



**BRECKENRIDGE TOWN COUNCIL  
WORK SESSION  
Tuesday, October 27, 2009**

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

<b>3:00 – 3:15 pm</b>	<b>I.     <u>PLANNING COMMISSION DECISIONS</u></b>	<b>Page 2</b>
<b>3:15 – 4:00 pm</b>	<b>II.    <u>LEGISLATIVE REVIEW</u> *</b> <ul style="list-style-type: none"><li>• Neighborhood Preservation Policy</li><li>• Ski Area Parking Lease Amendment</li><li>• Entrada Annexation Agreement Amendment Ratification</li><li>• PSCo License Agreement</li><li>• 3 Mile Plan Reaffirmation</li></ul>	<b>Page 67</b> <b>Page 74</b> <b>Page 82</b> <b>Page 108</b> <b>Page 116</b>
<b>4:00 – 4:30pm</b>	<b>III.   <u>MANAGERS REPORT</u></b> <ul style="list-style-type: none"><li>• Public Projects Update</li><li>• Housing/Childcare Update</li><li>• Committee Reports</li><li>• Financials</li><li>• Transit Winter Ops Plan</li></ul>	<b>Page 10</b> <b>Verbal</b> <b>Page 11</b> <b>Page 13</b> <b>Page 24</b>
<b>4:30 – 5:00pm</b>	<b>IV.    <u>PLANNING MATTERS</u></b> <ul style="list-style-type: none"><li>• Gondola Lot Master Plan Development Agreement</li></ul>	<b>Page 32</b>
<b>5:00 – 7:00 pm</b>	<b>V.     <u>OTHER</u></b> <ul style="list-style-type: none"><li>• Marketing Funding</li><li>• Experimental Parking Plan</li><li>• Sidewalk Master Plan</li><li>• Town Property Assets</li><li>• PAC Interviews</li></ul>	<b>Page 42</b> <b>Verbal</b> <b>Page 44</b> <b>Page 47</b> <b>Page 52</b>
<b>7:00 – 7:30 pm</b>	<b>VI.    <u>EXECUTIVE SESSION</u></b> <ul style="list-style-type: none"><li>• Acquisition</li></ul>	

*Dinner will be served*

**\*ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA** **Page 60**

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

***Report of Town Manager; Report of Mayor and Council members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items.***

**MEMORANDUM**

**To:** Town Council

**From:** Peter Grosshuesch

**Date:** October 21, 2009

**Re:** Town Council Consent Calendar from the Planning Commission Decisions of the October 20, 2009, meeting.

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***DECISIONS FROM THE PLANNING COMMISSION AGENDA OF October 20, 2009:***

**CLASS C APPLICATIONS:**

1. Lot 17, Corkscrew Flats, PC#2009048; 271 Corkscrew Drive  
Construct a new single family residence with 3 bedrooms, 3.5 bathrooms, 3,206 sq. ft. of density and 3,804 sq. ft. of mass for a F.A.R. of 1:3.64. Approved.
2. Roberts Change of Use, PC#2009050; 1900 Airport Road, Units A3-A4  
Change the use of the property/suites from commercial use to a 1,578 square foot, 40-person occupancy coffee shop/deli/cafe. Approved.
3. Water House on Main Temporary Roof and Screening, PC#2009049; 600 Columbine Road  
Construct a temporary roof structure over the existing parking garage door entry off Columbine Road and surround the remaining exposed parking structure with temporary chain-link constructions fencing with green mesh cover. Approved.

**PLANNING COMMISSION MEETING**

**THE MEETING WAS CALLED TO ORDER AT 7:00 P.M.**

**ROLL CALL**

Rodney Allen	Michael Bertaux	Leigh Girvin
Dan Schroder	Jim Lamb	Dave Pringle

JB Katz was absent.

**APPROVAL OF MINUTES**

With no changes, the minutes of the October 6, 2009, Planning Commission meeting were approved unanimously (6-0).

**APPROVAL OF AGENDA**

Mr. Neubecker added a discussion of the upcoming Planning Commission Field Trip at the end of the meeting. Mr. Allen noted that the order of the consent calendar was incorrect. He would like to discuss the agenda order at the end of the meeting.

With these two changes, the October 20, 2009 Planning Commission agenda was approved unanimously (6-0).

**WORKSESSIONS:**

1. Landscaping Policy

Ms. Cram presented the proposed changes to the Landscaping Policy, specifically regarding Relative recommendations. Some of the highlights of the changes included new language that gives greater emphasis to native plantings and the inclusion of xeriscape plantings. In addition, staff took a first try at developing some examples for the award of positive two (+2) up to positive eight (+8) points.

*Commissioner Questions/Comments:*

Mr. Schroder: Regarding irrigation, I don't want to award points to anyone that plants landscaping that will not survive without irrigation. I think that irrigation should be required. Do we ever look to see if the snow plow will get damaged by the boulders or wheel retentions when plowing? (Ms. Cram: We are trying to encourage protection of the landscaping.) (Mr. Neubecker: We also need staff to be more cognizant of tree locations in snow stacking and areas that will be plowed.) I think that staff is on the right track with the quantities of landscaping for the different size lots. It makes sense to require more trees for larger lots. I think that positive six (+6) is enough points. Number 13 may negate the need for a matrix; it says sufficient variety of species to assure appeal.

Ms. Girvin: One thing to consider is that we are encouraging temporary irrigation. Areas with utility cuts, for example, need water for the first few years to get established, and the most cost effective solution will be to require irrigation temporarily, even with spray. You cannot drip irrigate a lawn or native grass; you need to be able to spray it. It needs to go with the type of landscape you are putting in, and the length of time you expect to water it. Regarding #7, I would question the netting; I haven't seen it biodegrade over time and it can harm birds. There are other materials that can be used for the same purpose, such as straw, that are biodegradable. I am curious about the recycling of water that is included; it isn't located anywhere in the code. (Ms. Cram: Recycling is use of gray water, such as bathwater; we could include recommendations in the Landscaping Guidelines.) (Mr. Neubecker: We have looked into our legal water rights with the Town attorney, and we are allowed to recycle water in Breckenridge.) I have a question regarding #11: the first sentence says that "the remaining 50% of the tree stock", what is the remaining from? (Ms. Cram: 50% of the total, it gives minimum guidelines under the absolute policy.) The great example of landscape in its natural state is in Sunbeam Estates along Carter Park - there is a beautiful stand of Columbine and other wildflowers. This type of natural area can be preserved by fencing off and preserving these areas of native plantings during construction. (Mr. Neubecker: I would also add the word "undisturbed" to the policy relating to natural areas.) If you have a small property, how could you get 8-10 trees on it? (Mr. Lamb: I have 30-40 trees on my small lot; it is feasible to have that quantity.) I think that positive six (+6) is enough points. In your positive two (+2) points for preservation, if you have an area of outstanding vegetation and wildflowers such as Columbine, perhaps you should get positive

points without it having to be an entire 1/3 of the parcel. (Mr. Neubecker: Maybe we could have one point for natural area preservation, one point for drip irrigation, and so on. Like a menu.) In #3 you talk about preserving specimen trees; is this the definition of “specimen” or do we define it somewhere else? (Mr. Neubecker: It is defined in the development code.) I think that definition in the development code is appropriate. When discussing plants that are appropriate for the high altitude, I would like to encourage the use of legacy plantings (plants used historically in Breckenridge); they are not native, but have proven to do well here, such as oriental poppies, tansies, cotoneaster, balsam poplar, etc. I would like to encourage those types of plants that work. (Mr. Allen: Would #5 cover this?) (Ms. Cram: We should add “historical use” to the landscaping guidelines.) Technically, we aren’t “alpine” we are “sub-alpine”; you could just reference “high altitude”.

Mr. Pringle: Is it possible to break it out? For example if it is a Class C single family home it requires a specific type of irrigation, and a Class A and B commercial or multi-family should be absolute for irrigation. The netting does serve a purpose on steeper slopes. What are we changing the slope requirement to and from? (Ms. Cram: You can’t grow plants on greater than 2:1 slopes; therefore, we are changing the policy to absolute.) I agree that #9 should be encouraged rather than required. I wouldn’t want to penalize someone who wants to put in a turf yard rather than keep their yard in a natural state. (Mr. Neubecker: You are allowed to, but it would be encouraged to preserve the native grasses. This will also be addressed in the energy policy.) (Mr. Schroder: I think you should be able to do a turf yard, but you should get 0 points in that situation.) (Ms. Cram: Someone who preserves native grasses could get positive points; we are not prohibiting a turf yard.) I don’t like putting numbers in the code, because people will go for the cheapest points. More isn’t better, better is better. Do these rules apply to all development in Breckenridge? (Ms. Cram: Yes.) I think that single family should be able to get the maximum positive points. Do we want to give people positive points if they have a disturbance envelope? (Ms. Cram: We wouldn’t give them points for that; only if they protected something within their disturbance envelope.) (Mr. Allen: Or if they routed their driveway specifically to preserve an area of natural vegetation.) (Mr. Truckey: The language right now reading as “1/3 of a lot” needs to be distinguished with disturbance envelopes and the preservation area.) On page 23, is this part of 22R? (Ms. Cram: We want to make this absolute so we are going to move it.) So this will come out of 22R. Is there a difference between “natural” and “I’m never going to touch this again landscaping”? (Ms. Cram: Yes, this is addressed in maintenance.)

Mr. Lamb: If you require an irrigation system, someone could still choose to not turn it on. My issue with irrigation is that you can typically see them on during rainstorms. (Mr. Rossi: We could require a rain sensor.) I think that #9 is okay in the historic district. I envision a large lot with the parking and landscaping, it sounds like it would look unnatural. I think that the landscape for a small lot seems equitable. I think that positive six (+6) is enough points.

Mr. Bertaux: In an arid climate, the plant material needs irrigation. I think that irrigation is deserving of positive points. The netting works, but you can also use straw or other materials. We might want to allow a xeriscape type project rather than a retaining wall. (Ms. Cram: You could do dry stacked walls.) (Ms. Girvin: You could plant pockets along the dry stacked wall.) (Ms. Cram: This would be allowed with the proposed policy language.) Possibly a strip of gravel or other options could be used in the historic district where curbs or boulders could not be provided. If you are encouraging a large quantity of trees, 40-60, aren’t we going to get a large quantity of aspens versus evergreen trees? (Mr. Schroder: I think there needs to be an equivalency table, like 3 aspens are equal to 1 evergreen or a percentage of each plant type.) I think that positive six (+6) is enough points. Should the code also show the difference between a master plan and a single lot? How do you define the amount of landscaping that isn’t on a developable lot, along a right of way? (Ms. Cram: That is in the subdivision process, which determines how many trees you have to plant in the subdivision.)

Mr. Allen: I agree with Ms. Girvin regarding irrigation, it depends on the type of landscape and type of property. You could also evaluate where the property is located, some parts of town may need different types of irrigation due to the soil type and drainage. Are we talking about the same policy #9 for both single family home driveways along with commercial and multifamily project parking lots? (Ms. Cram: Yes.) Have we seen a problem with this? (Ms. Cram: No.) What is staff’s issue with turf? (Ms. Cram: Water use.) (Mr. Pringle: We could include a tall turf type fescue or other lower water use turf besides Kentucky Bluegrass.) Could we have a floor area ratio type formula for landscaping? (Mr. Bertaux: You need to make sure if you apply this approach, you need to take the

net of the lot area so that impervious areas are not included.) I want to make sure we aren't precluding trees from being planted outside the disturbance envelope. (Mr. Neubecker: We have allowed people to plant outside the disturbance envelope.) (Mr. Lamb: Typically people aren't asking for positive points outside the disturbance envelope unless they are creating buffers.) (Ms. Cram: This hasn't been an issue in the past.) (Mr. Neubecker: It is about how the tree is planted, you should use a less disturbing planting mechanism, like a bobcat rather than a dozer.) I agree with Mr. Neubecker, and with pine beetle, planting outside the disturbance envelope will be an issue in the future.

Mr. Rossi: This isn't mentioned in the plan, but is there any reason to encourage nursery grown versus field grown, and where the plants come from? (Ms. Cram: We want to allow people to do both. Engelmann Spruce will be field collected, while Blue Spruce will be nursery grown. We just want to make sure that plants are adapted to our elevation. There are some species that are less likely to survive if they come from Denver. We will put information regarding planting, watering, and tips in the Landscaping Guidelines to help people.) (Mr. Bertaux: I think that nursery stock from Denver can be grown here, as long as it is watered and planted appropriately.) Can you specify the type of sod that is put in, potentially a low water use type sod or seed? Maybe that is one way to have a lawn with less water use.

Mr. Truckey: One comment on the discussion of Classes, a single family home in the historic district is not a C. You need to weigh the amount of positive points that are available, since affordable housing can get up to positive ten (+10) points at this time.

Mr. Neubecker: Are we missing any type of landscaping that should be getting points? Like a plaza? Is there any non-plant landscaping feature we are forgetting? (Ms. Cram: Those areas will not get positive points, only landscaped areas.)

## 2. Footprint Lots

Mr. Neubecker presented. The Planning Commission discussed footprint lots at the February 3, 2009 and March 17, 2009 Planning Commission meetings. After these two meetings, a few consensus points seemed to arise. These include:

- Prohibit footprint lots in the Conservation District, except possibly in the commercial core.
- Secondary structures should have a different design standard that makes them look secondary (e.g. no ornamentation, smaller scale, etc.)
- Footprint lots should be identified by the applicant during the site plan application and review process.
- Separation of structures/footprint lots needs to be addressed.
- Accessory apartments should still be allowed, but criteria for accessory apartments may need revision.
- Form based codes should be considered.

Staff would like to verify that there was consensus among the Commission on these items.

The following items either needed additional information, or did not have a consensus:

- Should condominiumization of buildings be allowed where footprints are not?
- Should the Downtown Overlay District have different rules, since it is already a more active, commercialized area? (For footprint lots and condominiumizations?)
- Should there be a minimum size for a development to qualify for footprint lots? (This could eliminate a small development, with only one or two historic lots, from using footprints.)

Staff anticipated changes to both the Subdivision Code (which currently addresses footprint lots and minimum lot size) and the Handbook of Design Standards for the Historic and Conservation Districts. Staff did not expect that changes were needed to the Development Code at this time, since the Handbook of Design Standards is the primary governing document for design related issues within the Conservation District.

### *Commissioner Questions/Comments:*

Mr. Schroder: People need to understand what they are allowed to build on the footprint lot, and that secondary buildings are going to look like a barn rather than a residence. I am in agreement regarding the remaining bullet points. I agree that the secondary building should be subordinate to the primary structure.

- Ms. Girvin: Regarding Mr. Pringle's example, what could happen on those properties with an existing smaller structure on the lot? I don't think we want the historic structures get relegated to the back of the lot to put a primary structure on the front of the lot. Is that a place where a footprint lot might make sense? (Mr. Neubecker: We could request that they move the cabin to the front and have the development in the back.) At least when you have a condominium, you have an HOA. (Mr. Allen: You could have an HOA with footprint lots also, for snow plowing, trash, landscaping, etc.) One of my concerns is the issue of financial consideration. That shouldn't be an issue we are discussing with footprint lots. (Mr. Neubecker: I think we should discuss it with the policy. We want to consider if there will be incentive for historic preservation and restoration.) (Mr. Pringle: You are right about the financial benefit, but sometimes footprint lots also satisfy other competing interests in the town such as neighborhood character or available density on a lot.) (Mr. Neubecker: Keep in mind we can distinguish between different areas in town.) There is an example of too much density on Harris Street, with multiple units and cars crammed in, and then there is a large home overlooking the old house (Abernathy's old house). This is what we are trying to get away from. If we saw a lot of this, it is definitely a degradation of the neighborhood. (Mr. Neubecker: This is not an example of an accessory dwelling unit, but of the time in the 70s-80s when subdivision of those lots was used in the hopes to get more people living in the area.) I am in agreement regarding the second and third bullet point. I think if we are going to allow footprint lots, it makes sense to have different rules for different areas. Most of the examples we've discussed are in the commercial core. (Mr. Allen: It might even be encouraged in the commercial core.) (Mr. Schroder: Vitality.) I would only want to see these in the business core, not in residential. If we get rid of footprint lots, it should be in the residential area.
- Mr. Pringle: There are good examples of footprint lots in the Town of Breckenridge, at Legacy and also Dosse Court, a development pattern was included which fit into the neighborhood. The problem I have with footprint lots is sometimes it allows for more development on a lot than you would normally see. I think you want to keep footprint lots, because once in a while it presents a solution, and the Planning Commission should decide if it is allowed on a property. We have a minimum lot size in town, so you can't just subdivide any lot. There have been projects in the past where subdivision of the property by footprint lots was the only way to go forward with the development. (Mr. Neubecker: I think that there are ways to develop properties without the footprints.) I don't see a distinction between inside the commercial core and outside. I have some concerns with requiring the design standards on footprint lots – I think people should be able to apply for a master plan. (Mr. Neubecker: People can always apply for a master plan and request different standards.) Regarding the third bullet point, setbacks are an issue for commercial and residential properties and need to be addressed. The accessory apartment cannot be sold off like a footprint lot. (Mr. Truckey: Can an accessory unit be located on a footprint lot?) (Mr. Neubecker: Maybe we should add that accessory units shouldn't be allowed on footprint lots.) (Mr. Allen: Why not? If you have the room to provide the parking, etc. why couldn't you do this? You have limits to density.) This is why I prefer master plans. You can see the total amount of development.
- Mr. Lamb: What is the advantage of a footprint lot? Is it just that you can sell part of the property? (Mr. Neubecker: Yes, and developers can sell a building and the land.) (Mr. Allen: It is easier to finance than a condominium, because the land can be sold.) A footprint lot seems like an increase in density, and many times people seem to shoe-horn in a lot of additional development. The question is: are we comfortable with a situation where applicants are able to circumvent the minimum lot size? Is the potential adverse impact on the neighborhood included in the policy, such as multiple landowners where there used to be one? (Mr. Pringle: The aesthetic is the same whether it is under one ownership or two.) (Mr. Allen: I agree.) (Mr. Neubecker: The code could require additional parking areas, which does change the aesthetic because originally the lot required fewer parking spaces.) (Mr. Pringle: If you just allowed one single family house and an accessory apartment you are probably going to have more cars than you have spaces.) I am in agreement regarding the second bullet and third point. I agree with Mr. Pringle regarding accessory units. What if you banned footprint lots everywhere, and made everyone who wants to do this type of development do a master plan? (Mr. Neubecker: I don't think you will solve that much, you would end up with the same development proposal.) I have an issue with the form based codes, because what if the house in the front of the lot is small and they have a large amount of density? You want people to be able to build to the little amount of density that they have. (Mr. Neubecker: There will be exceptions for every

rule.) (Mr. Allen: Maybe we should address an example of this in the policy?) I am not sure that secondary structures need to look like a barn, but that they look subordinate to the main structure. I agree with Ms. Girvin regarding footprint lots in commercial versus residential.

Mr. Bertaux: It is not always density; it is often subdivision that drives the issue. There are several lots in the historic district where there are smaller existing buildings on the lot, and people want to be able to develop the lot. Footprint lots allow the development of the lot and preservation of the structure, and can create some revenue generation to restore the historic structures. I am in agreement regarding the remaining bullet points. I agree that the secondary structure should look subordinate to the primary structure. I'd like to see more master planning take place in the commercial area. (Mr. Allen: Especially along the river corridor.)

Mr. Allen: Is there a mechanism that can allow for the sale of a footprint lot that meets historic guidelines? (Mr. Neubecker: Condominiumization is the first way. There are a couple issues with footprint lots, first is that people want to buy a "primary" looking structure. The second issue is that on lot with multiple property owners there can be issues with parking and maintenance, even with an HOA.) I have a concern with prohibiting footprint lots in the historic district. If we are talking about banning footprints, why wouldn't we discuss condominiumization? (Mr. Neubecker: Yes, at some point we will discuss condominiumization.) I don't see a distinction between inside the commercial core and outside of it in Town. I am in agreement regarding the second bullet point. Are you saying that there will be different rules for accessory apartments? Doesn't it also say it must be within the main structure or in the garage? (Mr. Neubecker: It can be a separate unit; the code doesn't address that, but it could be added.) (Mr. Pringle: The only difference between accessory unit and footprint lot is that you don't sell the accessory unit. I don't think that bringing this discussion into this is necessary.) What is the issue with having an additional accessory unit? (Mr. Neubecker: The parking and other site impacts are the issue.) Can you elaborate on what you will include in the form based code? (Mr. Neubecker: More guidelines about the architectural character of properties, mostly in the back yard, making them look more like a secondary building.) I think most of the Commission members agree that the secondary building should look subordinate to the primary structure, but that we don't agree on the materials. If you could provide us with some old maps and photos we could discuss that at another time. I think you either allow both condominiumization and footprint lots or you prohibit both. (Mr. Bertaux: I agree.) I agree with Ms. Girvin regarding having different rules in the commercial core. On the last bullet point, was Dosse Court and Legacy Place more than one lot? (Mr. Pringle: Yes, they are larger lots.) If we are allowing footprint lots, are you saying that lots need to be a certain size? (Mr. Lamb: I think there should be a minimum, but I'm not sure what it is.) I agree with that, possibly staff can bring us some examples. (Mr. Kulick: Do you really want to start advocating a change in the historic lot size in that area? They are part of the context of the Town's settlement pattern.) I think that footprint lots should be allowed, especially if they fit all of these rules that we've discussed.

**TOWN COUNCIL REPORT:**

Mr. Rossi: Get everyone up to speed on Entrada, ValleyBrook and the positive ten (+10) points issue for affordable housing. Everyone on Council was in agreement that the positive ten (+10) points was being abused. This can be addressed in the transfer of and the granting of density to the property. You have heard about Valley Brook. The drive way came through on Entrada and we made an agreement with the applicant that they can continue with the lawsuit, but if they don't win the lawsuit they will buy two TDRs from the town. At that time Council will allow the purchase of that easement through Summit Ridge. (Mr. Allen: Do you think you should talk to Council about footprint lots?) There seems to more acceptance of the concept with the last two meeting minutes that I read. I know that Council member Mamula had concerns with the issue.

