be appropriated, budgeted, and otherwise made available for the Town’s fiscal year ending December 31, 2020. Financial obligations of the Town under this Agreement payable after the Town’s current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the Town Council of the Town of Breckenridge, Colorado. The Town’s obligations under this Agreement shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.



F. **PRINCIPAL CONTACTS.** Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

Town of Breckenridge Program Contact	Town of Breckenridge Administrative Contact
Rick Holman, Town Manager Town of Breckenridge PO Box 168 Breckenridge, CO 80424 Telephone: 970-453-3166 Email: rickh@townofbreckenridge.com	Name: Julia Puester, Assistant Community Development Director Town of Breckenridge PO Box 168 Breckenridge, CO 80424 Telephone: 970-547-3174 Email: juliap@townofbreckenridge.com

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Erica Borum Transportation Engineer 900 Grand Avenue Glenwood Springs, CO 81601 Telephone: 970-945-3277 Email: erica.borum@usda.gov	Clark Woolley Grants & Agreements Specialist 900 Grand Avenue Glenwood Springs, CO 81601 Telephone: 970-945-9803 Email: clark.woolley@usda.gov

G. **U.S. FOREST SERVICE LIABILITY TO THE COOPERATOR.** The United States shall not be liable to The Cooperator for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work by the U.S. Forest Service or its contractors under this agreement, including but not limited to damage to any property owned by The Cooperator or any third party.

H. **REFUNDS.** Funds collected in advance by the U.S. Forest Service, which are not spent or obligated for the project(s) approved under this agreement, may be refunded to the Cooperator, authorized for use for a new agreement by the Cooperator, or waived by the Cooperator. A Data Universal Numbering System (DUNS) number and registration in the System for Award Management (SAM) by the Cooperator may be necessary to process a refund. Due to processing costs, any balance less than \$25 shall not be refunded to the Cooperator.

I. **PUBLIC NOTICES.** It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. The Cooperator is/are encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:



"the White River National Forest of the U.S. Forest Service, Department of Agriculture"

The Cooperator may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The Cooperator is/are requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to the U.S. Forest Service's Office of Communications as far in advance of release as possible.

- J. MEMBERS OF CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- K. FREEDOM OF INFORMATION ACT (FOIA). Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). Requests for research data are subject to 2 CFR 215.36.

Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).

- L. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or the Cooperator from participating in similar activities with other public or private agencies, organizations, and individuals.
- M. ENDORSEMENT. Any of the Cooperator's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of the Cooperator's products or activities and does not by direct reference or implication convey the Cooperator's endorsement of the U.S. Forest Service products or activities.
- N. NOTICES. Any communication affecting the operations covered by this agreement by the U.S. Forest Service or the Cooperator will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the agreement.

To the Cooperator, at the Cooperator's address shown in the agreement or such other address designated within the agreement.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.



- O. COLLABORATION. The U.S. Forest Service and the Cooperator may mutually agree to collaborate in the review of draft publications, interpretive signs, manuscripts, and other printed material and audiovisuals prior to completion. This agreement, in and of itself, does not authorize the Cooperator's participation in the project.
- P. USE OF U.S. FOREST SERVICE INSIGNIA. In order for the Cooperator to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications (Washington Office). A written request will be submitted by the White River National Forest to the Office of Communications Assistant Director, Visual Information and Publishing Services prior to use of the insignia. The White River National Forest will notify The Cooperator when permission is granted.
- Q. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. The Cooperator shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this agreement.
- R. PROPERTY IMPROVEMENTS. Improvements placed by The Cooperator on National Forest System land at the direction or with the approval of the U.S. Forest Service become property of the United States. These improvements are subject to the same regulations and administration of the U.S. Forest Service as would other national forest improvements of a similar nature. No part of this agreement entitles The Cooperator to any interest in the improvements, other than the right to use them under applicable U.S. Forest Service regulations.
- S. PURCHASE OF ASSETS. Any assets (such as equipment, property, or improvements) purchased by the U.S. Forest Service with the Cooperator's contributions shall become the property of the U.S. Forest Service.
- T. OFFSETS, CLAIMS AND RIGHTS. Any and all activities entered into or approved by this agreement will create and support afforestation/ reforestation efforts within the National Forest System without generating carbon credits. The U.S. Forest Service does not make claims of permanence or any guarantees of carbon sequestration on lands reforested or afforested through partner assistance. The U.S. Forest Service will provide for long-term management of reforested and afforested lands, according to applicable Federal statute regulations and forest plans.
- U. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The Cooperator shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)



To file a complaint alleging discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington DC 20250-9410 or call toll free voice (866) 632-9992, TDD (800)877-8339, or voice relay (866) 377-8642. USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

- V. TERMINATION FOR COLLECTION AGREEMENTS. Either party, in writing, may terminate this agreement in whole, or in part, at any time before the date of expiration. The U.S. Forest Service shall not incur any new obligations for the terminated portion of this agreement after the effective date of termination and shall cancel as many obligations as possible. Full credit must be allowed for U.S. Forest Service expenses and all non-cancelable obligations properly incurred up to the effective date of termination.
- W. DEBARMENT AND SUSPENSION. The Cooperator shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the Federal Government according to the terms of 2 CFR Part 180. Additionally, should the Cooperator or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- X. MODIFICATIONS. Modifications within the scope of this agreement must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 60 days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.
- Y. COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature, and is effective through December 1, 2020 at which time it will expire. The expiration date is the final date for completion of all work activities under this agreement.
- Z. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this agreement. In witness whereof, the parties hereto have executed this agreement as of the last date written below.