**CONSENT CALENDAR:**

1. Lot 17, Corkscrew Flats, Filing 3 (CK) PC#2009048, 271 Corkscrew Drive
2. Roberts Change of Use (MGT) PC#2009050, 1900 Airport Road, Units A3-A4

Ms. Girvin: What is in this location now, at 1900 Airport Road? (Mr. Roberts, Applicant: It was a timeshare sales office. The only other thing in the building now is a photo gallery.) What is the land that the Town is getting in the exchange? (Mr. Thompson: To the north of Rock Pile Ranch, the town has been using the land as an access point to Block 11, and the Town would like to make our access point legitimate and give Rock Pile Ranch some area to

expand their parking east of their building. The parking will be on this land that is traded.) So it sounds like a good land trade for the Town? (Mr. Thompson: Yes.) (Mr. Neubecker: This has been planned before the Applicant's request.) Is this walkable to the new college? (Mr. Roberts: Yes.)

Mr. Allen: Is the applicant looking to develop right away? (Mr. Thompson: According to the applicant it will take 6 weeks for interior tenant finish, and it will also be contingent on the land trade.)

Mr. Pringle: We are introducing a more intense use than the support commercial / industrial type of use that is going on in this area. Is this something that will continue to happen in this area? (Mr. Thompson: We thought it would be positive for the community to have a café / deli use in this neighborhood. The Applicant is required to pay additional tap fees and provide additional parking, and that will mitigate the more intense use. I think there will be additional traffic in the area.) This could lead to a more "destination" commercial in this area. (Mr. Bertaux: The neighborhood changed when people started putting in residential uses on the second floor of the commercial spaces.) (Mr. Neubecker: As Block 11 develops this area will continue to change.) (Mr. Lamb: We are happy about it at the college.)

Mr. Allen: Two changes in the conditions to this project:

Condition 5: Moved to "prior to certificate of occupancy".

New Condition 6: Exchange agreement with Rock Pile Ranch shall be completed prior to certificate of occupancy.

Mr. Pringle made a motion to call up Roberts Change of Use, PC#2009050, 1900 Airport Road, Units A3-A4, Mr. Bertaux seconded. Mr. Pringle moved to approve the Roberts Change of Use, PC#2009050, 1900 Airport Road, Units A3-A4, together with the corrected and additional findings and conditions. Mr. Bertaux seconded and the motion was carried unanimously (6-0).

3. Water House on Main Street Temporary Roof and Screening (CN for MM) PC#2009049, 600 Columbine Road  
On page 43 it is noted as vested for one year, and applicant wants to extend vesting for fencing to 18 months which is what is allowed per a Class C permit. (Ms. Sharon Cole, Applicant: It is to allow usage of the garage which is being built. We anticipate starting construction in the spring, and this extension would carry us through.) (Mr. Neubecker: We would put in the permanent structure at that time.) The Commission agreed that the vesting for 18 months was acceptable.

Ms. Girvin made a motion to call up Water House on Main Street Temporary Roof and Screening, PC#2009049, 600 Columbine Road. Mr. Bertaux seconded. Ms. Girvin made a motion to approve Water House on Main Street Temporary Roof and Screening, PC#2009049, 600 Columbine Road, with the change to the extended vesting to 18 months. Mr. Bertaux seconded, and the motion was carried unanimously (6-0).

With two requests to call up, the remainder of the consent calendar was approved as presented.

***OTHER MATTERS:***

1. Consent Calendar

Mr. Allen asked Mr. Neubecker why the consent calendar was not at the beginning of the meeting as previously discussed. (Mr. Neubecker noted that the Council had wanted it to be moved. The feeling was that generally the people that are showing up for the consent calendar are the architect or developer and are paid to attend, and can wait until 9pm if needed. Staff presented the Commission's concerns to the Town Council at the last meeting.) Planning Commission doesn't think that this agenda order serves the public very well. The order should be: Consent Calendar, Worksession, and Council Update. If there is a call up off the Consent Calendar it potentially goes to the end of the line after the Worksession. If it is technical, we will extend that courtesy to the applicant, if we think it will be quick. If it is a longer discussion, we will move the Call Up discussion to after the Worksession. The Planning Commission is on agreement on this issue.

2. Planning Commission Field Trip

Mr. Bertaux and Mr. Pringle will not be able to attend. Mr. Schroder is 90% sure he will make it.

Mr. Neubecker: The mission is to look at energy related issues that are not addressed by our green building codes. Everyone takes the typical items into account (solar, VOC, etc.). We are going to look at more site planning type issues, such as building orientation and bio-swales. Many of the units at Prospect New Town have accessory units. It is possible that the order of projects visited during the field trip may change, but Staff wanted to make sure the Planning Commission had the times correct.



***ADJOURNMENT***

The meeting was adjourned at 10:18 p.m.

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Rodney Allen, Chair

## Memorandum

**TO:** Town Council  
**FROM:** Tom Daugherty, Town Engineer  
**DATE:** October 22, 2009  
**RE:** Public Projects Update

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### **Wellington Neighborhood Path**

Town has executed a License Agreement with Xcel Energy to complete work on the path at the Wellington Neighborhood within the Xcel easement. Staff is moving forward to schedule the paving of the path still this fall, weather permitting. The developer, Wellington LLC, has committed to completing some minor items required by Xcel and the Town.

### **CDOT SH 9 Update**

CDOT has completed their work on SH 9 scheduled for the 2009 construction season. CDOT has recently removed the construction signing and restriped the intersections of Coyne Valley Road and Valley Brook Street.

CDOT plans to return to work on SH 9 beginning May 1, 2010, possibly earlier if weather permits. Work to be completed in the summer and fall of 2010 includes final grading, curb & gutter, paving of SH 9 and improvements to the intersections. No further work is planned for the bike path through the corridor. The path will be opened on the typical spring schedule.

### **Recreation Center Roof**

The major work on the new roof at the Recreation Center is now done with only minor items left to be completed.

### **Main Street Curb Extensions at Lincoln / Ski Hill**

The TOB project to construct new curb extensions and crosswalks at the Lincoln and Ski Hill intersection was completed as scheduled the week of October 12, 2009. Staff is working with CDOT to make minor adjustments to the signal cameras and timing to best match the new intersection configuration.

Staff is also looking forward to the final design and construction of another intersection on Main Street in the spring construction season of 2010.

### **Main Street Parking Modifications**

Town Staff is waiting on a decision from Town Council on the restriping of Main Street. Staff will be available to answer questions at the work session.

**MEMO**

**TO: Mayor & Town Council**

**FROM: Tim Gagen**

**DATE: October 21, 2009**

**RE: Committee Reports**

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**LLA** **MJ Loufek** **October 20, 2009**

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- Three transfers of ownership were approved:
  - Bridge Hospitality LLC d/b/a **Beaver Run Resort**  
620 Village Road
  - Prodigal Seed Inc. d/b/a **Ember** (formerly Café Alpine)  
106 East Adams Ave.
  - Palmer Industries d/b/a **Liquid Lounge**  
500 S, Main St., Units 2T, 2U, 2V
  
- One new liquor license was approved:
  - Northside Pizza LLC d/b/a **Northside**  
315 N. Main St. (formerly Domino's Pizza)  
Tavern Liquor License
  
- The Fire Department plans to change business inspection frequency from once a year to every six months.

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**Public Art Commission** **Jen Cram** **October 2009**

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**Sculpture on the Blue**

The public selected "Rusty" by Doyle Svenby for "People's Choice" and the Commission voted for "The Flame of Fairplay" by Chaz della Porta for "Best of Show". Each artist will receive a certificate and \$250.

**Outcropping House II Installation**

The Outcropping House II has been permanently installed in the Arts District. As soon as the plaque is ready a dedication will be planned.

**Popsicle Fundraising**

Cole Stevens is working on a letter to send out to 2<sup>nd</sup> homeowners to invite them to be a part of the Breckenridge community and assist in growing the Public Art Collection by helping to purchase it.

**High School Sculpture Donations**

The six totem sculptures have been installed in the Arts District. A dedication will be planned soon, possibly to coincide with the Outcropping House II.

#### New Sculpture Donations

Two additional sculptures have also been donated recently and located in the Arts District. Sculptor Doyle Svenby donated a steel Cat Tail piece and Cooper and Dave Walsh donated a stone and steel piece by Steaurt Bremner.

#### Other Meetings

CML	Tim Gagen	No Meeting
Summit Leadership Forum	Tim Gagen	No Meeting
SCHA	Laurie Best	No Meeting
CAST	Tim Gagen	No Meeting
I-70 Coalition	Tim Gagen	No Meeting
CAST	Tim Gagen	No Meeting
Wildfire Council	Matt Thompson	No Meeting
Police Advisory Committee	Rick Holman	No Meeting
Summit Stage	James Phelps	No Meeting
CDOT	Tim Gagen	No Meeting

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INTEROFFICE MEMORANDUM

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**TO:** TIM GAGEN, TOWN MANAGER  
**FROM:** CLERK AND FINANCE DIVISION  
**SUBJECT:** SEPTEMBER 2009 FINANCIAL VARIANCE HIGHLIGHTS MEMO  
**DATE:** 10/21/2009

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This report highlights variations between the 2009 budget and actual figures for the Town of Breckenridge for the year to date through September 30, 2009 (75% of the fiscal year).

**Revenue**

- **General Fund:** YTD Actual Revenues of \$18,096,068 fell short of budget by \$415,577 primarily due to Building Services revenue which is down \$400,000 due to lack of building/permitting activity.
- **Utility (Water) Fund:** \$480,869 below budgeted revenue due to lack of building/PIF's.
- **Marketing Fund:** below budgeted revenue by \$129,264 as a result of decreased sales and accommodations tax collections.
- **Golf Fund:** revenue is \$266,072 less than budgeted due to greens fees.
- **Excise Fund:** Sales tax collections through September 30, 2009 are under budget by \$1,486,188. RETT makes up about 60% of the deficiency. Investment income is also less than budget by \$150,130. A summary of budget vs. actual comparisons for RETT, sales and accommodation tax collections is below:

**RETT:**

	Budget	Actual	Variance \$	Actual as a % of Budget
YTD Sept 2009	\$2,826,594	\$1,917,692	\$(908,902)	68%

**Sales:**

	Budget	Actual	Variance \$	Actual as a % of Budget
YTD Sept 2009	\$8,432,387	\$7,975,355	\$(457,032)	95%

**Accommodations:**

	Budget	Actual	Variance \$	Actual as a % of Budget
YTD Sept 2009	\$1,196,520	\$1,085,376	\$(111,144)	91%

**Expenditures**

- **General Fund:** substantial cost savings due to budget savings measures implemented
- **Utility (Water) Fund:** variance reflects large (\$2million) capital project expenditure budgeted.

Expenditures (continued)

- **Golf Fund**: unfavorable variance is due to timing-the budget accumulates over 12 months but golf course expenditures take place during the golf season.
- **Garage services fund**: favorable variance due to lower fuel costs, repair and capital than expected/budgeted.
- **Facilities**: variance due to timing, facilities expenditures are budgeted for November and December.

To summarize, the *All Funds* report shows 2009 YTD actual revenues approximately 16% lower than 2008 at 9/30 and 2009 YTD expenditures approximately 25% lower than prior year.

TOWN OF BRECKENRIDGE  
**ALL FUNDS**  
 CURRENT YEAR TO PRIOR YEAR COMPARISON  
 FOR THE 9 MONTHS ENDING SEPTEMBER 30, 2009

75 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR				CURRENT YEAR		VARIANCE \$ FAVORABLE/ (UNFAVORABLE)	ACTUAL/BUDGET % CHANGE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	ACTUAL/ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET				
REVENUE										
1 GENERAL FUND	17,559,581	24,409,015	72%	103%	18,096,068	18,511,645	(415,577)	98%	23,385,696	77%
2 UTILITY FUND	3,376,841	5,060,764	67%	57%	1,936,382	2,417,251	(480,869)	80%	3,485,661	56%
3 CAPITAL FUND	2,790,159	3,451,444	81%	29%	796,843	889,818	(92,975)	90%	1,175,024	68%
4 MARKETING FUND	982,368	1,584,876	62%	99%	969,521	1,098,785	(129,264)	88%	1,596,976	61%
5 GOLF COURSE FUND	2,295,347	2,474,272	93%	74%	1,941,043	2,207,115	(266,072)	77%	2,272,325	75%
6 EXCISE TAX FUND	14,065,994	19,816,507	71%	83%	11,619,841	13,106,030	(1,486,189)	89%	18,431,797	63%
7 HOUSING FUND	2,407,997	3,314,688	73%	107%	2,570,219	2,437,330	132,889	105%	3,299,262	78%
8 OPEN SPACE ACQUISITION FUND	1,475,209	2,011,659	73%	86%	1,269,037	1,590,908	(321,871)	80%	1,920,498	66%
9 CONSERVATION TRUST FUND	25,944	36,191	72%	96%	24,904	21,963	2,941	113%	30,123	83%
10 GARAGE SERVICES FUND	1,577,367	2,938,578	54%	116%	1,825,359	1,752,171	73,188	104%	2,336,328	78%
11 INFORMATION TECHNOLOGY FUND	718,406	957,874	75%	102%	731,131	731,133	(2)	100%	974,844	75%
12 FACILITIES MAINTENANCE FUND	322,807	569,813	57%	54%	174,307	174,312	(5)	100%	232,416	75%
13 SPECIAL PROJECTS FUND	3,403,500	2,269,000	150%	22%	755,378	753,930	1,448	100%	1,005,240	75%
Total Revenue	51,001,520	68,894,681	74%	75%	42,710,033	45,692,391	(2,982,358)	83%	60,146,190	63%
EXPENDITURES										
1 GENERAL FUND	12,137,042	22,242,278	55%	119%	14,490,464	16,483,939	1,993,475	88%	23,504,383	62%
2 UTILITY FUND	1,800,408	2,979,476	60%	89%	1,597,242	3,889,363	2,292,121	41%	5,324,195	30%
3 CAPITAL FUND	8,431,808	9,727,977	87%	15%	1,280,379	881,253	(399,126)	145%	1,175,004	109%
4 MARKETING FUND	1,265,249	1,553,644	81%	108%	1,368,072	1,309,074	(58,998)	105%	1,770,117	77%
5 GOLF COURSE FUND	1,373,775	1,732,766	79%	122%	1,681,464	1,373,855	(307,609)	122%	2,454,405	69%
6 EXCISE TAX FUND	16,036,603	21,746,535	74%	86%	13,754,326	13,743,571	(10,755)	100%	18,696,808	74%
7 HOUSING FUND	2,298,614	2,902,911	79%	24%	550,995	2,563,378	2,012,383	21%	3,396,597	16%
8 OPEN SPACE ACQUISITION FUND	2,192,287	2,855,811	77%	70%	1,537,718	1,369,924	(167,794)	112%	2,079,901	74%
9 CONSERVATION TRUST FUND	33,750	45,000	75%	69%	23,250	23,247	(3)	100%	30,996	75%
10 GARAGE SERVICES FUND	2,220,526	3,179,302	70%	45%	993,972	1,444,488	450,516	69%	1,950,711	51%
11 INFORMATION TECHNOLOGY FUND	650,303	905,006	72%	65%	423,824	555,306	131,482	76%	774,940	55%
12 FACILITIES MAINTENANCE FUND	0	0	0%	0%	203,135	0	(203,135)	0%	194,632	104%
13 SPECIAL PROJECTS FUND	3,481,971	2,055,864	169%	20%	682,732	753,930	71,198	91%	1,005,240	68%
Total Expenditures	51,922,336	71,926,570	72%	83%	38,587,573	44,391,328	5,803,755	97%	62,357,929	69%
Revenue less Expenditures	(920,816)	(3,031,889)			4,122,460	1,301,063	2,821,397		(2,211,739)	

TOWN OF BRECKENRIDGE  
**EXCISE TAX FUND**  
 CURRENT YEAR TO PRIOR YEAR COMPARISON  
 FOR THE 9 MONTHS ENDING SEPTEMBER 30, 2009

75 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			ACTUAL/ACTUAL % VARIANCE	CURRENT YEAR		ACTUAL/BUDGET \$ VARIANCE FAVORABLE/ (UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET				
<b>REVENUE</b>										
SALES/ACCOM TAXES DAILIES	161	161	100%	673%	1,083	-	1,083	0%	-	0%
SALES TAX	8,976,798	12,067,380	74%	89%	7,975,355	8,432,387	(457,032)	95%	12,401,703	64%
ACCOMODATIONS TAX	1,400,583	1,783,019	79%	77%	1,085,376	1,196,520	(111,144)	91%	1,589,664	68%
INVESTMENT INCOME	206,210	293,992	70%	23%	47,257	197,387	(150,130)	24%	246,805	19%
<b>TOTAL REVENUE</b>	<b>10,583,752</b>	<b>14,144,552</b>	<b>75%</b>	<b>86%</b>	<b>9,109,071</b>	<b>9,826,294</b>	<b>(717,223)</b>	<b>93%</b>	<b>14,238,172</b>	<b>64%</b>
<b>MISCELLANEOUS TAX</b>										
SALES TAX	57,687	1,223,687	5%	0%	-	-	-	0%	-	0%
CIGARETTE TAX	67,544	83,994	80%	59%	39,855	39,727	128	100%	54,999	72%
TELEPHONE FRANCHISE TAX	22,541	30,029	75%	96%	21,531	22,891	(1,360)	94%	30,499	71%
PUBLIC SERVICE FRANCHISE	341,144	464,908	73%	134%	457,796	322,139	135,657	142%	398,001	115%
CABLEVISION FRANCHISE TAX	65,857	135,552	49%	112%	73,897	68,385	5,512	108%	105,000	70%
REAL ESTATE TRANSFER TAX	2,927,469	3,733,785	78%	66%	1,917,692	2,826,594	(908,902)	68%	3,605,126	53%
<b>TOTAL MISCELLANEOUS TAX</b>	<b>3,482,242</b>	<b>5,671,955</b>	<b>61%</b>	<b>72%</b>	<b>2,510,771</b>	<b>3,279,736</b>	<b>(768,965)</b>	<b>77%</b>	<b>4,193,625</b>	<b>60%</b>
<b>TOTAL FUND REVENUE</b>	<b>14,065,994</b>	<b>19,816,507</b>	<b>71%</b>	<b>83%</b>	<b>11,619,842</b>	<b>13,106,030</b>	<b>(1,486,188)</b>	<b>89%</b>	<b>18,431,797</b>	<b>63%</b>
<b>EXCISE TAX DEBT SERVICE</b>										
OTHER CONTRACTED SERVICES	-	-	0%	0%	-	378	378	0%	504	0%
COP FEES	1,150	2,225	52%	33%	383	-	(383)	0%	-	0%
2005 COP'S PRINCIPAL	-	260,000	0%	0%	-	-	-	0%	275,000	0%
2005 COP'S INTEREST	139,562	289,788	48%	104%	145,570	145,570	-	100%	291,140	50%
<b>TOTAL EXCISE TAX DEBT SERVICE</b>	<b>140,712</b>	<b>552,013</b>	<b>25%</b>	<b>104%</b>	<b>145,953</b>	<b>145,948</b>	<b>(5)</b>	<b>100%</b>	<b>566,644</b>	<b>26%</b>
<b>TRANSFERS</b>										
TRANSFER TO GENERAL FUND	6,569,846	13,297,081	49%	154%	10,102,500	10,102,500	-	100%	13,470,000	75%
TRANSFER TO GOLF FUND	187,500	250,000	75%	0%	-	-	-	0%	-	0%
TRANSFERS TO CAPITAL FUND	1,887,000	2,516,000	75%	35%	665,250	665,253	3	100%	887,004	75%
TRANSFER TO MARKETING	225,000	300,000	75%	150%	337,000	326,250	(10,750)	103%	435,000	77%
TRFS TO EMPLOYEE HSG FUND	1,771,831	2,362,441	75%	99%	1,749,688	1,749,690	2	100%	2,332,920	75%
TRFS TO FACILITIES FUND	150,000	200,000	75%	0%	-	-	-	0%	-	0%
TRFS TO SPECIAL PROJECTS FUND	3,403,500	2,269,000	150%	22%	753,934	753,930	(4)	100%	1,005,240	75%
<b>TOTAL TRANSFERS</b>	<b>14,194,677</b>	<b>21,194,522</b>	<b>67%</b>	<b>96%</b>	<b>13,608,372</b>	<b>13,597,623</b>	<b>(10,749)</b>	<b>100%</b>	<b>18,130,164</b>	<b>75%</b>
<b>TOTAL FUND EXPENDITURES</b>	<b>14,335,389</b>	<b>21,746,535</b>	<b>66%</b>	<b>96%</b>	<b>13,754,325</b>	<b>13,743,571</b>	<b>(10,754)</b>	<b>100%</b>	<b>18,696,808</b>	<b>74%</b>
<b>NET REVENUE OVER EXPENDITURES</b>	<b>(269,394)</b>	<b>(1,930,028)</b>	<b>-14%</b>	<b>792%</b>	<b>(2,134,485)</b>	<b>(637,541)</b>	<b>1,496,944</b>	<b>335%</b>	<b>(265,011)</b>	<b>-805%</b>



TOWN OF BRECKENRIDGE  
**GENERAL FUND**  
 CURRENT YEAR TO PRIOR YEAR COMPARISON  
 FOR THE 9 MONTHS ENDING SEPTEMBER 30, 2009

**75 % OF THE FISCAL YEAR HAS ELAPSED**

	PRIOR YEAR				CURRENT YEAR				ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	ACTUAL/ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$	ACTUAL/BUDGET % CHANGE		
<b>REVENUE</b>										
MUNICIPAL COURT PROGRAM	152,705	195,014	78%	114%	173,542	129,831	43,711	134%	172,598	101%
ADMINISTRATIVE MGT PROGRAM	43,446	48,282	90%	14%	6,145	27,966	(21,821)	22%	30,657	20%
SPECIAL EVENTS/COMM PROGRAM	104,496	118,694	88%	101%	105,282	99,873	5,409	105%	107,351	98%
TOWN CLERK ADMIN PROGRAM	22,112	27,565	80%	96%	21,181	19,705	1,476	107%	25,110	84%
TRANSIT ADMIN PROGRM	-	-	0%	0%	95,000	95,000	-	100%	95,000	100%
TRANSIT SERVICES PROGRAM	280,571	318,407	88%	144%	404,372	266,961	137,411	151%	354,811	114%
PUBLIC SAFETY ADMIN/RECORDS	93,429	121,392	77%	82%	76,252	70,055	6,197	109%	93,494	82%
PUBLIC SAFETY COMMNTY SVC PROG	397,408	507,643	78%	111%	440,501	417,678	22,823	105%	485,450	91%
PLANNING SERVICES ADMIN PROGRM	165,033	201,089	82%	87%	142,798	127,558	15,240	112%	163,555	87%
BUILDING SERVICES ADMIN PROGRM	1,495,525	1,755,243	85%	24%	356,510	760,383	(403,873)	47%	919,902	39%
PUBLIC WORKS ADMIN PROGRAM	453,212	505,002	90%	86%	388,752	468,845	(80,093)	83%	565,128	69%
STREETS PROGRAM	29,250	29,250	100%	162%	47,450	21,600	25,850	220%	27,000	176%
RECREATION PROGRAM	221,465	339,432	65%	130%	288,019	259,280	28,739	111%	349,490	82%
RECREATION OPERATIONS PROGRAM	1,113,459	1,498,901	74%	94%	1,047,462	994,552	52,910	105%	1,409,753	74%
NORDIC CENTER OPERATIONS	142,556	172,591	83%	87%	123,642	142,310	(18,668)	87%	168,625	73%
ICE RINK OPERATIONS PROGRAM	520,635	660,643	79%	87%	451,378	480,674	(29,296)	94%	672,699	67%
REVENUE DEFAULT	12,320,345	17,906,029	69%	113%	13,909,884	14,129,374	(219,490)	98%	17,745,073	78%
<b>TOTAL REVENUE</b>	<b>17,559,581</b>	<b>24,409,015</b>	<b>72%</b>	<b>103%</b>	<b>18,096,068</b>	<b>18,511,645</b>	<b>(415,577)</b>	<b>98%</b>	<b>23,385,696</b>	<b>77%</b>

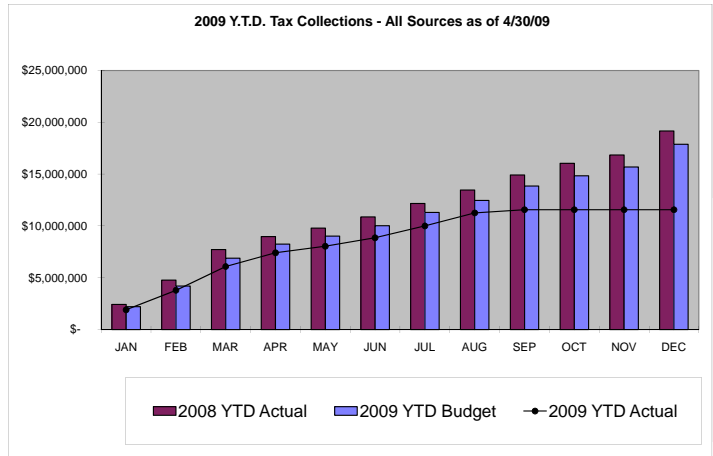
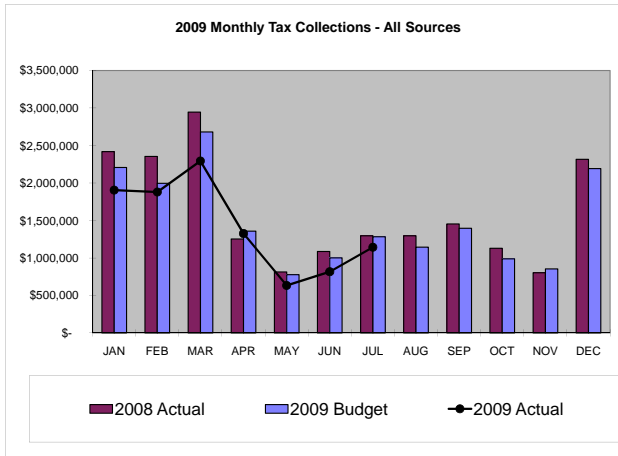
TOWN OF BRECKENRIDGE  
**GENERAL FUND**  
 CURRENT YEAR TO PRIOR YEAR COMPARISON  
 FOR THE 9 MONTHS ENDING SEPTEMBER 30, 2009

**75 % OF THE FISCAL YEAR HAS ELAPSED**

	PRIOR YEAR				CURRENT YEAR				ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	ACTUAL/ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$	ACTUAL/BUDGET % CHANGE		
<b>EXPENDITURES</b>										
LAW & POLICY MAKING PROGRAM	112,421	139,989	80%	90%	101,660	118,849	17,189	86%	159,103	64%
MUNICIPAL COURT PROGRAM	132,982	202,760	66%	91%	120,575	169,594	49,019	71%	227,057	53%
ADVISE & LITIGATION PROGRAM	140,793	201,725	70%	182%	255,792	143,634	(112,158)	178%	222,817	115%
ADMINISTRATIVE MGT PROGRAM	427,580	636,610	67%	94%	399,812	444,673	44,861	90%	641,483	62%
HUMAN RESOURCES ADMIN PROGRAM	351,273	469,342	75%	84%	295,114	362,828	67,714	81%	524,798	56%
SPECIAL EVENTS/COMM PROGRAM	537,327	680,460	79%	82%	438,055	526,449	88,394	83%	692,441	63%
TOWN CLERK ADMIN PROGRAM	177,813	256,307	69%	97%	171,897	197,161	25,264	87%	294,688	58%
FINANCE ADMINISTRATION PROGRAM	196,285	254,086	77%	104%	203,894	229,012	25,118	89%	341,013	60%
ACCOUNTING PROGRAM	278,403	384,082	72%	80%	224,066	263,411	39,345	85%	378,675	59%
TRANSIT ADMIN PROGRAM	149,582	200,467	75%	58%	86,935	101,523	14,588	86%	133,533	65%
TRANSIT SERVICES PROGRAM	1,751,433	2,466,674	71%	90%	1,568,119	1,768,075	199,956	89%	2,440,099	64%
PUBLIC SAFETY ADMIN/RECORDS	660,897	924,281	72%	95%	629,965	689,971	60,006	91%	918,410	69%
PUBLIC SAFETY COMMUNICATN PROG	182,020	363,929	50%	137%	249,373	231,576	(17,797)	108%	337,570	74%
PUBLIC SAFETY PATROL SVCS PROG	1,494,264	2,012,053	74%	88%	1,317,794	1,513,851	196,057	87%	2,124,474	62%
PUBLIC SAFETY COMMNTY SVC PROG	96,642	207,494	47%	334%	322,881	437,789	114,908	74%	582,257	55%
PLANNING SERVICES ADMIN PROGRAM	1,019,152	1,347,389	76%	81%	827,861	959,370	131,509	86%	1,337,906	62%
BUILDING SERVICES ADMIN PROGRAM	298,477	428,018	70%	95%	283,624	335,015	51,391	85%	474,428	60%
PUBLIC WORKS ADMIN PROGRAM	290,677	424,244	69%	94%	271,786	420,951	149,165	65%	585,220	46%
STREETS PROGRAM	1,370,060	1,985,156	69%	96%	1,320,619	1,491,468	170,849	89%	2,069,860	64%
PARKS PROGRAM	826,755	1,165,100	71%	95%	785,793	944,284	158,491	83%	1,252,464	63%
FACILITIES ADMIN PROGRAM	947,263	1,360,724	70%	96%	908,272	1,096,099	187,827	83%	1,516,938	60%
ENGINEERING ADMIN PROGRAM	367,541	508,275	72%	84%	309,527	246,340	(63,187)	126%	342,276	90%
CONTINGENCIES	128,700	135,700	95%	154%	198,500	188,906	(9,594)	105%	195,999	101%
RECREATION ADMIN PROGRAM	510,786	733,027	70%	94%	479,713	569,755	90,042	84%	772,143	62%
RECREATION PROGRAM	480,824	643,537	75%	86%	413,827	527,782	113,955	78%	692,576	60%
RECREATION OPERATIONS PROGRAM	1,483,686	2,038,052	73%	82%	1,212,906	1,483,125	270,219	82%	2,149,175	56%
NORDIC CENTER OPERATIONS	185,795	288,476	64%	108%	200,116	198,182	(1,934)	101%	338,739	59%
ICE RINK OPERATIONS PROGRAM	778,760	1,092,268	71%	86%	669,704	812,991	143,287	82%	1,207,067	55%
LONG TERM DEBT	54,178	426,746	13%	386%	209,101	-	(209,101)	0%	418,163	50%
SHORT TERM DEBT	8,767	133,783	7%	68%	5,929	11,275	5,346	53%	133,011	4%
<b>TOTAL EXPENDITURES</b>	<b>15,564,026</b>	<b>22,242,278</b>	<b>70%</b>	<b>93%</b>	<b>14,490,369</b>	<b>16,483,939</b>	<b>1,993,570</b>	<b>88%</b>	<b>23,504,383</b>	<b>62%</b>
<b>REVENUE (LESS) EXPENSE</b>	<b>1,995,555</b>	<b>2,166,737</b>			<b>3,605,699</b>	<b>2,027,706</b>	<b>(2,409,147)</b>		<b>(118,687)</b>	

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

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 2,418,737	\$ 2,418,737	12.6%	\$ 2,206,630	\$ 2,206,630	12.3%	\$ 1,905,072	-21.2%	86.3%	\$ 1,905,072	-21.2%	10.7%
FEB	\$ 2,354,775	\$ 4,773,512	24.9%	\$ 1,996,244	\$ 4,202,874	23.5%	\$ 1,879,483	-20.2%	94.2%	\$ 3,784,555	-20.7%	21.2%
MAR	\$ 2,943,976	\$ 7,717,488	40.3%	\$ 2,680,714	\$ 6,883,589	38.5%	\$ 2,292,474	-22.1%	85.5%	\$ 6,077,029	-21.3%	34.0%
APR	\$ 1,253,479	\$ 8,970,968	46.8%	\$ 1,357,940	\$ 8,241,529	46.1%	\$ 1,325,404	5.7%	97.6%	\$ 7,402,433	-17.5%	41.4%
MAY	\$ 813,163	\$ 9,784,131	51.1%	\$ 777,466	\$ 9,018,994	50.4%	\$ 633,153	-22.1%	81.4%	\$ 8,035,586	-17.9%	44.9%
JUN	\$ 1,086,064	\$ 10,870,194	56.7%	\$ 1,002,387	\$ 10,021,381	56.0%	\$ 816,602	-24.8%	81.5%	\$ 8,852,188	-18.6%	49.5%
JUL	\$ 1,294,864	\$ 12,165,059	63.5%	\$ 1,283,829	\$ 11,305,210	63.2%	\$ 1,144,007	-11.7%	89.1%	\$ 9,996,195	-17.8%	55.9%
AUG	\$ 1,295,684	\$ 13,460,743	70.3%	\$ 1,144,904	\$ 12,450,114	69.6%	\$ 1,256,355	-3.0%	109.7%	\$ 11,252,550	-16.4%	62.9%
SEP	\$ 1,453,616	\$ 14,914,359	77.8%	\$ 1,396,497	\$ 13,846,611	77.4%	\$ 309,701	-78.7%	22.2%	\$ 11,562,251	-22.5%	64.7%
OCT	\$ 1,128,981	\$ 16,043,340	83.7%	\$ 988,792	\$ 14,835,403	83.0%	\$ -	n/a	0.0%	\$ 11,562,251	-27.9%	64.7%
NOV	\$ 802,593	\$ 16,845,933	87.9%	\$ 854,627	\$ 15,690,030	87.7%	\$ -	n/a	0.0%	\$ 11,562,251	-31.4%	64.7%
DEC	\$ 2,314,976	\$ 19,160,909	100.0%	\$ 2,192,063	\$ 17,882,093	100.0%	\$ -	n/a	0.0%	\$ 11,562,251	-39.7%	64.7%

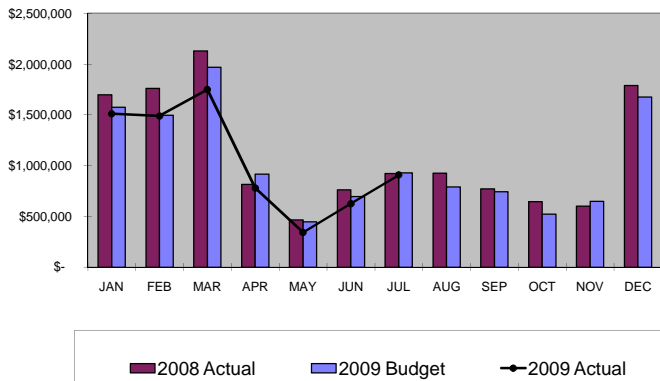


<b>Prior Year Actual and Current Year Budget Variances</b>					
	TOTAL	Sales	Accommodations	RETT	Housing
vs. August 08 Actual	(39,329)	25,295	(9,438)	(44,428)	(10,757)
vs. August 09 Budget	111,452	160,836	(11,119)	(34,972)	(3,293)
vs. YTD 08 Actual	(2,208,193)	(1,124,919)	(315,186)	(715,435)	(52,653)
vs. YTD 09 Budget	(1,197,564)	(460,159)	(111,125)	(635,375)	9,095

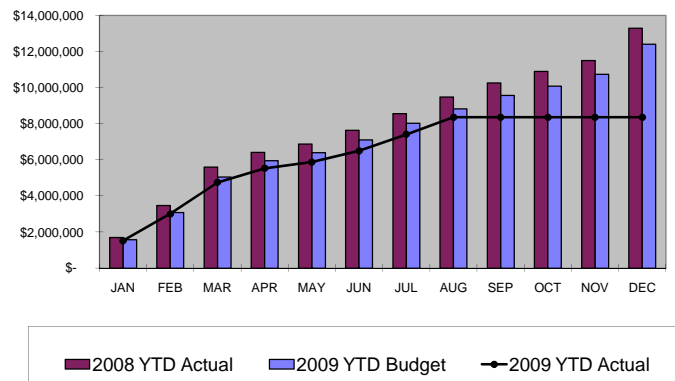
**TOWN OF BRECKENRIDGE  
SALES TAX COLLECTIONS  
REPORTED IN THE PERIOD EARNED**

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 1,699,052	\$ 1,699,052	12.8%	\$ 1,574,195	\$ 1,574,195	12.7%	\$ 1,511,000	-11.1%	96.0%	\$ 1,511,000	-11.1%	12.2%
FEB	1,759,932	3,458,985	26.0%	1,496,091	3,070,286	24.8%	1,488,258	-15.4%	99.5%	2,999,259	-13.3%	24.2%
MAR	2,129,985	5,588,969	42.1%	1,967,425	5,037,711	40.6%	1,748,787	-17.9%	88.9%	4,748,046	-15.0%	38.3%
APR	814,209	6,403,179	48.2%	914,797	5,952,508	48.0%	780,318	-4.2%	85.3%	5,528,363	-13.7%	44.6%
MAY	464,918	6,868,097	51.7%	445,750	6,398,258	51.6%	341,527	-26.5%	76.6%	5,869,890	-14.5%	47.3%
JUN	761,897	7,629,994	57.4%	695,674	7,093,932	57.2%	625,051	-18.0%	89.8%	6,494,941	-14.9%	52.4%
JUL	922,613	8,552,607	64.4%	929,455	8,023,387	64.7%	907,451	-1.6%	97.6%	7,402,392	-13.4%	59.7%
AUG	924,291	9,476,897	71.3%	788,750	8,812,137	71.1%	949,586	2.7%	120.4%	8,351,978	-11.9%	67.3%
SEP	770,561	10,247,459	77.1%	741,531	9,553,668	77.0%	n/a	0.0%	n/a	8,351,978	-18.5%	67.3%
OCT	644,680	10,892,138	82.0%	522,493	10,076,161	81.2%	n/a	0.0%	n/a	8,351,978	-23.3%	67.3%
NOV	601,530	11,493,668	86.5%	649,337	10,725,498	86.5%	n/a	0.0%	n/a	8,351,978	-27.3%	67.3%
DEC	\$ 1,789,075	\$ 13,282,743	100.0%	\$ 1,676,204	12,401,702	100.0%	n/a	0.0%	n/a	\$ 8,351,978	-37.1%	67.3%

2009 Monthly Sales Tax Collections



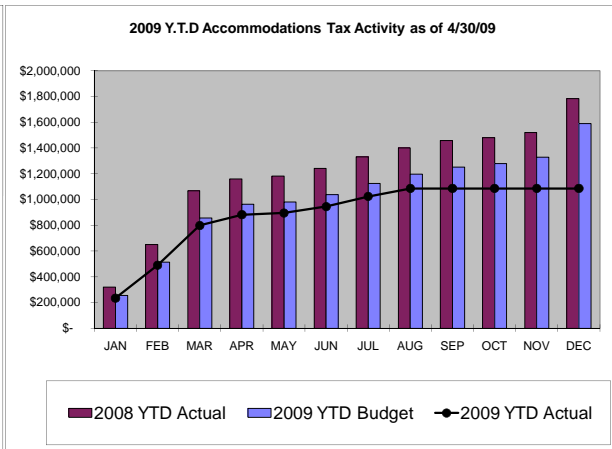
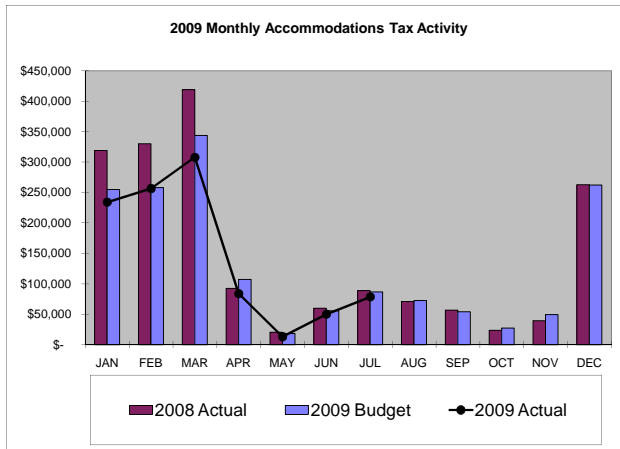
2009 Y.T.D. Sales Tax Collections as of 4/30/09



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

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 319,027	\$ 319,027	17.9%	\$ 254,720	\$ 254,720	16.0%	\$ 234,107	-26.6%	91.9%	\$ 234,107	-26.6%	14.7%
FEB	330,262	649,289	36.4%	257,892	512,612	32.2%	256,470	-22.3%	99.4%	490,577	-24.4%	30.9%
MAR	418,622	1,067,911	59.9%	343,506	856,117	53.9%	307,773	-26.5%	89.6%	798,350	-25.2%	50.2%
APR	92,660	1,160,571	65.1%	107,159	963,276	60.6%	84,014	-9.3%	78.4%	882,363	-24.0%	55.5%
MAY	20,413	1,180,984	66.2%	18,397	981,674	61.8%	13,100	-35.8%	71.2%	895,464	-24.2%	56.3%
JUN	60,094	1,241,078	69.6%	55,869	1,037,543	65.3%	50,092	-16.6%	89.7%	945,555	-23.8%	59.5%
JUL	88,754	1,329,831	74.6%	86,546	1,124,089	70.7%	78,528	-11.5%	90.7%	1,024,084	-23.0%	64.4%
AUG	70,749	1,400,580	78.6%	72,430	1,196,519	75.3%	61,311	-13.3%	84.6%	1,085,395	-22.5%	68.3%
SEP	57,015	1,457,595	81.7%	54,323	1,250,842	78.7%	n/a	0.0%		1,085,395	-25.5%	68.3%
OCT	23,615	1,481,210	83.1%	27,148	1,277,990	80.4%	n/a	0.0%		1,085,395	-26.7%	68.3%
NOV	39,286	1,520,496	85.3%	49,398	1,327,389	83.5%	n/a	0.0%		1,085,395	-28.6%	68.3%
DEC	\$ 262,520	\$ 1,783,016	100.0%	\$ 262,274	1,589,663	100.0%	n/a	0.0%		\$ 1,085,395	-39.1%	68.3%

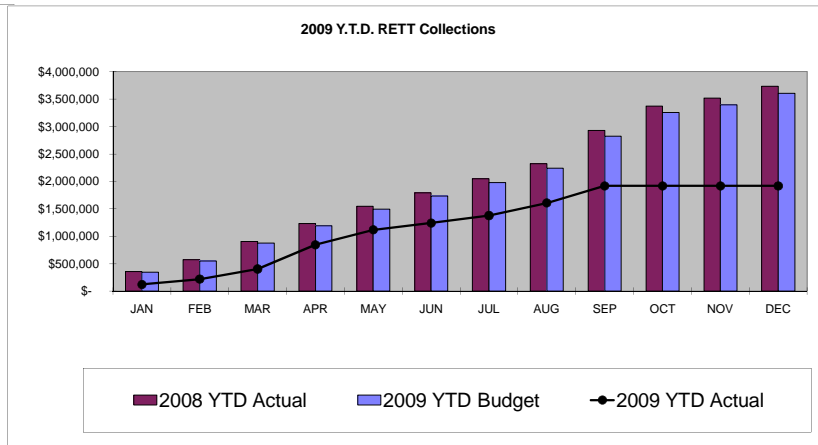
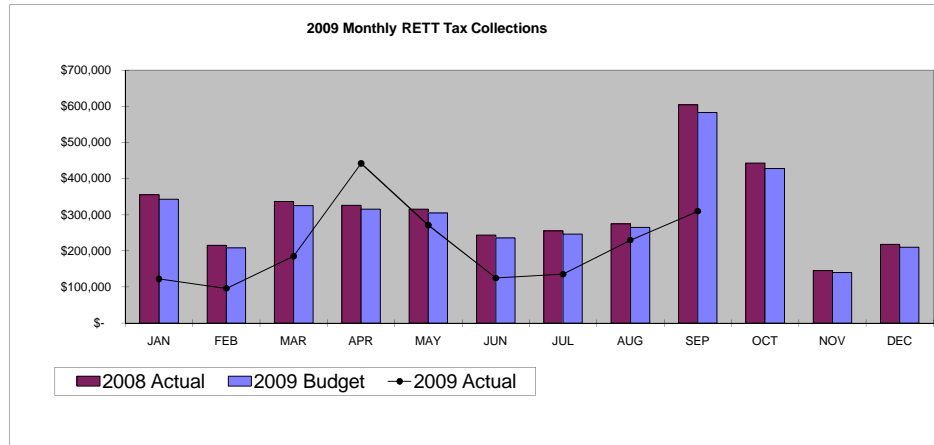
Accommodation tax amounts reflect collections at the 2% rate.