RICK HOLMAN, Town Manager
Town of Breckenridge

Date



SCOTT G. FITZWILLIAMS, Forest Supervisor
U.S. Forest Service, White River National Forest

Date

The authority and format of this agreement have been reviewed and approved for signature.

CLARK M. WOOLLEY, G&A Specialist
U.S. Forest Service, White River National Forest

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

Attachment

Operating Plan, Budget Summary, and Map

GENERAL PROJECT OVERVIEW: Indiana Creek Aquatic Organism Passage and Restoration Project

The U.S. Forest Service, in cooperation with the Town of Breckenridge, will improve stream health, water quality protection, aquatic organism passage, and aquatic resource improvements where Indiana Creek crosses the Indiana-Pennsylvania Connect Road on the White River National Forest which will improve the Town of Breckenridge's municipal drinking water while maintaining long-term motorized access.

PROJECT SUMMARY:

The proposed work supports both organizations goals of protecting watersheds, healthy ecosystems and sustainability of our precious waterways. The proposed improvements will improve the Town of Breckenridge's municipal drinking water supply. This will be accomplished by replacing the ford crossing with an aquatic organism passage along with associated restoration work. This project is anticipated to:

- Decommission approximately 1000 feet of road within 100 feet of Indiana Creek; and reduce an estimated 0.7 tons of sediment to Indiana Creek per year.
- Relocate approximately 260 feet of Indiana-Pennsylvania Connect Road to a more sustainable, upland location.
- Restore and reconnect approximately 430 square feet of streambank habitat.
- Eliminate sediment mobilization into Indian Creek with each vehicular crossing.
- Eliminate vehicle chemical pollutants.
- Reduce sediment runoff by capping the road with aggregate.

OBJECTIVES AND SCOPE:

The U.S. Forest Service completed the environmental analysis and signed a decision memo in May 2019. The U.S. Forest Service will:

- Complete the crossing and road realignment design by April 2020.
- Work with Friends of Dillon Ranger District to procure materials and equipment rental prior to mobilization in August/September 2020.
- Construct and oversee construction of access road maintenance, a new aquatic organism passage, road realignment, and road decommissioning.

APPROACH:

Task 1: Site Assessment and Engineering Design

Task 1.1: Field data collection, LiDAR data & processing for topographic map, engineering design of crossing. This design process is being completed in-house by

Forest Service engineering & hydrology with expertise in aquatic organism passage design. Estimated cost - \$4,600.

Task 2: Procure materials, supplies, & equipment rental

Task 2.1: The Friends of Dillon Ranger District will procure project equipment rental, backfill material and pipe arch structure. Estimated cost - \$59,360.

Task 3: Utilize the U.S. Forest Service’s Construction & Maintenance Crew along with engineering oversight to complete the aquatic organism passage installation with associated Best Management Practices.

Task 3.1: Reconstruction of Indiana Creek Road for access.

Task 3.2: Close the Indiana-Pennsylvania Connect Road

Task 3.3: Dewater Indiana Creek around the ford crossing for erosion & sediment control

Task 3.4: Install the pipe-arch

Task 3.5: Place the streambed material and streambanks within the pipe-arch & tie the newly constructed banks into the natural stream channel

Task 3.6: Rewater the Indiana Creek passing flow through the new streambed

Task 3.7: Backfill the structure and bring in fill to raise the height of the road

Task 3.8: Realign the road approach to create a 100-foot buffer between the road and Indiana Creek

Task 3.9: Cap the new road with aggregate to control surface erosion

Task 3.10 Decommission the redundant and unnecessary road segments to allow for revegetation and restoration; including reseeding. Total Estimated Construction Costs with construction oversight - \$43,280

TERM OF OPERATING PLAN: TIMELINE

Anticipated approximate start and end dates for tasks are as follows:

Tasks 1-3 and all subtasks within would will begin as of last signature of the agreement and completed by **December 1, 2020**.

PERSONNEL

U.S. Forest Service personnel will complete Tasks 1-3.