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

Sales Period	2007 Collections			2008 Collections			2009 Budget			2009 Monthly				2009 Year to Date			
	Tax Collected	Year To Date	Percent of Total	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	% Change from 2007	% Change from 2008	Actual	% of Budget	% Change from 2007	% Change from 2008
JAN	\$ 352,958	\$ 352,958	6.2%	\$ 355,179	\$ 355,179	9.5%	\$ 342,940	\$ 342,940	9.51%	\$ 122,245	35.6%	-65.4%	-65.6%	\$ 122,245	3.4%	-65.4%	-65.6%
FEB	342,995	695,953	12.3%	215,566	570,745	15.3%	208,138	551,078	15.29%	96,379	46.3%	-71.9%	-55.3%	218,623	6.1%	-68.6%	-61.7%
MAR	271,817	967,770	17.1%	336,956	907,701	24.3%	325,345	876,423	24.31%	185,714	57.1%	-31.7%	-44.9%	404,337	11.2%	-58.2%	-55.5%
APR	564,624	1,532,394	27.0%	326,521	1,234,222	33.1%	315,270	1,191,693	33.06%	442,039	140.2%	-21.7%	35.4%	846,376	23.5%	-44.8%	-31.4%
MAY	533,680	2,066,074	36.4%	315,494	1,549,716	41.5%	304,623	1,496,317	41.51%	271,393	89.1%	-49.1%	-14.0%	1,117,770	31.0%	-45.9%	-27.9%
JUN	522,999	2,589,073	45.6%	243,969	1,793,685	48.0%	235,562	1,731,879	48.04%	124,822	53.0%	-76.1%	-48.8%	1,242,591	34.5%	-52.0%	-30.7%
JUL	343,610	2,932,683	51.7%	255,305	2,048,990	54.9%	246,508	1,978,387	54.88%	135,393	54.9%	-60.6%	-47.0%	1,377,984	38.2%	-53.0%	-32.7%
AUG	594,349	3,527,032	62.1%	274,442	2,323,432	62.2%	264,985	2,243,372	62.23%	230,014	86.8%	-61.3%	-16.2%	1,607,997	44.6%	-54.4%	-30.8%
SEP	711,996	4,239,028	74.7%	604,037	2,927,469	78.4%	583,223	2,826,596	78.40%	309,701	53.1%	-56.5%	-48.7%	1,917,698	53.2%	-54.8%	-34.5%
OCT	392,752	4,631,779	81.6%	442,830	3,370,299	90.3%	427,571	3,254,167	90.26%	-	0.0%	n/a	n/a	1,917,698	53.2%	-58.6%	-43.1%
NOV	459,147	5,090,926	89.7%	145,549	3,515,848	94.2%	140,534	3,394,701	94.16%	-	0.0%	n/a	n/a	1,917,698	53.2%	-62.3%	-45.5%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 217,937	\$ 3,733,785	100.0%	\$ 210,427	3,605,128	100.00%	\$ -	0.0%	n/a	n/a	\$ 1,917,698	53.2%	-66.2%	-48.6%

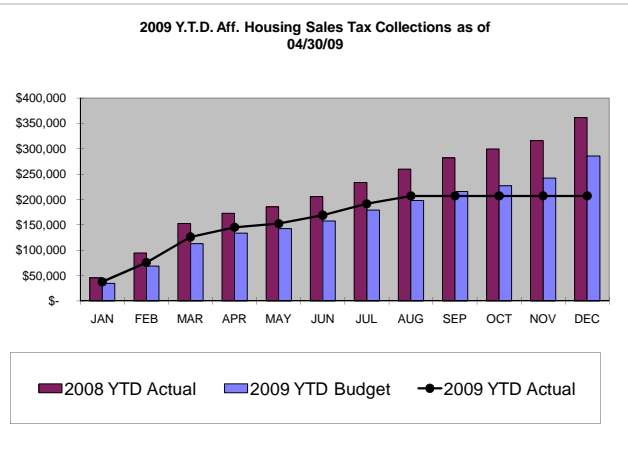
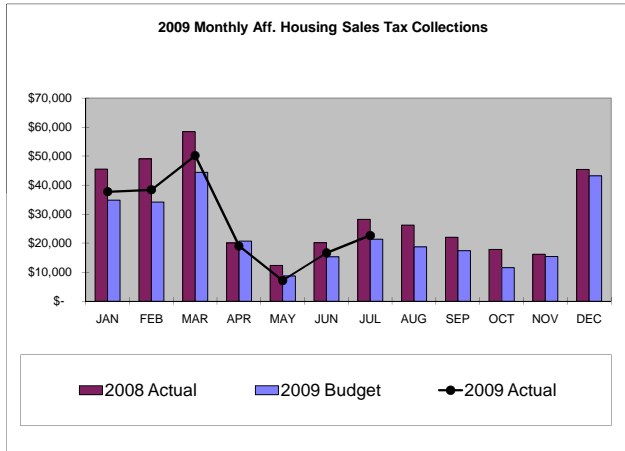
September #s are as of 9/14/09



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

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 45,479	\$ 45,479	12.6%	\$ 34,776	\$ 34,776	12.2%	\$ 37,720	-17.1%	108.5%	\$ 37,720	-17.1%	13.2%
FEB	49,015	94,494	13.6%	34,123	68,899	11.9%	38,376	-21.7%	112.5%	76,096	-19.5%	26.6%
MAR	58,414	152,907	16.2%	44,438	113,337	15.6%	50,200	-14.1%	113.0%	126,296	-17.4%	44.2%
APR	20,089	172,997	5.6%	20,714	134,051	7.3%	19,034	-5.3%	91.9%	145,330	-16.0%	50.9%
MAY	12,337	185,334	3.4%	8,695	142,746	3.0%	7,133	-42.2%	82.0%	152,462	-17.7%	53.4%
JUN	20,104	205,438	5.6%	15,281	158,027	5.4%	16,637	-17.2%	108.9%	169,100	-17.7%	59.2%
JUL	28,193	233,631	7.8%	21,320	179,347	7.5%	22,635	-19.7%	106.2%	191,735	-17.9%	67.1%
AUG	26,202	259,833	7.3%	18,738	198,085	6.6%	15,445	-41.1%	82.4%	207,180	-20.3%	72.5%
SEP	22,003	281,836	6.1%	17,420	215,505	6.1%	-	n/a	0.0%	207,180	-26.5%	72.5%
OCT	17,856	299,692	4.9%	11,580	227,085	4.1%	-	n/a	0.0%	207,180	-30.9%	72.5%
NOV	16,228	315,921	4.5%	15,358	242,443	5.4%	-	n/a	0.0%	207,180	-34.4%	72.5%
DEC	\$ 45,445	\$ 361,365	12.6%	\$ 43,157	285,600	15.1%	\$ -	n/a	0.0%	\$ 207,180	-42.7%	72.5%

Affordable Housing Sales Tax reflects money distributed to the Town net of the Housing Authority share and is deposited directly into the Affordable Housing Fund





October 20, 2009

TO: Breckenridge Town Council

FROM: James Phelps and Maribeth Lewis

RE: Winter Ops Plan for 2009-2010

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The proposed service changes for 2009-2010 Winter Ops are designed utilizing the adopted 2009 Transit Master Plan. The proposed service changes will create minimal minor adjustments to the Free Ride system.

Overview of Changes:

- (1) New route or the “Gray Route”. This route will be a circulator route that will have two parts:
- **North** – going out Airport Road to CMC and returning to Breckenridge Station
  - **South** – going from Breckenridge Station through Kings Crown/Beaver Run, to the Ice Rink, back through Beaver Run/Kings Crown, service to F-Lot, and back to Breckenridge Station.

The addition of the Gray Route was determined because of the minor changes to the final destinations vs. the current Yellow Route. The Gray Route does add service to CMC and the South Route has new final destination of the Ice Rink. The Gray North Route will feature a new stop at City Market on the Northbound direction only. All of the bus marquees and schedule maps provide the Route Name and where the bus is traveling for easy identification. Gray North and Gray South will have different boarding positions at Breckenridge Station to provide for an ease of use. No transfer will be necessary due to interline of the bus.

(2) The Yellow Route will operate unchanged from current route/stops. Yellow Route will now be operated as # 2, winter seasonal bus, from 7:30 am – 5:00 pm. #2 buses are funded through a 5311 Operating Assistance Grant from CDOT. The Yellow Route will not provide service to CMC and will continue to turn around at Summit Landscaping. This will provide for 15 minute service in conjunction with the Gray Route for peak times. The Yellow Route will only be run during the winter months. For summer service the Yellow will be replaced by the Gray Route.

(3) The Brown Route will no longer service Four o’clock, Kings Crown but now will make an express run to Warrior’s Mark, with The Village being its first stop, and continue on through Warrior’s Mark, service Ski and Racquet, return to Beaver Run, F-Lot, and back to Breckenridge Station. The Brown #2 will operate on a split shift during peak times, like last winter, and mimic the Brown 1 - being 15 minutes offset during peak times.

(4) The Purple Route will remain unchanged from current routing.



(5) The Orange route will remain unchanged from current routing.

(6) The Blue route will no longer be operated by the Town of Breckenridge. The Breckenridge Ski Resort will operate the Blue Route with (2) two busses. Previously years the TOB has partnered with BSR for operation of the Blue Route. BSR will continue to operate the Black Route and the Green Route during the daytime; in addition to the Red Route parking lot buses. This change of BSR operating the Blue Route this year has allowed for the Free Ride to operate the North & South interline of the Gray Route without incurring additional operating costs.

As with last year, the Free Ride will begin service of the Black Route, starting at 5:45 pm. The Black Route proved to be very popular last winter and brought over 12,000 passengers down from the Ski Hill and Peak 7/8 neighborhoods at night into the core of Town.

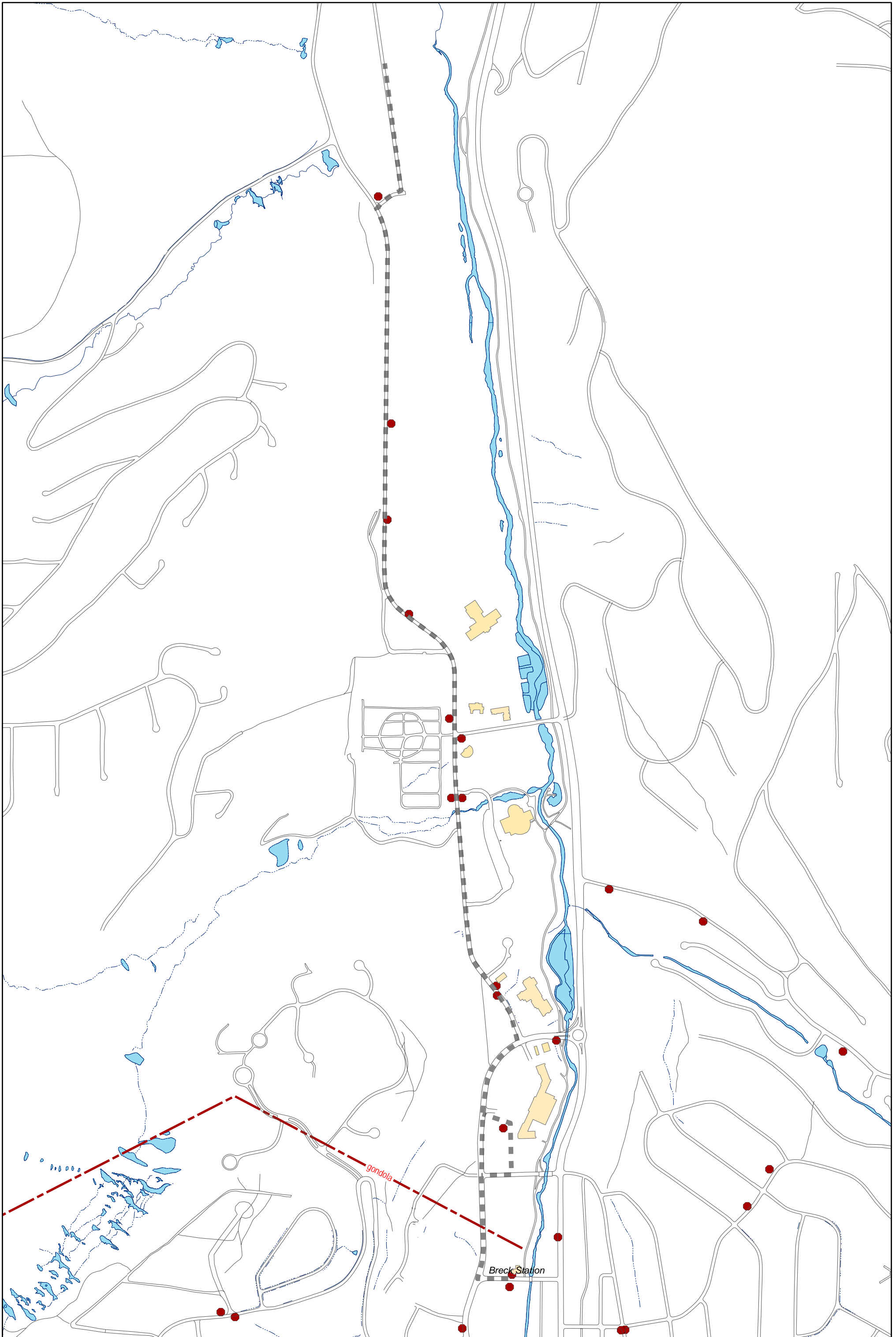
#### Connection to Summit Stage

The proposed winter operations plan for 2009-2010 would continue to have buses staggered to have :15 & :45 departure schedule from Breckenridge Station for main buses and :00 & :30 for #2 buses. This timetable proved to be very successful in terms of meeting the connection with Summit Stage. At :15 & :45, we provide guests with a fairly equal and yet the shortest amount of dwell-time in which to connect with the Summit Stage for arrivals and departures.

#### Overall Impression of System

Transit Management believes that last winter was a banner season in terms of our coordination with the Breckenridge Ski Resort transportation and Summit Stage. We saw a much more coordinated effort at maximizing our resources and providing the best service coverage possible for our guests. The proposed winter operations plan for 2009-2010 grows upon our success of last winter and further moves us into position for future expansion of service as outlined in the adopted 2009 Transit Master Plan.

Staff will be available for any questions that Council may have.



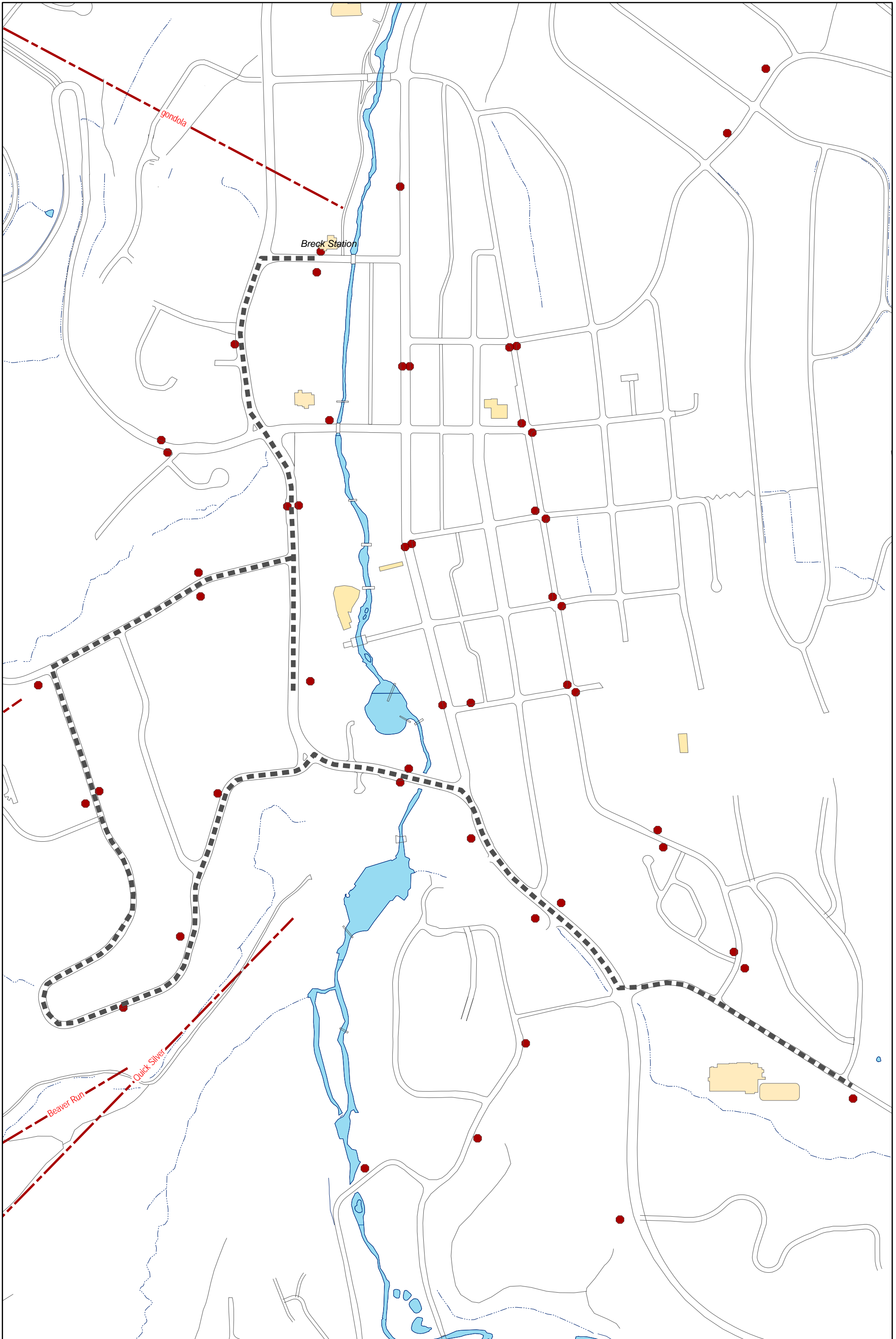
Town of Breckenridge and Summit County governments assume no responsibility for the accuracy of the data, and use of the product for any purpose is at user's sole risk.

# Gray North Route

printed 9/23/2009

● transit stops Page 26 of 120





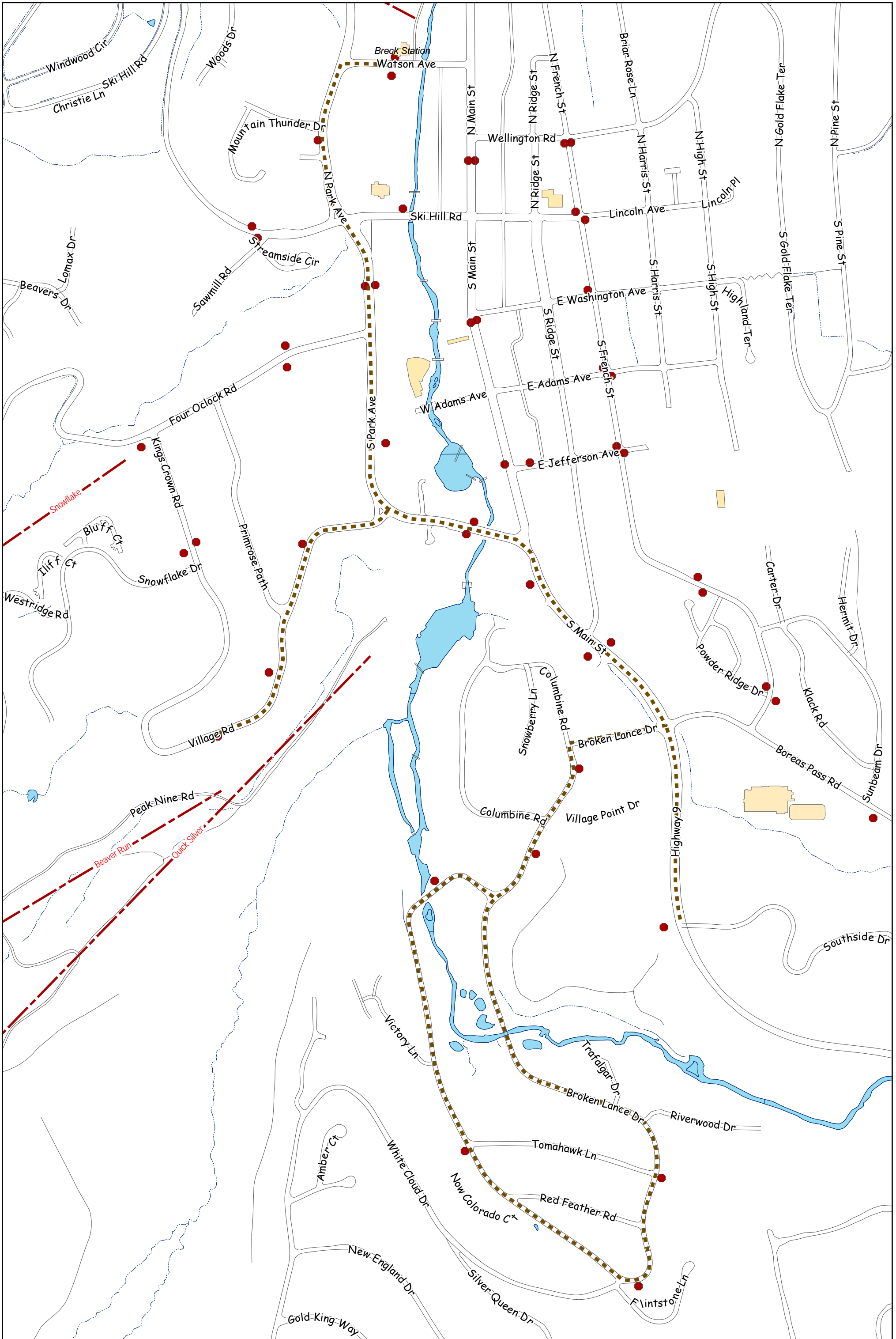
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# Gray South Route

printed 9/23/2009

● transit stops Page 27 of 120





Town of Breckenridge and Summit County governments assume no responsibility for the accuracy of the data, and use of the product for any purpose is at user's sole risk.

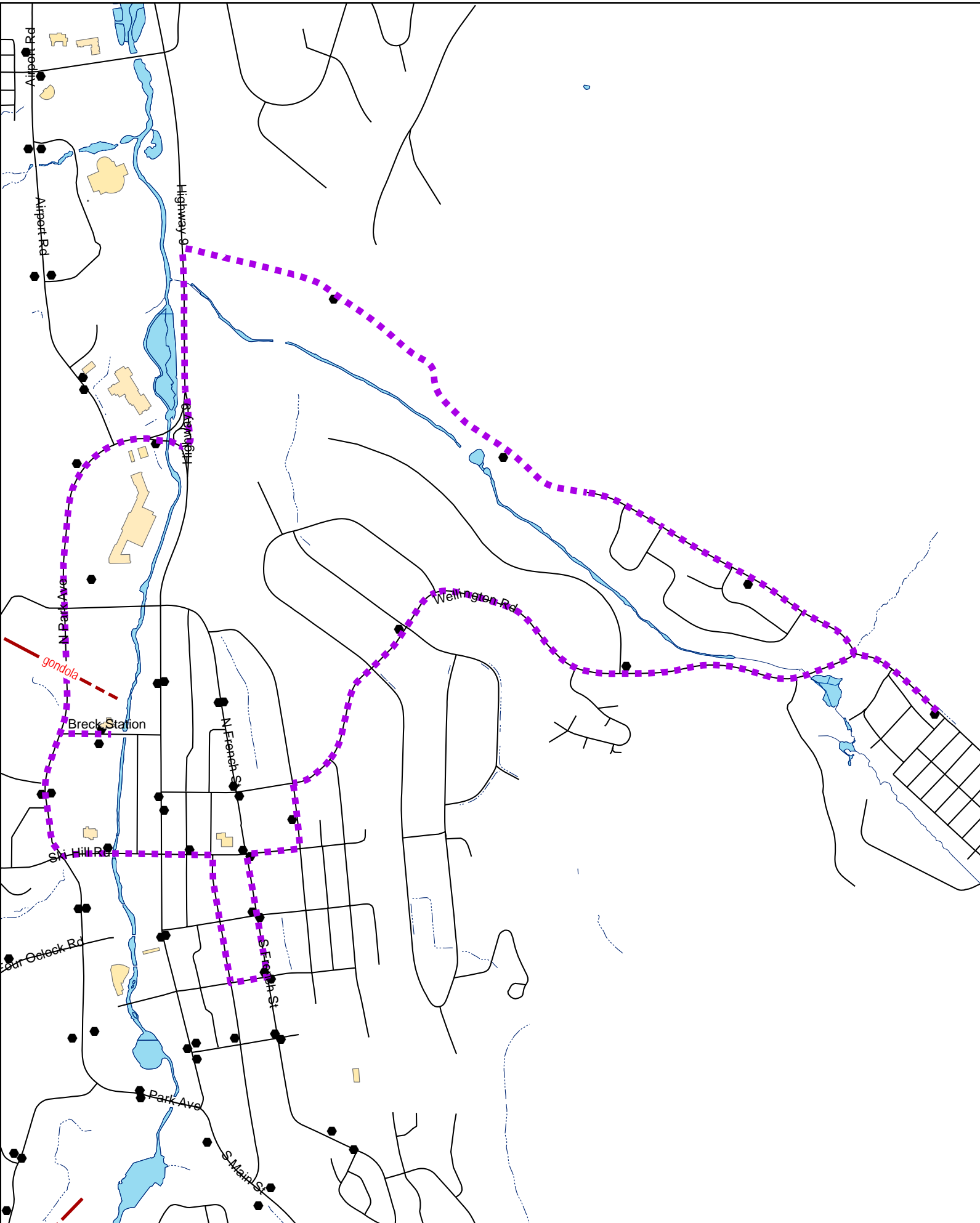
# Brown Route

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● transit stops Page 28 of 120



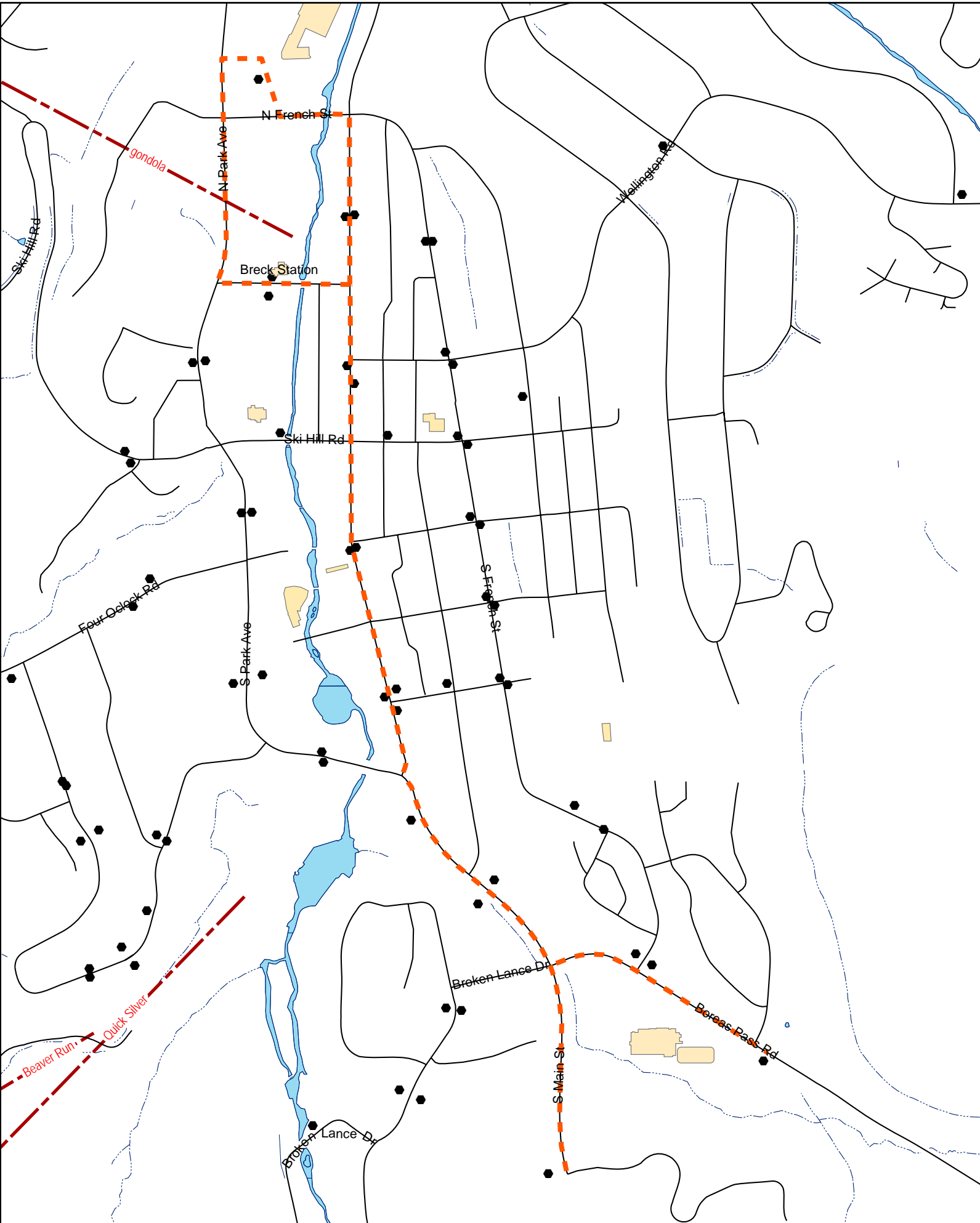




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**Purple Route 2008-09**

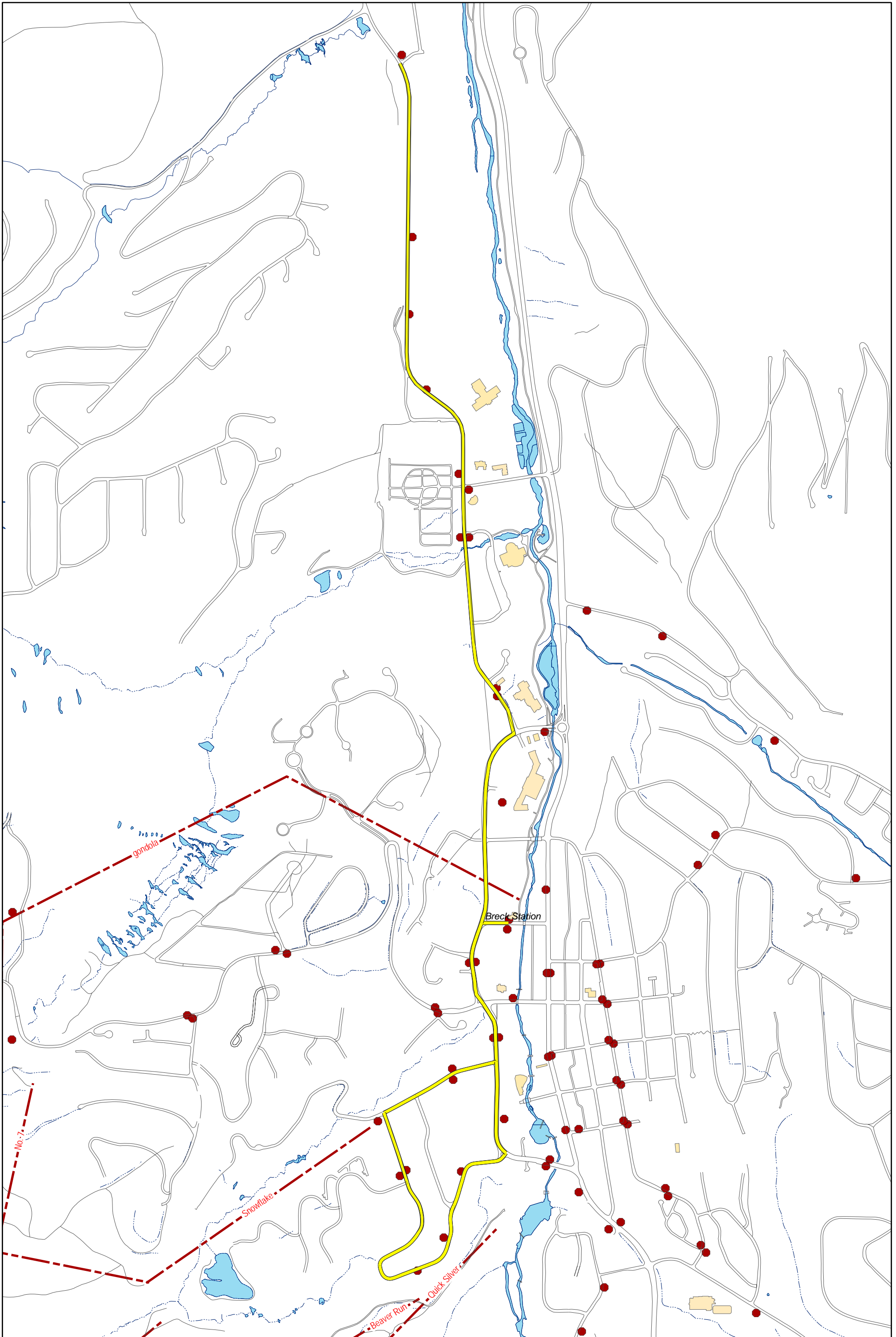




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# Orange Route 2008-09





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# Yellow Route

printed 9/23/2009

● transit stops Page 31 of 120





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## MEMORANDUM

**TO:** Town Council

**FROM:** Chris Neubecker, Current Planning Manager

**DATE:** October 21, 2009

**SUBJECT:** Development Agreement for Reduced Parking at Gondola Lot Master Plan

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Vail Resorts Development Company (VRDC) has been working with Staff over the past year on the master plan for the development of the two parking lots (Gondola North and Gondola South) around the gondola. As part of this process, VRDC has requested one (1) parking space per condo-hotel unit, rather than 1.5 spaces as required by Section 9-3-8 B of the Off Street Parking Regulations. Section 9-3-8 D of this chapter allows a reduced parking requirement for mixed use developments over 100,000 square feet, through a development agreement, if supported by a qualified parking study. VRDC has contracted with Felsburg, Holt & Ullevig engineering and transportation consultants for such study. The study supports a reduced parking demand, based on the mix of uses within the site, good pedestrian and transit access, and an overlap of skiers, shoppers and diners.

As you may know, applicants for development agreements are encouraged to make commitments to the Town beyond the requirements of the development code, subdivision standards and other adopted policies. These additional “public benefits” may include (but are not limited to):

- provision of open space, trails and other environmental dedications;
- establishment of design standards beyond those required by adopted codes and polices;
- provision of employee housing;
- reduction of density, etc.

While these dedications are encouraged, they are not required, and the Town Council is authorized to approve a development agreement without these dedications, or with alternate commitments, as acceptable to the Council. The applicant has requested that the processing of the master plan at this time, before such a master plan is needed by VRDC, be considered sufficient benefit because it provides greater direction to the Town on how Town property may be developed in the future. The decision of the Council to enter a development agreement is always discretionary.

During the work session, VRDC will also give an update on the progress of the plan, and some future issues they will be bringing to the Council, including business issues and possibly extended vesting. These items are for the Council’s information only, and are not part of the development agreement.



LAW OFFICES  
**WEST, BROWN, HUNTLEY & THOMPSON, P.C.**  
100 SOUTH RIDGE STREET, SUITE 204  
POST OFFICE BOX 588  
BRECKENRIDGE, COLORADO 80424  
TELEPHONE (970) 453-2901  
FAX (970) 453-0192

STEPHEN C. WEST  
D. WAYNE BROWN  
FELICE F. HUNTLEY  
MARK D. THOMPSON

ERIN C. HUNTER  
JOSHUA N. REIDER  
JILL D. BLOCK  
Paralegal

October 14, 2009

**VIA HAND DELIVERY**  
**and VIA EMAIL ([chrisn@townofbreckenridge.com](mailto:chrisn@townofbreckenridge.com))**

Chris Neubecker  
Department of Community Development  
Town of Breckenridge  
150 Ski Hill Road  
Breckenridge, CO 80424

Re: Development Agreement to Authorize One to One Residential Parking for the  
Hotel Proposed in the Gondola Lots Master Plan

Dear Chris:

In connection with the application for a master plan for what are commonly referred to as the North and South Gondola Lots ("Properties"), Vail Summit Resorts, Inc. ("VSR") is requesting that the Town Council authorize the Planning Commission to approve a reduced parking requirement for certain residential uses included in the pending Master Plan. In accordance with Section 9-3-8:D of the Town Code, the parking requirements set forth in Section 9-3-8 may be decreased for a mixed use development containing not less than 100,000 square feet pursuant to a development agreement approved in connection with the approval of a master plan. Such a development agreement is to be supported by a written analysis prepared by a qualified parking consultant.

The purpose of this letter is to serve as the required application for a development agreement to decrease the parking requirement for the hotel building (a condominium/hotel under the Town Code) from one and one-half parking spaces for each one bedroom and larger unit to one parking space for each such unit.

With respect to the encouraged commitments provided for in Section 9-9-4 of the Town Code in connection with an application for a development agreement, we believe that the processing of the proposed Master Plan in advance of VSR's need for a master plan for the Properties in order to provide the Town with some certainty as to how the Properties will be developed provides a benefit to the Town. The proposed Master Plan evolved directly from a joint planning process undertaken for the Properties by the Town and VSR in part to try to resolve how the Properties and the Town properties on the east side of the Blue River could be cooperatively developed or improved. VSR understood that a significant motivating factor for the Town in that cooperative process was to determine how the Blue River north of Ski Hill Road could be improved to provide a more

Chris Neubecker  
Department of Community Development  
Town of Breckenridge  
October 14, 2009  
Page 2

aesthetically pleasing and pedestrian friendly experience similar to the Riverwalk improvements south of Ski Hill Road. Processing of an actual master plan for the Properties could not be required by the Town and the time and costs associated with preparation of and an application for an actual master plan represent a substantial commitment of VSR's resources during a period when economic conditions are not favorable for development of the Properties. The benefit to the Town of having the Master Plan in place for the Properties is that it will provide more certainty as to how the Properties eventually will be developed and, therefore, enable the Town to plan and potentially improve its adjacent property along the Blue River consistent with an approved plan for the development of the Properties.

As required by Section 9-3-8:D of the Town Code, an analysis from Fellsburg, Holt and Ullevig supporting the overall parking for the proposed development, including one parking space for each unit in the proposed hotel to be developed as a condominium/hotel under the Town Code, has been provided to you directly by VSR.

Based on the foregoing, VSR respectfully requests that this letter be considered as the formal application for consideration of the proposed Development Agreement attached. Because the proposed Development Agreement is an integral and necessary part of the pending application for the proposed Master Plan, we have not included a separate application fee. The remainder of the submittal requirements set forth in Section 9-9-9 of the Town Code are complied with as follows: Subsection A is satisfied by the attached Commitment for title insurance showing ownership of the property in the name of VSR; Subsections B and C are not applicable because VSR owns the Properties; Subsections D and E are satisfied by this letter and the attached Development Agreement; and Subsection F is satisfied with the submittal of the proposed Development Agreement itself. If any additional information or documentation is needed, please do not hesitate to let me know.

We look forward to working with you, Tim Berry and the Town Council on approval of the Development Agreement.

Respectfully,



Stephen C. West  
Attorney and Agent for  
Vail Summit Resorts, Inc.

SCW/amw

cc: Timothy H. Berry, Esq. (w/enc.)  
Alex Iskenderian (w/enc.)  
Ross Holbrook (w/enc.)  
Diane Mauriello, Esq. (w/enc.)

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APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED  
PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED  
STATUTES, AS AMENDED

**DEVELOPMENT AGREEMENT  
FOR ONE TO ONE PARKING  
FOR CONDOMINIUM/HOTEL**

This Development Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“Town”) and VAIL SUMMIT RESORTS, INC., a Colorado corporation (“Developer”).

RECITALS

A. Developer is the owner of the properties described in Exhibit A hereto (“Properties”).

B. The Developer and the Town together developed a preliminary plan for the future potential development of the Properties.

C. Consistent with the preliminary plan selected by the Town and Developer as the best alternative for the future potential development of the Properties, Developer has applied for a master plan for the Properties pursuant to the Breckenridge Development Code.

D. In order for all of the components of the preliminary plan to be included on the Properties and to make development of the Properties feasible, a decrease in the off-street parking that would be required under Section 9-3-8 of the Town of Breckenridge Off-Street Parking Ordinance for the residential units in the proposed hotel building to be developed as a condominium/hotel is required.

E. The preliminary plan and the proposed master plan reflect a phased development of a mixed use development containing not less than one hundred thousand (100,000) square feet, as provided for in Subsection 9-3-8:D of the Breckenridge Town Code, and, accordingly, Developer has submitted a written evaluation of the parking supply for the Properties prepared by Felsburg, Holt & Ullevig, a qualified parking consultant, dated October 2 , 2009 supporting a reduction in the required parking for the residential units in the proposed hotel building to be developed as a condominium/hotel.

F. Developer’s commitments encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code is the processing of the proposed master plan in advance of Developer’s need for a master plan for the Properties and during a period when economic conditions are not favorable for development of the Properties in order to provide the Town with some certainty as to how the Properties will be developed. Developer’s agreement to proceed with the master plan at this time will enable the Town to plan and potentially improve its adjacent properties along the Blue River consistent with an approved master plan for the Properties.

1  
2 G. The Town Council has received a completed application and all required  
3 submittals for a development agreement, had a preliminary discussion of the application and this  
4 Agreement, and determined that it should commence proceedings for the approval of this  
5 Agreement, and, in accordance with the procedures set forth in Subsection 9-9-10:E of the  
6 Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

7  
8 AGREEMENT  
9

- 10 1. The requirements of Section 9-3-8 of the Breckenridge Town Code for parking spaces to  
11 be provided in connection with development of the building identified in the proposed  
12 master plan as the hotel, which is planned to be developed as a condominium/hotel under  
13 the Breckenridge Town Code shall be decreased to one (1) space for each residential unit  
14 including one (1) bedroom or more, with all such spaces to be available in a pool (not  
15 assigned to particular units) and generally available on a first come, first served basis.  
16 The Planning Commission is hereby authorized to review and approve a master plan  
17 providing for parking in accordance with the foregoing, which will be less than required  
18 by Section 9.3.8:B of the Breckenridge Town Code.  
19
- 20 2. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for  
21 herein, the execution of this Agreement shall not preclude the current or future  
22 application of municipal, state or federal ordinances, laws, rules or regulations to the  
23 Properties (collectively, “laws”), including, but not limited to, building, fire, plumbing,  
24 engineering, electrical and mechanical codes, and the Town’s Development Code,  
25 Subdivision Ordinance and other land use laws, as the same may be in effect from time to  
26 time throughout the term of this Agreement. Except to the extent the Town otherwise  
27 specifically agrees, any development of the Properties which is the subject of this  
28 Agreement shall be done in compliance with the then-current laws of the Town.  
29
- 30 3. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of the  
31 Town to adopt or amend any Town law, including, but not limited to the Development  
32 Code, Guidelines, Master Plan and Subdivision Standards of the Town.  
33
- 34 4. This Agreement shall run with the title to the Properties and be binding upon the owners,  
35 heirs, successors and assigns, including specifically, but not limited to, such entity or  
36 entities affiliated with Developer as actually take title to any of the Properties.  
37
- 38 5. Prior to any action against the Town for breach of this Agreement, Developer shall give  
39 the Town a sixty (60) day written notice of any claim by the Developer of a breach or  
40 default by the Town, and the Town shall have the opportunity to cure such alleged default  
41 within such time period.  
42
- 43 6. The Town shall not be responsible for and the Developer shall have no remedy against  
44 the Town if development of the Properties is prevented or delayed for reasons beyond the  
45 control of the Town.  
46

- 1 7. Actual development of the Properties shall require the issuance of such other and further  
2 permits and approvals by the Town as may be required from time to time by applicable  
3 Town ordinances.  
4
- 5 8. No official or employee of the Town shall be personally responsible for any actual or  
6 alleged breach of this Agreement by the Town.  
7
- 8 9. The Developer agrees to indemnify and hold the Town, its officers, employees, insurers,  
9 and self-insurance pool, harmless from and against all liability, claims, and demands, on  
10 account of injury, loss, or damage, including without limitation claims arising from  
11 bodily injury, personal injury, sickness, disease, death, property loss or damage, or any  
12 other loss of any kind whatsoever, which arise out of or are in any manner connected  
13 with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is  
14 claimed to be caused in whole or in part by, the negligence or intentional act or omission  
15 of Developer; any subcontractor of Developer, or any officer, employee, representative,  
16 or agent of Developer or of any subcontractor of Developer, or which arise out of any  
17 worker's compensation claim of any employee of Developer, or of any employee of any  
18 subcontractor of Developer; except to the extent such liability, claim or demand arises  
19 through the negligence or intentional act or omission of Town, its officers, employees, or  
20 agents. Developer agrees to investigate, handle, respond to, and to provide defense for  
21 and defend against, any such liability, claims, or demands at the sole expense of the  
22 Developer. Developer also agrees to bear all other costs and expenses related thereto,  
23 including court costs and attorney's fees.  
24
- 25 10. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not  
26 affect or impair the validity, legality or enforceability of the remaining provisions of the  
27 Agreement.  
28
- 29 11. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,  
30 Colorado Revised Statutes, as amended, provided, however, that, because the terms of  
31 this Agreement are preliminary in nature and provide authorization for approval of a  
32 master plan consistent with the terms hereof and do not constitute a site specific  
33 development plan, the vested property right hereby created shall remain vested for a  
34 period of three (3) years.  
35
- 36 12. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of  
37 any other provision, nor shall it be deemed to constitute a continuing waiver unless  
38 expressly provided for by a written amendment to this Agreement signed by both Town  
39 and Developer; nor shall the waiver of any default under this Agreement be deemed a  
40 waiver of any subsequent default or defaults of the same type. The Town's failure to  
41 exercise any right under this Agreement shall not constitute the approval of any wrongful  
42 act by the Developer or the acceptance of any improvements.  
43
- 44 13. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign  
45 immunity under any applicable state or federal law.  
46

1 14. Personal jurisdiction and venue for any civil action commenced by either party to this  
2 Agreement shall be deemed to be proper only if such action is commenced in District  
3 Court of Summit County, Colorado. The Developer expressly waives its right to bring  
4 such action in or to remove such action to any other court, whether state or federal.  
5

6 15. Any notice required or permitted hereunder shall be in writing and shall be sufficient if  
7 personally delivered or mailed by certified mail, return receipt requested, addressed as  
8 follows:  
9

10  
11  
12  
13 If To The Town: Timothy J. Gagen, Town Manager  
14 Town of Breckenridge  
15 P.O. Box 168  
16 Breckenridge, CO 80424  
17

18 With A Copy (which  
19 shall not constitute  
20 notice to the Town) to: Timothy H. Berry, Esq.  
21 Town Attorney  
22 P.O. Box 2  
23 Leadville, CO 80461  
24

25 If To The Developer: Alex Iskanderian, Vice President  
26 Vail Summit Resorts, Inc.  
27 P.O. Box 1058 (BK22)  
28 Breckenridge, CO 80424  
29

30 With A Copy (which  
31 shall not constitute  
32 notice) to: Stephen C. West, Esq.  
33 West, Brown, Huntley & Thompson, P.C.  
34 P.O. Box 588  
35 Breckenridge, CO 80424  
36

37 With A Copy (which  
38 shall not constitute  
39 notice) to: Vail Resorts Management Company  
40 Attn: Legal Department  
41 Box I-88 390 Interlocken Crescent, Suite 1000  
42 Broomfield, CO 80021  
43

44 Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been  
45 given upon delivery. Notices personally delivered shall be deemed to have been given upon  
46 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the  
47 Colorado Rules of Civil Procedure for service of civil process.