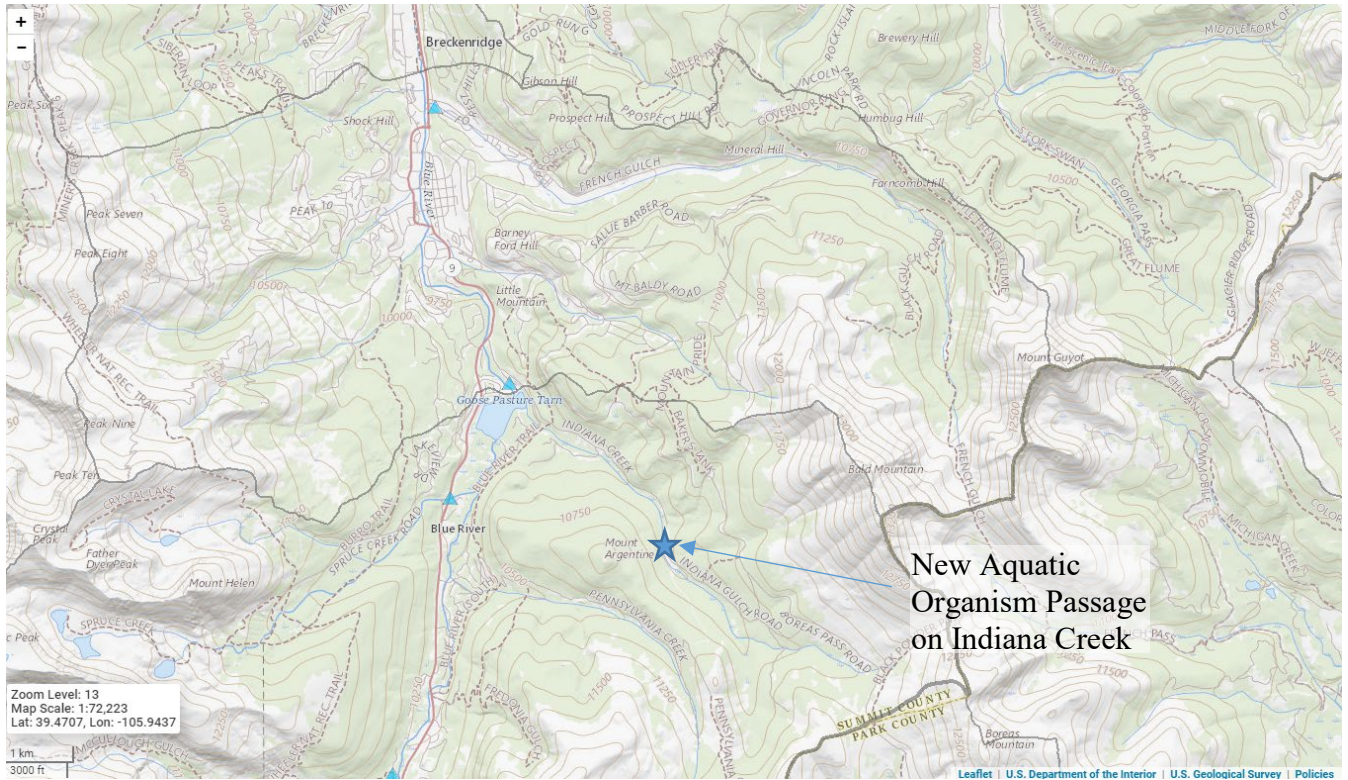
Attached is the Financial Plan for this Agreement and Operating Plan. The financial plan estimates costs associated with projects and activities incorporated to this Agreement.

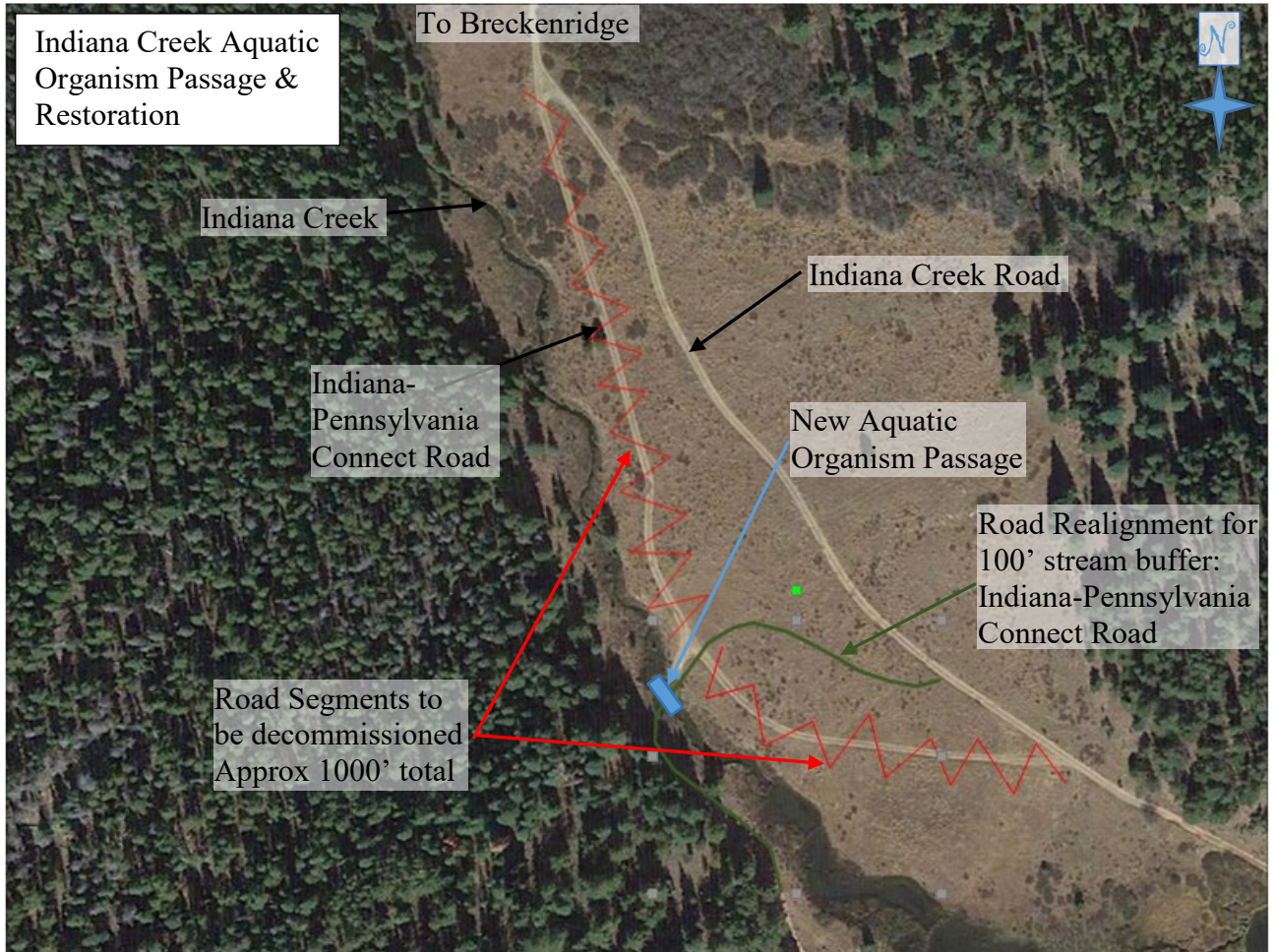
BUDGET SUMMARY

Total Estimated Cost:

<i>Task #</i>	<i>Description</i>	<i>Estimated Cost</i>
1.1	Data Collection, Site Assessment & Design	\$4,600
2.1	Purchase Structure	\$14,600
2.2	Purchase Backfill	\$23,760
2.3	Rent Equipment & Miscellaneous Supplies	\$21,000
3.1-3.10	Construction Implementation & Oversight	\$43,280
Total		\$107,240

MAP





Forest Service Agreement # 20-CO-11021500-009

Cooperator Agreement #

**Collection Agreement Financial Plan
Cooperator and FS Contributions**

COST ELEMENTS and related data			Cooperator Contribution	FS Non-Cash Contribution	
Line Item Cost Subtotals			Subtotal	Subtotal	Combined Subtotals
PERSONNEL					
Resource Specialists (List all personnel):	# of Days	\$/Day			
Hydrologist - Mark Weinhold	10	\$526	\$5,260		\$5,260.00
Wildlife Biologist - Ashley Nettles	1	\$380	\$380		\$380.00
Civil Engineer - Erica Borum	30	\$408		\$12,240	\$12,240.00
Separate FS Partnership with Friends of Dillon Ranger District and National Forest Foundation				\$4,000	\$4,000.00
Subtotal, Personnel:	41		\$5,640	\$16,240	\$21,880.00
EQUIPMENT					
Name and Type of Equipment:	Unit Cost	Quantity			
FS Miscellaneous Supplies				\$5,000.00	\$5,000.00
<i>Separate FS Partnership with Friends of Dillon Ranger District</i>					
Excavator with thumb - 3 week rental (no rate)	\$6,600	1		\$6,600.00	\$6,600.00
Excavator with thumb - 2 week rental	\$3,000	2		\$6,000.00	\$6,000.00
Compactor x 2 week rental	\$1,000	2		\$2,000.00	\$2,000.00
Pumps & hoses x 2 week rental	\$700	2		\$1,400.00	\$1,400.00
Subtotal, Equipment:			\$0.00	\$21,000.00	\$21,000.00
SUPPLIES					
Name and Type of Supplies:	Unit Cost	Quantity			
Aggregate, Fill & Backfill Material Delivered (cy)	\$55	152	\$8,360.00		\$8,360.00
<i>Separate FS Partnership with Friends of Dillon Ranger District</i>					
Structure - 38 LF	\$365	40		\$14,600.00	\$14,600.00
Aggregate, Fill & Backfill Material Delivered	\$55	280		\$15,400.00	\$15,400.00
Subtotal, Supplies:			\$8,360.00	\$30,000.00	\$38,360.00
OTHER					
Describe Other Costs of the Project:					
Road Crew Time, Overtime & Fleet Vehicles			\$26,000.00		\$26,000.00
Subtotal, Other:			\$26,000.00	\$0.00	\$26,000.00
TOTAL DIRECT CHARGES			\$40,000.00	\$67,240.00	\$107,240.00
OVERHEAD ASSESSMENT (if applicable, see FSH 1909.13)	Insert Rate Here:	0.0%	\$0.00		
Total Party Costs			\$40,000.00	\$67,240.00	\$107,240.00
COST ELEMENTS SUBJECT TO NATIONAL PASS-THROUGH RATES			Cooperator Contribution		
TOTAL CHARGES			\$0.00		
OVERHEAD ASSESSMENT (if applicable, see FSH 1909.13)	Insert Rate Here:	0.0%			\$0.00
Total Pass-Through Costs			\$0.00		
TOTAL PROJECT COSTS					\$107,240.00

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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SAM Search Results
List of records matching your search for :

Record Status: Active
DUNS Number: 016151920

ENTITY BRECKENRIDGE, TOWN OF	Status: Active
DUNS: 016151920 +4:	CAGE Code: 5D4S9 DoDAAC:
Expiration Date: 08/28/2020	Has Active Exclusion?: No Debt Subject to Offset?: No
Address: 150 SKI HILL RD	
City: BRECKENRIDGE	State/Province: COLORADO
ZIP Code: 80424-0000	Country: UNITED STATES

1 **FOR WORKSESSION/ADOPTION – MARCH 10**

2
3 RESOLUTION NO. ____

4
5 Series 2020

6
7 A RESOLUTION APPROVING A COLLECTION AGREEMENT WITH THE USDA,
8 FOREST SERVICE, WHITE RIVER NATIONAL FOREST
9 (Indiana Creek Aquatic Organism Passage and Restoration Project)

10
11 WHEREAS, the Town of Breckenridge previously entered into Memorandum of
12 Understanding with the United States Department of Agriculture (USDA), Forest Service, White
13 River National Forest (“Forest Service”), dated February 24, 2017, concerning the Indiana Creek
14 Aquatic Organism Passage and Restoration Project (“Project”); and

15
16 ; and

17
18 WHEREAS, it is now necessary and appropriate for the Town to enter into the proposed
19 Collection Agreement with the Forest Service related to the Project, a copy of which is marked
20 **Exhibit “A”**, attached hereto and incorporated herein by reference; and

21
22 WHEREAS, the Town Council has reviewed the proposed Collection Agreement, and
23 finds and determines that it would be in the best interests of the Town and its citizens for the
24 Memorandum of Understanding to be approved.

25
26 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
27 BRECKENRIDGE, COLORADO:

28
29 Section 1. The Collection Agreement between the Town and the USDA, Forest Service,
30 White River National Forest, substantially in the form attached as **Exhibit “A”**, is approved, and
31 the Town Manager is authorized to sign such document for and on behalf of the Town of
32 Breckenridge.

33
34 Section 2. This resolution is effective upon adoption.

35
36 RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2020.

37
38 TOWN OF BRECKENRIDGE

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42 By: _____
43 Eric S. Mamula, Mayor
44
45

1 ATTEST:

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Helen Cospolich, CMC
Town Clerk

APPROVED IN FORM

Town Attorney Date



Memo

To: Breckenridge Town Council

From: Laurie Best, AICP-Community Development

Date: 3/4/2020 (for meeting 3/10/2020)

Subject: A RESOLUTION CONCERNING THE ACQUISITION OF TWO HOUSING UNITS IN THE TRAILS AT BERLIN PLACER

The Trails at Berlin Placer, which consist of 20 100% AMI deed restricted duplexes, 1 Habitat for Humanity home, and 14 single family market rate lots at the corner of Baldy and Sally Barber Road, was approved by Summit County on August 22, 2017. As you may recall, the Town has been discussing participation in this proposed affordable housing development with Summit County and the Developer since the application was first submitted to Summit County.

To support the project, the Town agreed to provide water service pursuant to an out of Town water service agreement and also agreed to pre-purchase two deed restricted units which would enable the Developer to acquire the TDRs necessary to record the PUD and start construction. The Developer expects to begin construction in spring of 2020. There are several documents that will need to be executed before the construction start, and we are working with Summit County and the Developer to finalize the documents, including an Advance Purchase and Sale Agreement for Berlin Placer Townhome Units, a Purchase Agreement for TDRs, and an Escrow Agreement for TDRs. There is also an Out of Town Water Service Agreement that has been approved, but not executed.

A Resolution has been prepared for your consideration authorizing the Town Manager to execute the documents when they are in final form and approved by the Town Attorney. The deal points and substance of the documents are as follows:

- The Town will pay a total of \$789,566 for 2 four bedroom townhomes (\$394,783 each). The townhomes are two story units, each consisting of 1,681 square feet plus a 410 square foot attached 2 car garage. (see Units 9 and 10 on the attached site plan)
- The Town will provide \$621,400 up front (estimate-March 2020) that will be utilized to acquire the TDRs and the balance of \$168,166 will be paid by the Town when the units are complete at closing (estimated 1st quarter 2021)

- These Townhomes are in the first phase of construction (site work is expected to start May 2020).
- The Town's initial funds will be held in escrow until the final plat is approved at which time the County will withdraw the funds and issue the TDR Certificates. At the same time, the Developer will execute and record a Deed of Trust on the entire property to secure completion of the units, and in addition, the Developer will provide the Town with an irrevocable letter of credit as a guarantee.
- The Townhomes will be subject to a Summit County Restrictive Covenant in a form acceptable to both the County and the Town. The Town may retain the Townhomes for Town employees, or opt to sell or rent the Townhomes to qualified local employees.
- The Town will sell and deliver water to the project pursuant to an Out of Town Water Service Agreement. The Town will waive Plant Investment Fees for each affordable housing unit. The PIF fee for market rate units will be 1.25 times the in-Town fee. All monthly water fees will be 1.5 times the in-Town fee. It is anticipated that the waived fees will be transferred from the Housing Fund to the Water Fund.

Staff supports the project and recommends approval of the Resolution authorizing the Town Manager to execute the necessary documents when they are in final form. We will be available at your meeting to answer any questions about this project.

1 **FOR WORKSESSION/ADOPTION – MARCH 10**

2
3 RESOLUTION NO. ____

4
5 Series 2020

6
7 A RESOLUTION CONCERNING THE ACQUISITION OF TWO HOUSING UNITS IN THE
8 TRAILS AT BERLIN PLACER TOWNHOMES
9

10 WHEREAS, the Town desires to acquire two four-bedroom housing units in the proposed
11 development to be known as the “Trails at Berlin Placer Townhomes;” and

12
13 WHEREAS, the terms of the acquisition of two four-bedroom housing units are still
14 being negotiated; and

15
16 WHEREAS, the Town Council deems it to be appropriate to formally authorize the Town
17 Manager to negotiate an agreement to purchase the two four-bedroom housing units within
18 certain parameters, and to complete the purchase of the two four-bedroom housing units, all as
19 more fully set forth hereafter.

20
21 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
22 BRECKENRIDGE, COLORADO:
23

24 Section 1. The Town Manager is hereby authorized, empowered, and directed to take all
25 necessary and appropriate action to purchase for the Town Units 9 and 10, Trails at Berlin Placer
26 Townhomes, located in unincorporated Summit County, Colorado (“Units), including, but not
27 limited to the following:
28

- 29 1. To negotiate a contract pursuant to which the Town will acquire the Units at a purchase
30 price not to exceed Seven Hundred and Eighty-Nine Thousand, Five Hundred and Sixty-
31 Six U.S. Dollars (\$789,566.00).
- 32 2. To execute a contract to purchase the Units on behalf of the Town. In the contract, the
33 Town will agree to place a housing covenant on the Units in favor of Summit County
34 Government.
- 35 3. To execute such other and necessary agreements related to the acquisition of the Units as
36 the Town Attorney advises are necessary and appropriate.
- 37 4. To make, execute, and acknowledge settlement statements, closing agreements, and other
38 usual and customary closing documents related to the acquisition of the Units.
- 39 5. To accept delivery of the deed conveying the Units to the Town.
- 40 6. To record the deed for the Units with the Summit County Clerk and Recorder.
- 41 7. To take such other and further action as may be necessary and appropriate to the

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acquisition of the Units.