1 16. This Agreement constitutes the entire agreement and understanding between the parties  
2 relating to the subject matter of this Agreement and supersedes any prior agreement or  
3 understanding relating to such subject matter.  
4

5 17. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.  
6

7 IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first  
8 above set forth.  
9

10 VAIL SUMMIT RESORTS, INC. TOWN OF BRECKENRIDGE  
11

12 By Vail Resorts Development Company,  
13 a Colorado corporation, it's authorized agent  
14

15  
16  
17 By: \_\_\_\_\_  
18 Alex Iskanderian, Vice President  
19

20  
21  
22 By: \_\_\_\_\_  
23 Timothy J. Gagen, Town Manager  
24

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27  
28 ATTEST:  
29

30 \_\_\_\_\_  
31 Town Clerk

32 STATE OF COLORADO )  
33 ) ss:  
34 COUNTY OF SUMMIT )

35 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
36 2009 by Timothy J. Gagen as Town Manager and Mary Jean Loufek as Town Clerk of the Town  
37 of Breckenridge.  
38

39 Witness my hand and official seal.  
40

41 My commission expires: \_\_\_\_\_  
42  
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45 \_\_\_\_\_  
46 Notary Public  
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STATE OF COLORADO    )  
                                  ) ss:  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2009 by Alex Iskanderian as Vice President of Vail Resorts Development Company, a Colorado  
corporation, authorized agent of Vail Summit Resorts, Inc.

Witness my hand and official seal.

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

\_\_\_\_\_  
Notary Public



EXHIBIT A  
TO  
DEVELOPMENT AGREEMENT

Legal Description of the Properties

PARCEL A:

LOT 1, BLOCK 3, PARKWAY CENTER, ACCORDING TO THE PLAT RECORDED JULY 26, 1985 UNDER RECEPTION NO. 300636, COUNTY OF SUMMIT, STATE OF COLORADO.

PARCEL B:

LOTS 1A, 3-A, 3-B AND 4, SAWMILL STATION SQUARE, FILING NO. 3, AMENDMENT NO. 2, ACCORDING TO THE PLAT THEREOF FILED JANUARY 21, 1986 AT RECEPTION NO. 311104, COUNTY OF SUMMIT, STATE OF COLORADO;

AND

LOTS 1-B AND 1-C, A REPLAT OF LOTS 1-B AND 1-C, SAWMILL STATION SQUARE FILING NO. 3, AMENDMENT NO. 2, AND LOT 1, SAWMILL STATION SQUARE, FILING NO. 3, ACCORDING TO THE PLAT THEREOF FILED DECEMBER 14, 1990 AT RECEPTION NO. 397221, COUNTY OF SUMMIT, STATE OF COLORADO.



**To:** Mayor and Town Council Members  
**From:** Director of Communications  
**Cc:** *Town Manager, Assistant Town Manager, BRC Executive Director*  
**Date:** October 21, 2009 (*for 10.23.09 meeting*)  
**RE:** Increased Marketing Funding

---

In response to the Council's request for ideas for sustainable increased marketing funding, the Breckenridge Resort Chamber (BRC) has formed a Sustainable Marketing Committee. The committee is comprised of Mayor Warner, Councilmember Millisor as well as various members of the community representing lodging, restaurant and retail.

**Current Situation:**

Tourism is Breckenridge's number one industry, yet the Town does not have a sustainable marketing fund. Compared to other destinations, according to BRC research, Breckenridge is under funded by up to 50% and a few competitors may be increasing their marketing funds through increased tax measures. These include: Aspen proposed 1% lodging tax for November election will raise an additional \$1 million for town marketing funds; Vail's "Citizens for Action" are proposing a 2-4% lodging tax for April election will raise an additional \$2-4 million for town marketing funds; and Telluride proposes a .6% increase in sales tax to special events and arts for November ballot.

As a follow up from the Budget Retreat on October 13, the following options are offered from the Marketing Sustainability Committee for Council's discussion:

1. Lodging Tax - .5%-1% increase
2. Sales Tax - .3% increase
3. BOLT - 10% increase for five years, then automatically adjust to CPI

Staff requests direction on the following:

- Do you favor the options from the Marketing Sustainability Committee listed above?
- Do you authorize an appropriation to fund a feasibility study? (*I will have quotes to report on Tuesday*)

Following this memo is an outline from the Town Clerk with a schedule of deadlines pertaining to the April 2010 election.

Staff and members of the Committee will be available at Tuesday's work session for questions and direction.

<b>Deadlines for April 6, 2010 Regular Municipal Election (TABOR Deadlines indicated in Red)</b>	
Tuesday, February 9	Last day for Town Council to adopt an ordinance submitting ballot issue(s) to the voters
Monday, February 15	First day candidate nomination petitions may be circulated
Friday, February 19	Last day written comments concerning TABOR ballot issues may be filed
Tuesday, February 23	Last day for Town Council to adopt an ordinance submitting ballot questions to the voters (non-TABOR)
Friday, March 5	Last day to circulate and file candidate nomination petitions Last day to mail notices for TABOR ballot issue elections
Sunday, March 7	Last day to establish residency for the purpose of voting in the 4/6/10 election
Monday, March 8	Last day to register to vote in the 4/6/10 municipal election
Tuesday, March 16	Fair Campaign Practices Act reports due
Wednesday, March 17	Last day for a local government submitting a ballot issue concerning the creation of any debt or other financial obligation to post notice of audited (if available) financial information prescribed by § 1-7-908(1) on the local government's website.
Thursday, March 25	First day to vote via walk-in absentee ballot
Friday, March 26	Notice of Election published
Friday, April 2	Last day to apply for an absent voter ballot Last day to vote via walk-in absentee ballot Fair Campaign Practices Act reports due
Tuesday, April 6	<b>ELECTION DAY.</b> Polls open from 7 a.m. to 7 p.m. Polling place: Breckenridge Town Hall.

# Memorandum

**To:** Town Council  
**From:** Tom Daugherty  
**Date:** 10/22/2009  
**Re:** Sidewalk Master Plan

The Sidewalk Master Plan identifies where sidewalks are to be placed. The goal of the plan is to provide logical pedestrian, hard surface connections that encourage non motorized use. Some of the criteria that are considered are connectivity, expected usage, safety, sustainability, capital and operational costs.

The original master plan was developed in 2001 and from time to time the plan is updated. The last update occurred in 2005. The Council has recently asked to revisit the document.

A number of sidewalk connections have been installed since the 2005 plan and are listed below:

1. Reiling Road along Vista Point
2. Reiling Road along French Creek Village
3. Wellington Road
4. Ski and Racket along SR 9
5. Peak 8 (is being completed as part of Peak 7 & 8 development)

The attached table lists the recommended sidewalk connections in Town. The list is essentially what remained from the 2005 plan.

## **Infill Policy**

Upon review of the sidewalk plan it became apparent that the infill projects (number 11 through 15 on the spread sheet) are similar because the roads they are on already have a sidewalk on the opposite side of the street. These segments are in the core of Town except number 11 which is on Boreas Pass Road. That section has a soft surface path that can be used in the summer. These connections would be made for convenience because reasonable alternatives exist.

These segments are in the plan based on a discussion with previous Councils relative to completing the sidewalks in the Town grid. The intention was to provide east-west connections to the main part of Town on both sides of the road. The priority of these infill segments has always been low and never really contemplated in the Capital Improvement Plan.

Having sidewalks on both sides of the roadway is very expensive to plow since there is not snow storage area next to the road. These types of roads typically require snow removal to keep the areas passable.

As a policy, does the Council still consider these infill segments important?

### **Airport Road**

The sidewalk on Airport Road was included in the plan because of previous Councils desires to provide a pedestrian connection to this commercial/industrial/residential area. Staff does see pedestrians on this segment of roadway in the summer. This area is on the yellow transit route and the pedestrians are mainly accessing the bus. The Block 11 housing project is expected to provide connections to the bike path along the river for its residence and is not expected to need a sidewalk on this portion of Airport Road to connect to Town.

Typically a curb, gutter and sidewalk required some type of drainage infrastructure to deal with runoff. This section of Airport would require that infrastructure and substantially increases the cost of the sidewalk.

Staff has lowered the priority for this sidewalk because the cost is high, the pedestrians are typically walking a short distance to the transit stop and the number of pedestrians is small.

### **Gondola Lot Development**

The Gondola Lot development will install segments 4 and 5 on the list. These will connect the bike path to the Riverwalk and put a sidewalk on French Street between Main and Park Avenue.

### **North Main Street**

The round-a-bout project installed a sidewalk from CR 450 to the round-a-bout on the east side of SR9. The segment between French Street and round-a-bout was identified as a new sidewalk on the master plan to complete the connection from the French Creek area to the core of Town.

The old BBC property is expected to be redeveloped and staff has been talking with the developer about installing a sidewalk in front of their property which will be a part of this segment.

### **Skiway Connection to Gold Rush Lot**

Previous plans showed a sidewalk from the Skyway Skiway along the west side of Park Avenue to the Gold Rush parking lot. Experience tells us that placing a sidewalk along this location would encourage skiers to sheet across Park Avenue to the Gondola Parking lots. We have removed that segment from the master plan but have added a connection between the Skiway Skiway and the gold Rush Parking lot.

This addition to the master plan is not really a sidewalk but a skier connection along the edge of The Woods subdivision on the west side of the wetlands. This connection could require agreement with the Woods and the Ski Area before it could be built but we wanted to list as a way to get skiers to the Gold Rush lot and not further impact Park Avenue.

Dale and Terry will be at the meeting to answer any questions and take any comments that you have on the plan.

## 2009 Sidewalk Master Plan

No.	Road	Length	Capital Cost	Annual Maintenance Cost	Reason for Connection	Comments
1	Huron Road (CR 450)	600	\$ 50,000.00	\$ 783	Completes connection from Wellington Neighborhood to SR 9 along CR 450	This portion of the project is being proposed as part of the Entrada Annexation.
2	North Main Street	1,200	\$ 90,000.00	\$ 1,567	This completes the connection between the core of Town to CR 450	The redevelopment of the old BBC will install a portion of this segment
3	Skiway Skiway Connection to Gold Rush Lot	1,500	\$ 20,000.00	\$ 15,697	Providing a connection to Gold Rush lot that is not on Park Avenue would help prevent pedestrian conflicts on Park Ave.	This is not a sidewalk but a ski way. This was proposed through the wetlands and denied. A potential solution may become available in the future.
4	Riverwalk Extension	800	\$ 1,000,000.00	\$ 1,044	This has always been identified as a needed connection to the Ski Area parking to provide and attractive connection to Main Street.	This connection will be completed with the Gondola Lot redevelopment.
5	N. French Street	500	\$ 40,000.00	\$ 5,232	This will connect the skier parking (structure and Gold Rush) with Main Street via French Street	This connection will be included with the Gondola Lot redevelopment.
6	Huron Road (CR 450)	3,000	\$ 80,000.00	\$ 3,916	Completes connection from Wellington Neighborhood to SR 9 along CR 450	Project is in County but Council has expressed desire to make this connection to French Creek Village from SR 9. The sidewalk would not be in Town limits.
7	Airport Road	1,025	\$ 130,000.00	\$ 1,338	Provide Pedestrian connection to Town along Airport Commercial area.	Lower sidewalk plowing service levels will make this area difficult to plow on regular basis.
8	Airport Road	1,025	\$ 130,000.00	\$ 1,338	Provide Pedestrian connection to Town along Airport Commercial area.	Lower sidewalk plowing service levels will make this area difficult to plow on regular basis.
9	Airport Road	1,025	\$ 130,000.00	\$ 1,338	Provide Pedestrian connection to Town along Airport Commercial area.	Lower sidewalk plowing service levels will make this area difficult to plow on regular basis.
10	Airport Road	1,025	\$ 130,000.00	\$ 1,338	Provide Pedestrian connection to Town along Airport Commercial area.	Lower sidewalk plowing service levels will make this area difficult to plow on regular basis.
11	Boreas North	430	\$ 45,000.00	\$ 4,500	Completes connection of Bike path on Boreas from French St to Main Street without having to cross Boreas.	This sidewalk would connect both sides of Boreas Pass with Main Street and complete the link of the Bike path to Main St. This is an infill project.
12	Wellington 100 south	300	\$ 30,000.00	\$ 3,139	This connection will make more pedestrian paths available in the core of Town.	In fill project in core of Town
13	Lincoln 400	270	\$ 25,000.00	\$ 2,825	This connection will make more pedestrian paths available in the core of Town.	In fill project in core of Town
14	E Washington 300	300	\$ 30,000.00	\$ 3,139	This connection will make more pedestrian paths available in the core of Town.	In fill project in core of Town
15	E Washington 400	270	\$ 30,000.00	\$ 2,825	This connection will make more pedestrian paths available in the core of Town.	In fill project in core of Town
Total			\$ 1,960,000.00	\$ 50,023		

MEMO: Tim Gagen, Kate Boniface, Breckenridge Town Council Members  
 FROM: Public Works Management Team  
 DATE: September 22, 2009  
 SUBJECT: Town of Breckenridge Property

You have charged us with providing you information regarding property owned by the Town, and especially that property for which we have no specific commitment for future use. Below is a draft chart that, we hope, provides some clarification regarding this property.

<b>GENERAL</b>					
<b>Property</b>	<b>Current Use</b>	<b>Size</b>	<b>Rents</b>	<b>Future Use?</b>	<b>Recommendation</b>
Schoonover Bldg	Not-for-Profits Rents/Trade + Town Employee Housing 2 One-Bdrm+2 Studios;	4875 Sq Ft	\$10,750 annually (\$12.50/sq ft thru' 3/10, then to 50% of prevailing market rate for Main St.)-Summit Housing Authority ; Trade w/ SCTV for air time; One-Bedrooms=\$500/month; Studios=\$400/month	Demolition	Riverwalk expansion use
BOEC/Old San District	Rental; TOB Server Building Location	1.07 Acres	\$10/Yr-BOEC; \$18K/Yr-Comcast	As Is	Maintain as is or sell to BOEC; Must keep garage space for TOB server.
BOEC-F&D (Griffith Lodge Site)	BOEC/Sawmill Reservoir Passive Recreation	38.43 Acres	\$25/25 Yr-BOEC	As Is	Maintain As Is
McCain	Rental	~95 Acres	\$16620/Yr-2V's; \$31200/Yr-High Country Furniture; \$7200/Yr-Willemsen Const; \$1800/Yr-Metzger; \$325/Yr-Bunkhouse; \$1800/yr-DDB Excavating	Housing/Water Storage/River Restoration/Open Space	Keep
Block 11	20 Acres to School District; 20 Acres to CMC; 30 Owned by TOB	~70 Acres	None	Attainable Housing	Keep

<b>GENERAL (cont'd)</b>					
<b>Property</b>	<b>Current Use</b>	<b>Size</b>	<b>Rents</b>	<b>Future Use?</b>	<b>Recommendation</b>
Valley Brook Housing Site	In Development	4.542 Acres	None	Attainable Housing	Keep
Old "Little Red" site w/barn (French Street)	Some Storage	0.19 Acres	None	Affordable Housing for a resident?	Sell for Residential Unit
Stables @ Stillson	Stables	See Below	Rents reinvested in capital improvements	Stables	Keep
Stillson Lot	Storage/Rental	38.86 Acres, Incl Above	\$18000/Yr-The Trash Co; \$13200/Yr-Waste Management	As Is	Keep
Iowa Hill	Walking Path to Historic Mine	35 Acres	None	Possible Open Space?	Keep
Airport Road-Enyeart Land Exchange	Bus Turnaround	25,000 Sq Ft	None	As Is + Access to Block 11	Keep
Airport Road-Block 5, Lot 4	Access Block 11	1.9 Acres	None	Access to Block 11; Affordable Housing; Temporary PO Site	Keep
Carriage House	Child Care		None	As Is	Keep
Timberline Daycare	Child Care		None	As Is	Keep
Little Red Site-Wellington	Child Care		None	As Is	Keep
Breckenridge Theater	Arts District Exhibitions/Backstage Theatre Production	4188 Sq Ft	\$10/year	As Is	Keep
Welcome Center	BRC; Public Restrooms	6232 Sq Ft	None	As Is	Keep
<b>GENERAL (cont'd)</b>					



<b>Property</b>	<b>Current Use</b>	<b>Size</b>	<b>Rents</b>	<b>Future Use?</b>	<b>Recommendation</b>
Breck Station	Bus Depot	3211 Sq Ft	None (Land Owned by VRD)	Gondola Development	Leave As Is
Klack Barn	None		None	None Planned	Future Historic Site?
High Street Barns	Storage		None	As Is	Keep
Barns-Alley between Watson & Ski Hill	Storage		None	Future Development	Move Historic Barns to new site
B&B/Open Space Lots-Williams Placer (40 Acres) & Peabody Placer (9 Acres)	Joint Ownership w/ County	49 Acres	None	Could be sold to offset B&B purchase price	As Is
Grandview Unit	Town Employee Housing	690 Sq Ft	\$600/month rental	None Planned	Keep or Sell
Valley Brook House	Town Employee Housing	2,340 Sq Ft	2 Units \$800/month/unit	None Planned	Keep or Sell
Pinewood Village	Private Sector Employee Housing		None	Ownership Reverts to TOB if Usage Changer	<b>As Is</b>

<b>PARKING LOTS</b>				
<b>Property</b>	<b>Current Use</b>	<b>Rents</b>	<b>Future Use?</b>	<b>Recommendation</b>
Klack	Parking	None	As Is	Keep
Ice Rink	Parking/Bus Stop	None	As Is	Keep
French Street	Parking	None	As Is	Keep
Courthouse	Parking	Shared w/County	As Is	Keep
Barney Ford	Parking	None	Future Arts District Use	Keep
F-Lot	Parking	Pay Parking in Winter	As Is/Redevelopment	Keep
Tiger Dredge	Parking	Pay Parking in Winter	As Is/Redevelopment	Keep
La Cima	Parking	None	As Is	Keep
Exchange-Upper & Lower Lots	Parking	Limited Permits-Annually	As Is	Keep
Wellington Lot	Parking	Pay Pkg-Winter; Permit-annually	Gondola Development	Keep (Future Development)
East Sawmill	Parking	Pay Pkg-Winter; Permit-annually	Gondola Development	Keep

<b>HISTORIC BHA SITES</b>				
<b>Property</b>	<b>Current Use</b>	<b>Rents</b>	<b>Future Use?</b>	<b>Recommendation</b>
Carter Museum	Museum	None	Keep	Keep
Milne House	Museum	None	Keep	Keep
Rotary Park	Historic Engine Site	None	Keep	Keep
Gaymon Cabin	BHA Information Center	None	Keep	Keep
Dipping Station (by Madison Street ROW)	Artifacts	None	Keep	Keep
Fuqua Barn	Arts District	None	Keep	Keep
Quandary Antiques Building	Arts District	None	Keep	Keep
Robert Whyte House	Arts District	None	Keep	Keep

<b>TOWN OCCUPIED PROPERTY</b>				
<b>Property</b>	<b>Current Use</b>	<b>Size</b>	<b>Future use?</b>	<b>Recommendation</b>
Riverwalk	Events & Communication	23,803' sq	As Is	Keep
Town Hall	Admin/Finance/Planning/Building/Engineering/Auditorium	16,184' sq	Sell/Rent to Non-Profits/Maintain As Is	Dependent on CMC Decision
Ice Arena	Ice (Indoor+Outdoor Rinks; Ice Administration)	Main Bldg=37,600' sq/ Outdoor Spt Bldg=5,160' sq/ Outdoor Sheet=17,000' sq	As Is	Keep
Recreation Center	Recreation Programs & Activities; Rec Administration	69,000' sq	Need Expansion	Keep
Public Works	Fleet/Transit/Facilities/Water/Streets/Parks/PW Admin	Buildings sit on 15.36' sq of ~13 Acres	Maintain as Public Works	Keep
Police Station	Law Enforcement/Public Safety Activities+ Admin	11,237' sq	As Is	Keep
Golf Maintenance	Course+Nordic Trails Maintenance; GCM Admin	14,784' sq (1 ofc bldg+2 storage bldgs)	As Is	Keep
Golf Clubhouse	Clubhouse/Restaurant/Pro Shop/Nordic Rentals	15,344' sq	As Is	Keep
Colo Mtn College	Recently vacated by College	28,900' sq	Town Hall; Rent to Non-Profits; Employee Housing	Council Decision

Thank you. Please let us know if you have questions, need further information, or would like a map provided.