Section 2. The Town Council hereby ratifies and confirms in advance all action taken by the Town Manager pursuant to the authority granted by this resolution.

Section 3. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2020.

TOWN OF BRECKENRIDGE

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney Date



Memo

To: Breckenridge Town Council Members
From: Mark Truckey, Director of Community Development
Date: March 4, 2020
Subject: Planning Commission Decisions of the March 3, 2020 Meeting

DECISIONS FROM THE PLANNING COMMISSION MEETING, March 3, 2020:

CLASS A APPLICATIONS: None.

CLASS B APPLICATIONS: None.

CLASS C APPLICATIONS: None

TOWN PROJECT HEARINGS: None.

OTHER: Two Work Sessions were conducted, the first regarding Bistro Lighting/Lighting policy, and the second regarding Policy 24 A/R Social Community Regarding Amenity Space & Policy 25R Transit.



Parkway Center Mixed Use Building, 429 N. Park Avenue



Breckenridge South



PLANNING COMMISSION MEETING

The meeting was called to order at 5:30 p.m. by Chair Gerard.

ROLL CALL

Christie Mathews-Leidal
Mike Giller
Dan Schroder

Jim Lamb
Steve Gerard
Lowell Moore

Ron Schuman

APPROVAL OF MINUTES

With the below changes, the February 18, 2020 Planning Commission Minutes were approved

Ms. Leidal: Bottom Page 6. And top Page 7. The minutes should be changed to state I had concerns with the project, so we should speak to SHPO.

APPROVAL OF AGENDA

With no changes, the March 3, 2020 Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No Comments.

WORK SESSIONS:

1. Bistro Lighting

Ms. Puester gave an overview of the current policies on decorative lighting, specifically bistro and decorative lighting, and how it is going to be used in the upcoming parking structure development. She went over the background of the lighting policy and what it is intended for. The Commission was asked if they support a new definition from staff that would allow for downcast, shielded, strung lights in Lighting Zones 1 and 2. The Dark Sky Association is comfortable with the proposed lights as long as they are fully shielded, do not sway in the wind, are below 3,000 kelvin and do not exceed 850 lumens total on the property.

Commissioner Questions / Comments:

Mr. Schuman: What type of authority does the International Dark Sky Association have over us if we didn't approve lighting based on their recommendations. (Ms. Puester: They are advisory for municipalities, experts in the field, but they review and certify fixtures for Dark Sky compliance. We are not a Certified Dark Sky Community right now. Our code does not meet the requirements at this time.) (Mr. Truckey: If we were certified, they could pull our certification.)

Mr. Giller: Is there a sunset period for non-compliant lights? (Ms. Puester: Yes, July 1, 2022.)

Mr. Lamb: Why do they care about Kalvins? (Ms. Puester: Kelvin measures color. It affects sleep patterns of humans and has impacts on wildlife if its over 3000K.)

Mr. Giller: Devil is in the details, if we do not get this right, it will get out of hand like the Christmas lights which I think are overused. I think we should get more details on the photometrics so the public will have that information when they're installing them. We're on the right path but foot candles and shielding the point source is important. The point is to throw the light on the walking surface. (Ms. Puester: We do get that information from the photometrics unless they are exempt lights like decorative which replaced holiday and bistro lights. Sounds like you are taking about the light cones and when someone walking down the street and can see the source. That's another level of a photometric analysis that could be considered. Correct?) Mr. Giller: Yes.

Mr. Schroder: Are we concerned about opening the door to more lighting that currently is not available? (Ms. Puester: If this went in the code, it would be applicable to whomever has properties that

- would allow for it, yes.)
- Ms. Leidal: I like the suggestion of having a new category in the definitions, then two sub categories (Town and private property). Private property owners need to stay on their property and not attach to the Town ROW. Have different requirements for the Town, could cross property lines if needed.
- Mr. Giller: One way is to identify lights that are compliant, so residents know before purchase.
- Mr. Schuman: I am opposed to any more lights. I think the policy as we have it now is good. I don't want to see more lights.
- Mr. Giller: I agree. Can we tie the installation of bistro to removal of kitschy white Christmas lights? (Ms. Puester: We can check with Tim Berry on how to do that. So you mean if you put up this type of application, you can't have other decorative lights? One or the other?) It would be good to remove some old lighting if we're going to install some new lighting.
- Mr. Lamb: We have to juggle this somehow so we don't put in too much, or not enough. We're a small urban town and we should have lighting for safety where its needed. Distinguishing where that line is difficult.
- Mr. Moore: How much light from parking structure? (Mr. Kulick: The lighting people said there would be dimmers, and some motion sensors inside the parking structure, not on these type of bistro lights. So if there hasn't been anyone entering/exiting, the top level will go dark, then come on again with motion.)
- Mr. Schroder: Can the lights for the parking structure be rigid like we just discussed? (Ms. Puester: If they want to re-design it that way and have more of a road than strings that will blow.) (Mr. Truckey: Someone could still meet our existing code and light a walkway during the ski season. Really, the bistro lighting is providing a cheaper option over permanent lighting that has more design considerations.)
- Mr. Gerard: Any appetite by the Council to become a Certified Dark Sky Community? (Ms. Puester: I haven't gotten that direction at this point. It would be difficult to become certified, particularly due to our streetlights in the Historic District as well as some additional requirements for private property that we currently do not have in the code. Although our code started out strong in 2007, there have been many advancements made in this field since then and although we have made some of those changes in the code, not enough to be certified.)
- Mr. Giller: I am supportive of the proposal, the devil is in the details though.
- Mr. Lamb: There is a time and a place for lighting, and it involves public safety. We are a small urban community, the downtown core should have some lighting.
- Mr. Schuman: I am comfortable where we are now; I don't want to see additional light proliferation.
- Mr. Moore: I agree with Ron. I'd like to see a minimum amount of light, whatever that is. You can still see around town and still see the stars.
- Mr. Schroder: I support a third category. I would recommend staff draft appropriate language.
- Ms. Leidal: I agree with my fellow Commissioners, I like the idea of a new category and two different sub categories for public and private.
- Mr. Gerard: We should meet as many provisions of Dark Sky Certification as possible in our code so perhaps more changes that way. We should measure lumens on property and have a rule on the level as the IDA requires. We have too much lighting proliferation. If adding the another category allows us to become more Dark Sky compliant then I support.