# Memorandum

**To:** Town Council  
**From:** Jennifer Cram, Planner III  
**Date:** 10/22/2009  
**Re:** Public Art Commission Appointment

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We have advertised to fill one position on the Breckenridge Public Art Commission (BPAC), as Janis Bunchman's term has recently expired. The term to be filled is a two year term to keep the appointments staggered. We have received four letters from new applicants that are interested in serving on the BPAC. All four letters of interest are included in your packet for review. We are also attaching some example questions to assist you with interviews.

Staff will be present during interviews and in the evening for appointments to answer any questions. As always we thank you for your continued support of the public art program.

*Lisa Bennison Noll  
92 Braddock Court  
PO Box 2242  
Breckenridge, CO 80424  
(970) 389-6115*

Public Art Commission Applications  
c/o Jen Cram  
Town of Breckenridge  
PO Box 168  
Breckenridge, CO 80424

Sent via email to [jenn@breckgov.com](mailto:jenn@breckgov.com)

Dear Breckenridge Town Council:

I would like you to consider my application to the Public Art Commission. I have a strong interest and background in art that I have pursued my entire life as noted below.

In addition, I have been a member of this community since 1993. I am currently the Keystone Branch Broker and Director of Broker Development for Slifer Smith & Frampton Real Estate in Summit County. I live unincorporated Breckenridge with my husband, Thad Noll, who is the Assistant County Manager, Summit County.

#### Education

- Graphic Arts Degree—Endicott College, Beverly, MA.
- Bachelor of Business, Finance—Cameron University, Lawton, OK.
- Juris Doctor—University of Kansas School of Law, Lawrence, KS.

#### Additional Art Pursuits

##### Workshops:

- Anderson Ranch, Snowmass, CO.  
2007—Mixed Media  
2008—Mixed Media  
2009—Metal Sculpture
- Colorado Mountain College, Breckenridge, CO.  
Ceramics 1, 2 & 3.
- Business of Arts Center, Manitou Springs, CO.  
Art Marketing
- Colorado Springs Fine Art Center, Colorado Springs, CO.  
Enameling and Mosaic

- Old Town School of Art, Chicago, IL.  
Photography

Galleries:

I have shown my work at the following:

- Arts Alive, Breckenridge, CO.
- Iris Gallery, Littleton, CO.
- United State Air Force Academy, Colorado Springs, CO.

Other Volunteer Activities:

State School Board—Department of Higher Education, Division of Private Occupational Schools, State of Colorado. Appointed by Gov. Owens in April 2004. Reappointed by Gov. Ritter in April 2008. I will continue to serve until the end of my appointment in July 2010.

Summit Association of Realtors—Board of Directors. Elected by the membership and installed on Board in October 2009.

I would like very much to serve the citizens of our area as it relates to public art. On recent trips to Barcelona, Spain and Merida, Mexico, I was struck by those cities' vigorous support of public art as evidenced by the plethora of such work on display. I am a big fan of the public works I have seen and grown up with such as Calder and Picasso in Chicago, Gaudi and Miro in Barcelona, Leger in Provence and one of my new favorite artists/sculptures and a true Colorado treasure, Carl Reed in Colorado Springs.

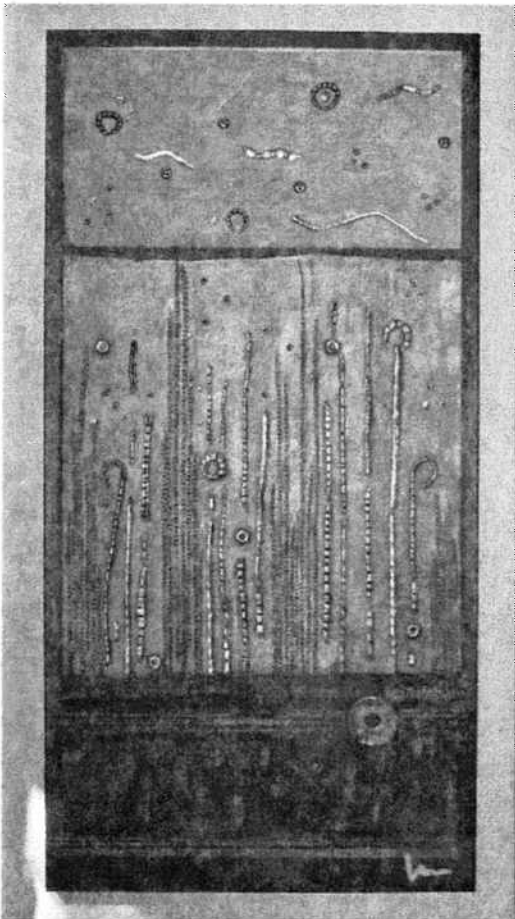
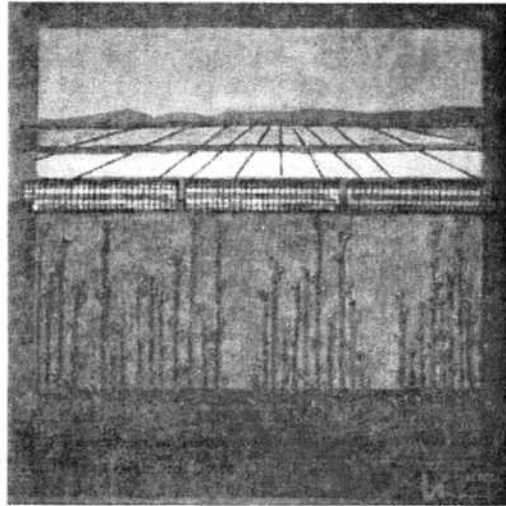
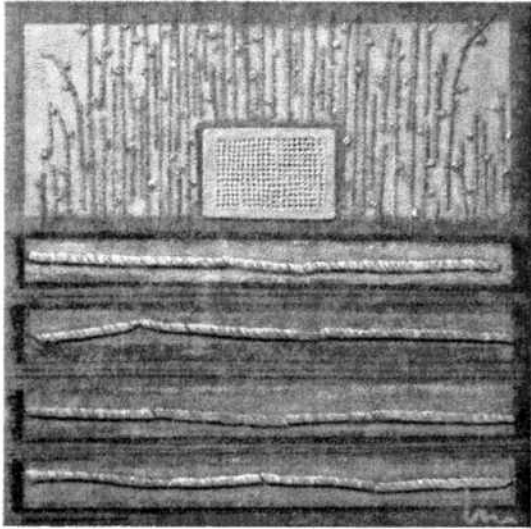
I am gratified for the support that is available to artists locally: the galleries, the Breck Arts District and the Summit County Arts Council. I would like to see the arts community and public art become even more prevalent in our town. It is something that makes our little mountain town unique and delights our visitors.

Best wishes,


*Lisa*

Lisa Bennison Noll

Attachment: An example of some of my work.



**Lisa Bennison Noll**  
Anderson Ranch Sculpture Workshop  
Aspen, Colorado  
June 8-13, 2009



Instructor:  
Carl Fredrickson  
Professor, Colorado College

Public Art Commission Application  
C/O Jennifer Cram  
Town of Breckenridge  
PO Box 168  
Breckenridge, CO 80424

Hi Jennifer,

I am very interested in serving on the Breckenridge Public Art Commission (BPAC). I must admit that I have no artistic talent. My expertise has been in strategic planning, organization, communication & brand management.

I have a deep appreciation of the creative process and have been fortunate to discuss that process with Peter Max, Jiang and the widow of Carl Thiemann, a “Jugendstil” woodcut artist from Dachau. I lived in Germany for 10 years and was able to attend great museums as well as unique flea markets throughout Europe. I have collected art since 1974, including several pieces from Breckenridge art shows and galleries and an assortment of Colorado-made furniture.

Since retiring from 3M Company and moving to Breckenridge in 2005, I will begin my fourth season with Breckenridge Ski Resort’s Guest Services, hosted a team for the last 3 years for the Budweiser International Snow Sculpting Championship, volunteered the last 2 years for the Breck Film Festival and various other events in Summit County.

I have attached my business resume as well.

Please let me know if you need additional information.

Sincerely,



Stephen E. Henderson  
PO Box 3343  
Breckenridge, CO 80424  
970-547-4875  
[heepster15@msn.com](mailto:heepster15@msn.com)



Stephen E. Henderson  
P.O. Box 3343  
Breckenridge, Colorado 80424  
970-547-4875  
heepster15@msn.com

**Summary of**

**Qualifications:** International marketing, communications, sales and customer training experience in industrial, government and adjacent, customer focused markets. Adept at motivating, mentoring and developing personnel. Experienced in managing marketing communications, brand management, electronic productivity processes, eCatalog data standards, budgets, sales territory development, strategic planning and directing cross-functional teams. MBA degree in finance. Six Sigma green belt trained. Fluent in the German language.

**Experience:**

**3M Corporate Marketing**

2001 – 2005. St. Paul, Minnesota  
Brand Operations Manager, Corporate Brand Department

1997 - 2001. St. Paul, Minnesota  
Manager, Data Quality Standards & Processes, eBusiness

**3M Occupational Health and Environmental Safety Division**

1985 - 1997. St. Paul, Minnesota  
Manager, Customer Focused Marketing,  
Marketing Communications and Customer Training

1984 - 1985. St. Paul, Minnesota  
Marketing Supervisor for new product development,  
Thinsulate<sup>®</sup> Thermal Insulation

1983 - 1984. Buffalo, New York  
Sales territory management for respiratory products

**3M Deutschland GmbH, U.S. Government Services Europe**

1974 - 1983. Heidelberg, Germany  
Account Executive, Visual Products and Educational Markets.  
Managed sales and marketing operations to U.S. Government  
accounts throughout Europe

**Education:**

Master of Science Degree in Business Administration,  
Boston University, 1981

Bachelor of Science Degree in Chemical Engineering,  
Denver University, 1971

Public Art Commission Applications  
C/O Jennifer Cram  
TOWN OF BRECKENRIDGE  
PO Box 168  
Breckenridge, CO 80424

Dear Ms. Cram,

I am a recent graduate from the University of Vermont, where I completed a bachelors degree in studio art and a minor in art history. My primary focus at the university was drawing, using a range of materials. My work dealt mostly with figurative drawings, and ideas surrounding 'the individual'.

In my last year I studied abroad at Goldsmith's College in London, England, where I set aside my focus on drawing, and began a concentration in sculpture. I incorporated many of the same themes I used in my drawings to the sculptural pieces I began creating abroad. I focused on the female body, using my own body to mold and cast plaster replicas. My interests are in the perceptions of our own bodies and of the bodies of others, relations and differences between bodies, and the concept of the ideal verses the real.

Public artworks reach a greater number of viewers, a large portion being those who are not seeking out art, but who stumble upon it. With the diversity of viewers in mind, public art should be thoughtfully commissioned and curated. Experiencing a piece of artwork can change the way a viewer sees, thinks, or feels much like television, radio, and other forms of multi-media.

I have lived in Breckenridge for a few months now and am greatly anticipating the busy winter months. This town is radically transformed as the resort opens, and is host to hundreds of thousands of people who come from all over the world to ski, but also to explore the town and the culture it has to offer. Public art works and exhibitions are a wonderful way to expose the work of local artists to the great number of people that visit Breckenridge each year. I am greatly impressed with the art community in this town, and would love nothing more than to be apart of the process of bringing artworks to the public. I have a lot of experience and ideas to bring to the Public Art Commission and would love to talk to you further about the position.

Haley Bernier

Oct 12, 09

Ms. Jennifer Cram -

It's time for me to serve the town again - i'd like to be a member of the Public Arts Commission. I've lived here for 39 yrs (!?); i was on the Town Council which brought you the Golf Course & Rec Center. Then i took some time off to be a mom.

I've served on the old County sign commission and like everyone else around here, "I know art when i see it." (right, it's all lovely-like that half naked indian at the Courthouse...)

And i'm the County's calligrapher -

Thanks -

Gretchen L. Abemathy

453. 68 93



**TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA**

**Tuesday, October 27, 2009 (Regular Meeting); 7:30 p.m.**

- I CALL TO ORDER and ROLL CALL**
- II APPROVAL OF MINUTES – October 13, 2009** **Page 61**
- III APPROVAL OF AGENDA**
- IV COMMUNICATIONS TO COUNCIL**
  - A. Citizen’s Comment - (Non-Agenda Items ONLY; 3 minute limit please)
- V CONTINUED BUSINESS**
  - A. SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS\*-**
    - 1. Council Bill No. 33, Series 2009-** AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY ADOPTING A NEW DEVELOPMENT POLICY 4 (ABSOLUTE) CONCERNING MAXIMUM ABOVE GROUND FLOOR AREA RATIO AND MAXIMUM ABOVE GROUND SQUARE FOOTAGE, AND MAKING CONFORMING AMENDMENTS TO POLICY 4 (RELATIVE) CONCERNING MASS **PAGE 67**
- VI NEW BUSINESS**
  - A. FIRST READING OF COUNCIL BILL, SERIES 2009 –**
    - 1. Council Bill No. 34, Series 2009-** AN ORDINANCE APPROVING AN AMENDMENT TO PARKING LEASE WITH VAIL SUMMIT RESORTS, INC. (Part of Tract A, Runway Subdivision) **Page 74**
  - B. RESOLUTIONS, SERIES 2009-**
    - 1.** A RESOLUTION APPROVING AN AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT WITH ENTRADA AT BRECKENRIDGE, INC., A COLORADO CORPORATION(Entrada – 3.98 acres, more or less) **Page 82**
    - 2.** A RESOLUTION APPROVING A LICENSE AGREEMENT WITH PUBLIC SERVICE COMPANY OF COLORADO **Page 108**
    - 3.** A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE COMPREHENSIVE PLAN AS THE TOWN’S ANNEXATION PLAN PURSUANT TO SECTION 31-12-105(1)(e), C.R.S **Page 116**
  - C. OTHER –**
    - 1. PAC Appointment** **Page 52**
- VII PLANNING MATTERS**
  - A. Planning Commission Decisions of October 20, 2009 **Page 2**
  - B. Town Council Representative Report (Mr. Rossi)
- VIII REPORT OF TOWN MANAGER AND STAFF\***
- IX REPORT OF MAYOR AND COUNCILMEMBERS\***
  - A. CAST/MMC (Mayor Warner)
  - B. Breckenridge Open Space Advisory Commission (Mr. Joyce)
  - C. BRC (Ms. McAtamney)
  - D. Summit Combined Housing Authority (Mr. Millisor)
  - E. Breckenridge Heritage Alliance (Mr. Bergeron)
  - F. Sustainability Committee (Mr. Millisor)
- X OTHER MATTERS**
- XI SCHEDULED MEETINGS** **Page 119**
- XII ADJOURNMENT**

\*Report of Town Manager; Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item

**TOWN OF BRECKENRIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, October 13, 2009  
PAGE 1**

***CALL TO ORDER and ROLL CALL***

Mayor Warner called the October 13, 2009 Town Council Meeting to order at 7:42 p.m. The following members answered roll call: Mr. Bergeron, Mr. Joyce, Mr. Mamula, Ms. McAtamney, Mr. Millisor, Mr. Rossi, and Mayor Warner.

***APPROVAL OF MINUTES – September 22, 2009 Regular Meeting***

With no changes or corrections to the minutes of September 22, Mayor Warner declared they would stand approved as presented.

***APPROVAL OF AGENDA***

Tim Gagen, Town Manager, requested a resolution discussion related to Entrada Breckenridge, Inc. be added under Other Matters.

***COMMUNICATIONS TO COUNCIL***

A. Citizen's Comments - (Non-Agenda Items ONLY; 3 minute limit please)-

Nick Farkouh and Jim Keller, Base Building Solutions, were present to explain their business decision to withdraw their position as contractor on the Valley Brook/Mercy Housing project.

Cain Dice addressed the Council concerning water fluoridation. His information will be passed on to Gary Roberts, Water Division Manager.

Kathye Conti - Kitchen Scapes, Lou Fishman – Level One Building, Jay Armstrong - H&F Excavation, Tom Vitalone - 2 Vs Landscaping, Craig Campbell - local builder and board member for the Builders' Association, Bobby Craig - Arapahoe Architects, all spoke in support of Base Building Solutions and commented on the Valley Brook/Mercy Housing project.

***CONTINUED BUSINESS***

A. ***SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS\*\* - None.***

***NEW BUSINESS***

A. ***FIRST READING OF COUNCIL BILL, SERIES 2009-***

**Council Bill No. 33, Series 2009-** AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE", BY ADOPTING A NEW DEVELOPMENT POLICY 4 (ABSOLUTE) CONCERNING MAXIMUM ABOVE GROUND FLOOR AREA RATIO AND MAXIMUM ABOVE GROUND SQUARE FOOTAGE, AND MAKING CONFORMING AMENDMENTS TO POLICY 4 (RELATIVE) CONCERNING MASS

Julie Puester introduced this matter stating since presenting the July open house results and the Task Force recommendations to Council changes to the Neighborhood Preservation Policy (NPP) include: Modification to FARs and/or maximum square footage limitations to allow additional square footage in some subdivisions. Separate subdivision within the Warriors Mark area for Gold King Placer (2 lots in Town limits), and addition of Tyra subdivision. The addition of 500 square feet for properties already at or over the maximum square footage allowance, and for properties which have less than 500 square feet remaining within the set FAR or maximum square footage (all properties existing or approved prior to this ordinance would be permitted an additional 500 square feet minimum from what is existing). Change to the existing Policy 4R Mass for consistency.

Ms. Puester stated some public comment was received prior to the evening meeting. Mayor Warner asked to hear comments from the public.

**TOWN OF BRECKENRIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, October 13, 2009  
PAGE 2**

Craig Campbell apologized that the building association's comments were submitted too late for the packet. Council commented they received the organization's comments. Mr. Campbell asked for more conversation on the subject. Lou Fishman, reiterated the concept of a sliding scale for this piece of legislation and Turk Montepare, local realtor, retired builder, felt the process worked well. He does not advocate a sliding scale and feels FAR works well. He asked that Council move forward with this first reading.

With no further comments from the public, Mayor Warner asked for a motion.

Mr. Mamula moved to approve Council Bill No. 33, Series 2009 as previously read into the record. Mr. Rossi seconded the motion. Mayor Warner asked if there was further discussion or comments from Council. All council members spoke in favor of the council bill, the process, the members of the task force and the staff. A roll call vote was taken. The motion passed with all council members in favor of passage.

**B. RESOLUTIONS, SERIES 2009 –**

**A RESOLUTION APPROVING A CONTRACT OF SALE WITH COLORADO MOUNTAIN JUNIOR COLLEGE DISTRICT (Lots 1-9, Block 2, Yingling & Mickles Addition – 103 South Harris Street)**

Mr. Berry introduced this matter stating the town entered into a Memorandum of Understanding with Colorado Mountain College to purchase the old CMC campus at 103 S. Harris Street. The Contract of Sale would bind the college and the town to a purchase price of \$2,250,000.00 for the building and grounds. Mr. Berry stated this is a standard sales contract; CMC will have limited use of the building and will pay applicable utility costs based on the amount of square footage used.

For the record, Mr. Gagen reported a number of comments were received from the public prior to the evening meeting.

Mayor Warner asked for comments from the public. Marty Lessow, Janet Sutterly and Michael Gallagher stated they were pleased the town will purchase the building and asked that the town maintain control of any future use of the building.

Mr. Berry stated there are changes to be made to the Contract of Sale Agreement: 16 (a) Future Space for Seller's Arts Programs in Breckenridge Arts District. An agreement for Seller's use of suitable space in facilities owned by Buyer for the continued operation of Seller's ceramics studio, photography lab and dance studio. Such facilities may be either in: (i) their current locations at the Property, or (ii) at one or more other suitable locations within the Town of Breckenridge "Arts District", or (iii) at such other mutually acceptable location as is agreed to by the parties...

Mr. Bergeron made a motion to approve Resolution 27, Series 2009 as previously read into the record with the changes to the Contract of Sale stated by the Town Attorney. Ms. McAtamney seconded the motion. With no further discussion a roll call vote was taken. The motion passed with all council members in favor of passage.

**C. OTHER –**

There was no other business.

**PLANNING MATTERS**

**A. Planning Commission Decisions of October 6, 2009**

For the record, Mr. Mamula stated he was not going to call up the development permit for Entrada as it met the code requirements, however, the Annexation Agreement is discretionary. Council would like to discuss the next step.

With no requests for call up or discussion, Mayor Warner declared the Planning Commission decisions of the October 6, 2009 meeting would stand as presented.

**B. Entrada Annexation Agreement**

Mr. Berry introduced this matter which was added to the evening meeting agenda. He explained the Planning Commission approved a modification of the approved development permit to remove the vehicular access connection between Lot A of Entrada and the parking lot at Summit Ridge Center and to move the eastern access drive on Tract A to the western edge. Mr. Berry stated despite the Council's affirmation this evening of the Planning Commission's decisions, it does not change the contractual obligation Entrada Breckenridge Inc. has pursuant to the Annexation Agreement.

Before the meeting, Mr. Berry met with Entrada's representative, David Michaels, to see if there is a proposal that can be offered to Council to modify the Annexation Agreement to eliminate the contractual agreement mentioned previously. Mr. Berry explained the proposed solution which was agreeable to Mr. Michaels.

Mayor Warner asked if Council had any questions. Mr. Rossi had two questions, which were answered by Mr. Berry. The plat and conveyances will need to be recorded as soon as possible. Mr. Berry asked Council if they would be comfortable approving a Resolution for an amendment to the Annexation Agreement with Entrada Breckenridge, Inc. containing the points previously discussed. Mayor Warner asked if there was a motion.