2. Policy 24A/R Social Community Regarding Amenity Space and Policy 25/R Transit

Ms. Puester presented an overview of current concerns surrounding positive points available in the Development Code for additional amenity space in Policy 24/R and the awarding of positive points for the provision of a lodging shuttle service in Policy 25/R; and recommendations for updates to both policies. The following specific questions were asked of the Commission:

1. Does the Planning Commission agree with staff's recommended modifications to Policy 24/R with

- regard to the removal of recreation and leisure amenities?
2. Does the Commission find that meeting and conference room facilities should be removed from Policy 24/R?
 3. Does the Planning Commission agree with staff's recommended modifications to Policy 25/R Transit as presented?

Commissioner Questions / Comments:

- Mr. Lamb: What would you need to do to get +4 points for transit? (Ms. Puester: It would have to be big, like a big bus turn around. It would be for those larger benefits.)
- Ms. Leidal: Have we ever given negative points? (Ms. Puester: Not sure, but we should reserve them in case something interferes with our transit system even if we haven't used negative points before. I would like to leave it as an option.)
- Mr. Schuman: Could a private shuttle used by other private properties qualify as general public? (Ms. Puester: I would not consider that the general public. It would have to be open to anyone riding.)
- Ms. Leidal: I like the idea of opening it to the public, but how would the public know that? Is having a transit shelter an actual amenity? It's something to consider when giving positive points. (Mr. Kulick: I think the location has to be supported by the Transit Department to be eligible for positive points.)
- Mr. Giller: Yes 1, 2, 3
- Mr. Lamb: Yes 1, 2, 3
- Mr. Schuman: Yes 1, 2, 3
- Mr. Moore: Yes 1, 2, 3
- Mr. Schroder: Yes to 1, 2, 3
- Mr. Truckey: We didn't talk much about the meeting facilities. I want to be sure we're considering that, and I'm not sure if we want to get rid of that entirely.
- Ms. Leidal: I think we have a lack of meeting facilities, and they should be incentivized with positive points. Get rid of positive points for amenity space. (Other Commissioners supported removing the positive points for meeting space 5-2)
- Mr. Gerard: 1. Yes, 2. No, 3. Yes
- Ms. Leidal: They are not forced to do so, it is an option; they choose to do it.

PRELIMINARY HEARINGS:

1. Parkway Center Mixed Use Building, 429 North Park Avenue, PL-2019-0292

Mr. Lott presented a proposal to construct a 15,887 sq. ft. mixed use building containing 6,385 sq. ft. of medical office, 2,465 sq. ft. of retail, 1,484 sq. ft. of common area, and 8 residential apartments totaling 5,421 sq. ft. One apartment, which is 705 sq. ft. in size, is proposed to be deed restricted. The following specific questions were asked of the Commission:

1. Does the Commission agree no market rate housing is allowed in this subdivision?
2. Does the Commission agree with the preliminary point analysis?

Commission Questions / Comments:

- Ms. Leidal: If we eliminate the plat note, what is the underlying land use? (Mr. Lott: The property splits land use districts but it is controlled by the Master Plan which stipulates commercial. We are working with the applicant on the modification of the plat note, which may also require a master plan modification.) Where are the lot lines of the parcel? (Mr. Lott pointed out the lot lines.) I am trying to understand the history of the shared parking, can you explain? (Mr. Lott: It was planned at the subdivision.) Might be eligible for positive points for shared parking facilities. (Mr. Begley: There is an easement on the plat dedicating the parking area for use by all of the lots.)

Mr. Schroder: Will the next hearing be a Final? (Mr. Truckey: Yes, if all the issues are dealt with.)

Tom Begley: Breckenridge Lands: We originally developed all of the Parkway Center, including City Market Shopping Center. We will be correcting the trail easement when we move the lot line. When the retaining wall was planned, we worked with Open Space on the location of the trail connection. We will follow up with them as we continue to modify the easement. We plan to comply with height and the storage requirements for the residential units and anticipate zero points for these two items. As Mr. Lott stated in the presentation, we are working with staff on the residential units and the plat note.

Suzanne Allen-Sabo is available for architectural questions.

Ms. Leidal: Have you submitted a traffic impact analysis? (Mr. Begley: Yes. We are working through the process with Engineering and CDOT. We were originally denied a bus stop on Park Avenue by the Summit Stage and we are working with CDOT to get a ¾ movement off of Park Avenue as was originally contemplated in 2004 when the Town was in charge of the right-of-way. When the building was constructed in 2010, we were denied that movement by CDOT, after they obtained control of Park Avenue.

Mr. Giller: A 6,000 square foot medical office may require two exits and may change your site plan a bit. (Mr. Begley: We are working Centura Health to finalize details of their needs.)

Mr. Schuman: There is a lot of glass on the south and western elevations. (Mr. Truckey: The solid to void ratio is not reviewed outside of Historic District and the architecture and glazing is consistent with the neighboring building.)

Ms. Leidal: Does glass count towards non-natural materials? (Mr. Kulick: No.) Can we check non-natural materials? (Mr. Kulick: Yes.)

Commission Questions / Comments:

Mr. Schuman: Good looking project, good location, and plan. This is much better than the vendor cart that was approved there. The questions are not relevant.

Mr. Lamb: Good project, I think some simple fixes can make this ready for Final Hearing.

Mr. Giller: Two questions, yes and yes. I wonder about the amount of glass. Could the bottom 18" glass mullion become either brick or stone. I have some concerns with the solid to void ratio as well.

Mr. Schroder: I agree with previous comments. I am looking forward to the final hearing.

Ms. Leidal: I agree with staff's analysis, nice looking project.

Mr. Moore: Good looking project, it ties in nicely with the Justice Center.

Mr. Gerard: I agree, it is nice looking. A lot of glass on tower element. I also agree with Mike's suggestions on the bottom glass mullion. It is appropriate to schedule this for a final.

Mr. Gerard opened the hearing for public comment. There were none and comments were closed.

OTHER MATTERS:

1. Town Council Summary (Memo Only)

ADJOURNMENT:

The meeting was adjourned at 7:10 pm.

Steve Gerard, Chair



Scheduled Meetings

Shading indicates Council required attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

March 2020

March 6th, 2020	6:00pm - 10:00pm	DoubleTree Hilton	Party for the Planet
Tuesday, March 10, 2020	3:00 pm / 7:00 pm	Town Hall Chambers	First Meeting of the Month
March 18th, 2020	8:00am - 9:00am	Rec Center - Multi-Purpose Rm	Coffee Talk with the Mayor
March 24th, 2020	2:00pm - 4:00pm	Welcome Center	Museum Open House
Tuesday, March 24, 2020	3:00 pm / 7:00 pm	Town Hall Chambers	Second Meeting of the Month
March 25th, 2020	4:00pm - 6:00pm	Rec Center - Multi-Purpose Rm	Forest Health Open House

April 2020

April 1st - 5th, 2020	All Day	Breck Ski Resort & Riverwalk	Breck Pride
April 7th, 2020	All Day	Town of Breckenridge	Election Day
Tuesday, April 14, 2020		Cancelled - First Meeting of the Month	
Tuesday, April 28, 2020	3:00 pm / 7:00 pm	Town Hall Chambers	Second Meeting of the Month

Other Meetings

March 10th, 2020	Board of County Commissioners Meeting Workforce Housing Committee	9:00am / 1:30pm 1:30pm
March 11th, 2020	Breckenridge Heritage Alliance	Noon
March 12th, 2020	Upper Blue Sanitation District	5:30pm
March 13th, 2020	QQ - Quality and Quantity - Water District	10:00am
March 16th, 2020	MT2030 Meeting	2:00pm
March 17th, 2020	Board of County Commissioners Meeting Liquor & Marijuana Licensing Authority Planning Commission Meeting	9:00am 9:00am 5:30pm
March 19th, 2020	Transit Advisory Council Meeting	8:00am
March 23rd, 2020	Open Space & Trails Meeting	5:30pm
March 24th, 2020	Board of County Commissioners Meeting	9:00am / 1:30pm
March 25th, 2020	Summit Stage Transit Board Meeting Summit Combined Housing Authority	8:15am 9:00am
March 26th, 2020	Breckenridge Tourism Office Board Meeting Northwest CO Council of Governments RW&B Board Meeting	8:30am 10:00am 3:00pm
April 1st, 2020	Breckenridge Events Committee Childcare Advisory Committee	9:00am 3:00pm
April 6th, 2020	Breckenridge Creative Arts	4:00pm



Scheduled Meetings

Shading indicates Council required attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

April 7th, 2020	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
April 8th, 2020	Breckenridge Heritage Alliance	Noon
April 9th, 2020	Upper Blue Sanitation District	5:30pm
April 11th, 2020	I-70 Coalition	10:00am
April 14th, 2020	Board of County Commissioners Meeting	9:00am / 1:30pm
	Workforce Housing Committee	1:30pm
April 16th, 2020	Transit Advisory Council Meeting	8:00am
April 21st, 2020	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm
April 22nd, 2020	Summit Stage Transit Board Meeting	8:15am
	Summit Combined Housing Authority	9:00am
April 23rd, 2020	Breckenridge Tourism Office Board Meeting	8:30am
	Northwest CO Council of Governments	10:00am
	RW&B Board Meeting	3:00pm
April 27th, 2020	Open Space & Trails Meeting	5:30pm
April 28th, 2020	Board of County Commissioners Meeting	9:00am / 1:30pm
April 29th, 2020	Summit Stage Transit Board Meeting	8:15am
May 5th, 2020	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
May 6th, 2020	Police Advisory Committee	7:30am
	Breckenridge Events Committee	9:00am
	Childcare Advisory Committee	3:00pm
TBD	Water Task Force Meeting	8:00am
	Art Installation Meeting	2:00pm