Mr. Mamula moved to approve an amendment to the Annexation Agreement with Entrada Breckenridge Inc. to include the following provisions:

1. Entrada commits to obtain a valid easement from the Summit Ridge Homeowners' Association either through negotiation and settlement of the pending lawsuit between Entrada and the Homeowners' Association, or through prosecution of the lawsuit to a successful conclusion.
2. If Entrada fails to obtain the valid easement from the Summit Ridge Homeowners' Association as described in point #1, the town will withhold transferring two of the Transferable Development Rights that the town is obligated to transfer to the Entrada property for the development of the mini-storage site until such time as Entrada pays the town the sum of \$85,000.
3. Entrada will reimburse the town for its attorney's fees incurred in connection with the amendment to the Annexation Agreement and related matters beginning October 14, 2009.
4. Entrada may build two of the three buildings to be located on the mini-storage site without further Town Council approval, but may not obtain a building permit for the third building to be located on the mini-storage site until the valid easement from the Summit Ridge Homeowners' Association has been obtained as described in point #1 or, failing that, the \$85,000 amount described in point #2 has been placed in escrow for the benefit of the town. If the \$85,000 has not been escrowed within 90 days after the entry of a final judgment denying Entrada the easement from the Summit Ridge Homeowners' Association, the town is relieved of the obligation to provide any TDRs for the development of the mini-storage site on the Entrada property.
5. The Town Manager is authorized to sign an Amended Annexation Agreement incorporating such terms. At such time as the Town Manager and the Town Attorney have approved the proposed Amended Annexation Agreement, a copy of the proposed Amended Annexation Agreement will be provided by e-mail to the Town Council.

Mr. Millisor made the second. A roll call vote was taken. All council members were in favor of the motion.

Mr. Michaels complimented Mike Mosher and Tim Berry for their work throughout this process.

**C. Report of Planning Commission Liaison**

Mr. Rossi reported on the Preservation Village at Reiling Road. A discussion of the issuance of ten positive points for affordable housing projects resulted. Mr. Bergeron felt this issue should be discussed in detail at a later date. Mr. Berry stated, until then this issue can be dealt with through development permit provisions, but should be addressed in detail at a later date.

***REPORT OF TOWN MANAGER AND STAFF***

Tim Gagen had two items to bring to Council's attention: He mentioned the Post Office memo – In this memo the US Postal Service is asking the town to rent the proposed lease site for free. If Council is not agreeable to this proposal, would they consider leasing one of two paved lot sites: Tiger Dredge or the Sawmill Lot. Council was not in favor of either proposal. Mr. Gagen will follow up with the US Postal Service.

The other item Mr. Gagen brought to the attention of Council concerned a homeowner's request that the town consider legislative action that would prevent a Home Owners' Association from prohibiting short term rentals. Council decided they would not legislate this matter. Mr. Gagen will follow up.

***REPORT OF MAYOR AND COUNCILMEMBERS-***

**A. CAST/MMC** (Mayor Warner) – Budgets were discussed. There will be a September 10 meeting concerning Dillon Dam and the Denver Water Board.

**B. Breckenridge Open Space Advisory Commission** Mr. Joyce stated the minutes were in the Manager's Newsletter. Mr. Joyce reported on the question of whether or not the town should allow special events in Cucumber Gulch. Council felt most events should not be allowed in the Gulch. Mr. Rossi asked about "branding trails". He commented "flag residue" from previous special events remain throughout some town trails. Mr. Rossi suggested implementing a color coded event plan so that the town can recognize which event organizers are not removing their flags.

Mr. Mamula asked about parking on French Gulch Road. He commented that east of where the B&B comes out there are trash bags being dumped.

**C. Breckenridge Resort Chamber** (Ms. McAtamney) – Nothing further to report.

**D. Summit Combined Housing Authority** (Mr. Millisor) – No meeting.

**E. Breckenridge Heritage Alliance** (Mr. Bergeron) – Nothing to report.

**F. Sustainability** (Mr. Millisor) – Nothing to report.

***OTHER MATTERS***

Klack Placer Cabin: Laurie Best stated the Breckenridge Heritage Alliance is requesting authorization from the town to utilize their 2009 operating fund balance to perform repair and maintenance on the Klack Cabin.

Mr. Millisor moved to transfer the funds from the Operating Account to the Capital Account. Mr. Rossi made the second. All council members were in favor of the motion.

Mr. Berry commented on what he thought was a required warning sign to be posted in medical marijuana dispensaries. The language on the sign dealt with loitering. He has since found out there is no State requirement for this sign. He will send out slightly revised regulations. In closing Mr. Berry reported he attended a conference last week where medical marijuana dispensaries were discussed. He wanted everyone to know he did not hear any information that gave him the impression the town had legislated this matter incorrectly.

Mr. Bergeron stated the comments Council heard tonight about Mercy Housing were of concern.

Mr. Mamula commented on the fencing on Wellington. It looks great. He thanked the staff members who made it happen.

Mr. Rossi asked about the speed limit on Highway 9. Mr. Gagen reported the speed limit will be raised to 45 mph through the area where construction occurred this summer.

Mayor Warner reported he met with the NWCOG Water Quality and Quantity Commission (QQ) Tuesday morning. This group represents the town in matters related to water storage, watershed protection, pump backs, and the Colorado Headwaters.



**TOWN OF BRECKENRIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, October 13, 2009  
PAGE 5**

***SCHEDULED MEETINGS***

Mayor Warner reported there will be a CAST meeting at the end of the month in Grand Junction. Mr. Gagen stated a water forum meeting will be held Thursday, October 15 at 1:00 p.m.

***ADJOURNMENT***

With no further business to discuss, the meeting adjourned at 9:40 p.m. Submitted by Wanda Creen, Deputy Town Clerk

**ATTEST:**

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Mary Jean Loufek, CMC, Town Clerk

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John Warner, Mayor

**EXECUTIVE SESSION CERTIFICATE**

Town of Breckenridge )  
County of Summit )  
State of Colorado )

John Warner, the duly elected, qualified and acting Mayor of the Town of Breckenridge, hereby certifies as follows:

As part of the Town Council meeting on Tuesday, October 13, 2009 at 6:35p.m., Ms. McAtamney moved to convene in Executive Session pursuant to Paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions; Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be negotiations , developing strategies for negotiations; and instructing negotiators; and Paragraph 4(f) of Section 24-6-402, C.R.S. relating to personnel matters.” Mr. Bergeron made the second.

The Mayor restated the motion.

A motion has been made from the Town council to go into an executive session pursuant to Paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions; Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be negotiations , developing strategies for negotiations; and instructing negotiators; and Paragraph 4(f) of Section 24-6-402, C.R.S. relating to personnel matters.”

The conference with the Town Attorney involves the possibility of a call up hearing on the Planning Commission’s decision on the amendment to the development permit for the Entrada development, and a possible amendment to the Entrada Annexation Agreement, but may also include conferences with the Town Attorney on matters covered by the attorney-client privilege that exists between the Town and the Town Attorney.

The negotiations that are the subject matter of the executive session involve the proposed Mercy Housing development at Valley Brook.

The personnel matter that is the subject matter of the executive session involves possible personnel-related matters concerning the Town’s 2010 and future budgets.

A roll call vote was taken and all were in favor of the motion.

Mr. Mamula moved to adjourn the Executive Session at 7:30 p.m. Mr. Millisor made the second. All were in favor of the motion.

This certificate shall be included after the minutes of the regular Town Council meeting of Tuesday, October 13, 2009.

\_\_\_\_\_  
John Warner, Mayor

# Memo

To: Town Council

From: Julia Puester, AICP

Date: October 21 for meeting of October 27, 2009

Re: Neighborhood Preservation Policy (NPP) Second Reading

---

The Town Council approved a new development Policy 4 (Absolute) Mass concerning Maximum Above Ground Floor Area Ratio and Maximum Above Ground Square Footage (i.e. the Neighborhood Preservation Policy), and amendment to Policy 4 (Relative) concerning Mass on first reading October 13th.

Changes proposed to the ordinance since the first reading at Town Council review are:

- Modification to FAR of Sunbeam Estates from 1:3.5 to 1:3 FAR.
- Removal of Trappers Glen and Snowflake subdivisions as both subdivisions have platted envelopes.
- Addition of a diagram for the definition of *Above Ground Square Footage*.
- Language to clarify that the policy applies only to those properties without platted building or disturbance envelopes outside of the Conservation District.
- Additional language to subsection C to allow for existing square footage to be rebuilt in the event of fire damage or other calamity.

Staff has not received any additional public comment since the first reading. The second reading of the ordinance has been attached for you review and approval.

1 **FOR WORKSESSION/SECOND READING – OCT. 27**

2  
3 Changes To The Ordinance From First Reading Are  
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5  
6 COUNCIL BILL NO. 33

7  
8 Series 2009

9  
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE  
11 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY  
12 ADOPTING A NEW DEVELOPMENT POLICY 4 (ABSOLUTE) CONCERNING  
13 MAXIMUM ABOVE GROUND FLOOR AREA RATIO AND MAXIMUM ABOVE  
14 GROUND SQUARE FOOTAGE, AND MAKING CONFORMING AMENDMENTS TO  
15 POLICY 4 (RELATIVE) CONCERNING MASS

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

19  
20 Section 1. The Town Council finds and determines as follows:

21 A. In September, 2007, the Town Council expressed its concern about the increasing  
22 number of large single family residence that were being built in the Town.

23  
24 B. The Town Council desires to maintain the character of the Town, particularly the  
25 character of its older, more established neighborhoods.

26  
27 C. The Town’s “small town” character is vitally important to its social and economic  
28 future and, as a result, to the social and economic well being of the current and future residents  
29 of the Town.

30  
31 D. The Town Council has tried to maintain the Town’s “small town” character, and has  
32 made the preservation of the Town’s small town character part of the Town’s Vision Plan. The  
33 Town’s Vision Plan envisions a community “where residents and visitors experience a historic  
34 mountain town with characteristic charms that offers a safe, friendly and peaceful atmosphere  
35 where individuals can live, work, play and raise a family.”

36  
37 E. Although the Town’s land use and development codes (Chapter 1 and Chapter 2 of  
38 Title 9 of the Breckenridge Town Code, primarily) require platted building envelopes and site  
39 disturbance envelopes for newer subdivisions, the current Town codes do not adequately control  
40 the size of single family residences in the Town’s older subdivisions.

41  
42 F. Large single family and duplex residences outside of the Town’s Conservation  
43 District have been built with increasing frequency in recent years, and the sizes of such  
44 residences have also increased.

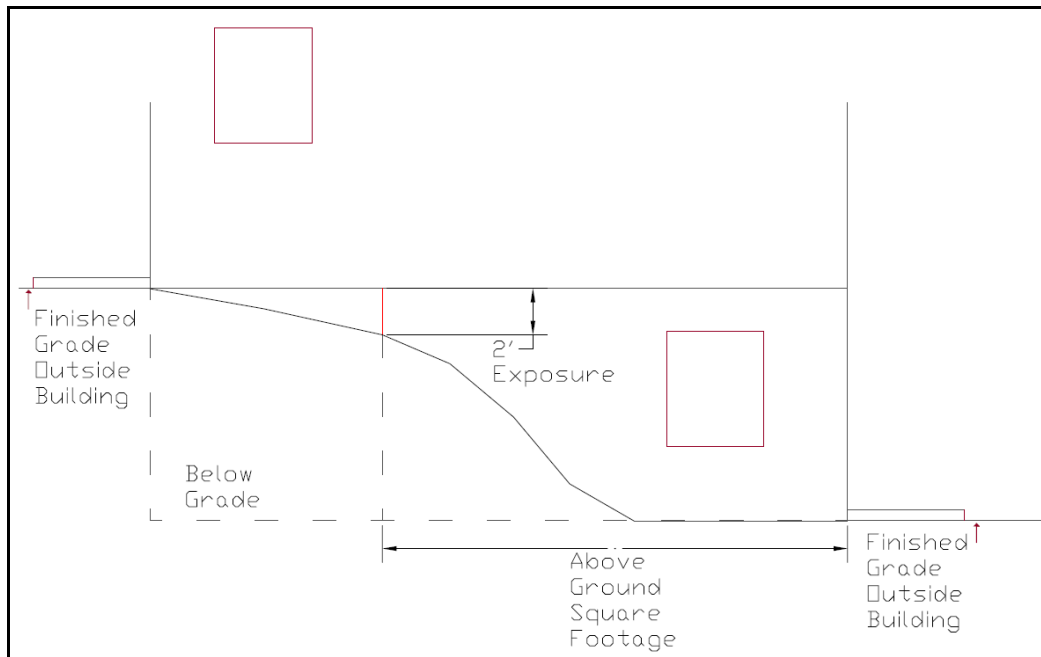
1 G. The development of large single family and duplex residences has a significant  
2 number of negative impacts on the Town and its residents. Such impacts, include, but are not  
3 limited to, development that:

- 4
- 5 1. is out-of-scale with existing neighborhood home sizes;
- 6 2. increases the demand on existing infrastructure, such as water, sewer, and other  
7 utility services;
- 8 3. decreases important areas of wildlife and vegetative habitat;
- 9 4. increases the Town's overall "carbon footprint" and creates other adverse  
10 environmental impacts;
- 11 5. increases the demand for workers to construct, service, and maintain the large  
12 residences; and
- 13 6. increases the demand for attainable employee housing within the Town.
- 14

15 H. Establishing a Town development policy providing a maximum above ground floor  
16 area and maximum above ground square footage in those older subdivisions that do not have  
17 platted building or site disturbance envelopes will help to preserve the character of the  
18 community, and will protect the public health, safety and welfare. As such, the adoption of such  
19 a policy is a legitimate exercise of the Town's zoning and police powers.

20  
21 Section 2. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of  
22 the following definitions, which shall read in their entirety as follows:

Above Ground Square Footage: That portion of the floor area of the structure that is above finished grade. Any portion of a foundation wall that is exposed more than two feet (2') above finished grade shall be counted as above ground square footage.



Floor Area Ratio (F.A.R.): The total square footage of the structure to be developed divided by the total square footage of the lot, tract or parcel.

Section 3. Section 9-1-19 of the Breckenridge Town Code is amended by the addition of a new Policy 4 (Absolute), to be entitled “Mass”, which shall read in its entirety as follows:

4. (ABSOLUTE) MASS

A. Maximum Mass:

A. For any development permit application submitted on or after November 11, 2009 [~~DATE OF ADOPTION OF ORDINANCE TO BE INSERTED~~], the maximum above ground square footage of a single family or duplex structure located on a lot, tract or parcel without a platted building or disturbance envelope shall be the lesser of:

SUBDIVISION OR GEOGRAPHIC AREA	FLOOR AREA RATIO (F.A.R.)		MAXIMUM ABOVE GROUND SQUARE FOOTAGE
Brooks Hill	1:5.00	OR	7000
Breckenridge South	1:5.00	OR	6000
Christie Heights	1:3.50	OR	6500
Gold King	1:8.50	OR	7000
Gold Flake	1:4.50	OR	9000
Highlands, Filing 1	1:8.50	OR	9000
Highlands, Filing 2	1:8.50	OR	9000
Highlands, Filing 3	1:8.50	OR	9000
Highlands, Filing 4	1:8.50	OR	9000
Peaks	1:1.75	OR	6500
Penn Lode	1:3.00	OR	6000
<del>Snowflake</del>	<del>1:2.00</del>	<del>OR</del>	<del>5500</del>
Sunbeam Estates	<del>1:3.50</del> <u>1:3</u>	OR	7000
Sunrise Point	1:2.00	OR	6500
Trafalgar	1:2.00	OR	7500
<del>Trapper's Glen</del>	<del>1:4.50</del>	<del>OR</del>	<del>8000</del>
Tyra	1:2.00	OR	6000
Warrior's Mark	1:2.00	OR	4000
Warrior's Mark West	1:2.00	OR	4500
Weisshorn	1:4.00	OR	8000
Yingling & Mickles	1:1.30	OR	5600

Real property that has ~~is not located within one of the subdivisions or geographic areas of the town described in the table, and any lot, tract or parcel of land with a platted building or disturbance envelope, or with a density or mass determined by an active Master Plan or Planned Unit Development~~ or is within the Conservation District, is not subject to this policy.

1  
2 The Floor Area Ratio and Maximum Above Ground Square Footage of any lot, tract or  
3 parcel of land without a platted building or disturbance envelope located outside of the  
4 Conservation District that is not listed in the table above shall be determined by the Director. In  
5 making such determination, the Director shall consider the applicable Floor Area Ratio and  
6 Maximum Above Ground Square Footage of adjacent subdivisions or geographic areas, and shall  
7 establish the applicable Floor Area Ratio and Maximum Above Ground Square Footage so that it  
8 will be compatible with the character of the area in which the lot, tract or parcel of land is  
9 located.

10  
11 B. If a single family or duplex structure contains a garage, the measurement of above  
12 ground square footage in subsection A applies only to that portion of the garage that exceeds 900  
13 square feet.

14  
15 C. ~~Any single family or duplex structure lawfully constructed before the date described in~~  
16 ~~subsection A of this policy remains lawful and may be maintained or rebuilt in the event of~~  
17 ~~damage by fire or other calamity, even if it is larger in size than would be allowed by subsection~~  
18 ~~A. If a single family or duplex structure that was lawfully constructed before the date~~  
19 ~~described in subsection A of this policy is damaged or destroyed by fire or other calamity it~~  
20 ~~may be rebuilt to the same size that existed immediately prior to the fire or other calamity.~~  
21 ~~However, except as provided in the preceding sentence, the provisions of Section 9-1-12 of~~  
22 ~~this chapter shall apply to the repair or reconstruction of such single family or duplex~~  
23 ~~structure.~~

24  
25 D. For any single family or duplex structure existing or for which a development permit  
26 has been issued before the date described in subsection A of this policy:

27  
28 1. an additional 500 square feet of above ground square footage is permitted for a single  
29 family or duplex structure if such square footage is not allowed by subsection A; and

30  
31 2. an interior addition is permitted without violating this policy if the addition does not  
32 result in any change to the exterior of the single family or duplex structure. If such addition  
33 results in the reduction of the size of the garage to below 900 square feet, additional garage space  
34 constructed on the property shall be counted toward the maximum allowable floor area ratio and  
35 maximum above ground square footage in Section A.

36  
37 E. For any duplex structure that is subject to the provisions of subsection D(1), if each  
38 duplex unit has the same above ground square footage each duplex unit shall be allocated an  
39 additional 250 square feet of allowed above ground square footage. If either of the duplex units  
40 has a greater amount of above ground square footage than the other duplex unit, the smaller  
41 duplex unit shall receive so much of the additional above ground square footage as is required to  
42 make it equal to the above ground square footage of the larger duplex unit, and the remaining  
43 additional above ground square footage shall be divided equally between the two duplex units. If  
44 both duplex owners agree to an alternative allocation of the duplex's additional 500 square feet  
45 of allowed above ground square footage, the Town may approve such alternative allocation if  
46 both owners submit an agreement in a form acceptable to the Town Attorney prior to the

1 submission of any application for a development permit that involves the use of any of the  
2 duplex's additional 500 square feet of above ground square footage. The duplex owners'  
3 agreement for an alternative allocation of the additional above ground square footage must be  
4 recorded in the real property records of the Clerk and Recorder of Summit County prior to the  
5 issuance of a development permit for the use of such additional square footage, and must run  
6 with the land and be binding upon all subsequent owners of the two duplex units.

7  
8 Section 4. Section (A)(2) of Policy 4 (Relative Mass of Section 9-1-19 of the  
9 Breckenridge Town Code is amended so as to read in its entirety as follows:

10 2. Single-Family, Duplexes, Bed and Breakfasts, and Townhouses. Single-family,  
11 duplex, bed and breakfast, and townhouse developments may be allowed an additional  
12 twenty percent (20%) of aboveground floor area for the provision of garages, common  
13 amenity areas, and common storage areas. This mass bonus does not apply to single  
14 family or duplex structures listed in Policy 4 (Absolute) Mass, subsection A.

15  
16 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and  
17 the various secondary codes adopted by reference therein, shall continue in full force and effect.

18 Section 6. The Town Council hereby finds, determines and declares that this ordinance  
19 is necessary and proper to provide for the safety, preserve the health, promote the prosperity,  
20 and improve the order, comfort and convenience of the Town of Breckenridge and the  
21 inhabitants thereof.

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

29 Section 8. The Town Council hereby finds, determines and declares that it has the  
30 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by  
31 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town  
32 Charter.

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

35 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
36 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2009. A Public Hearing shall be held at the  
37 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 27th day of  
38 October, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
39 Town.

40  
41 TOWN OF BRECKENRIDGE, a Colorado



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municipal corporation

By \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek, CMC,  
Town Clerk

**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Amendment to Ski Area Parking Lease

DATE: October 20, 2009 (for October 27<sup>th</sup> meeting)

---

In 2003 the Town entered into a long-term lease with Vail Summit Resorts, Inc. In the Lease the Town agreed to provide 500 parking spaces for use in connection with the operation of the Breckenridge Ski Resort.

The Town land that was leased to the Ski Area is the portion of Block 11 of the Breckenridge Airport Subdivision located southerly of the Upper Blue Elementary School. Since 2003, however, the Town has constructed the new Police Facility and the new Childcare Facility on the land described in the Lease. As a result, the Ski Area's parking has been moved further north to a mutually agreed location that is part of the Town's Tract A, Runway Subdivision. However, the text of the Lease has never been revised.

To remedy this problem, a proposed "Amendment to Parking Lease" has been prepared and is enclosed with this memo. Pursuant to the proposed Amendment, the Lease will be amended to change the description of the leased land from the Police/Childcare Facilities sites to the Tract A, Runway Subdivision location. The new site of the parking spaces is depicted on Exhibit "A" to the proposed Amendment to Parking Lease.

You will also recall that VSR enjoys the benefit of the Shared Parking Agreement between the Town and CMC that was negotiated as part of the sale of the CMC Parcel. The Runway Subdivision site described in the proposed Amendment to Lease abuts the CMC property, and allows the CMC shared parking area to function well with the Ski Area's parking site.

This is a housekeeping matter that needs to be cleaned up in order to release the sites of the new Police Facility and Childcare Center from the technical burdens of the 2003 Parking Lease, and to correctly describe the part of the Town's Runway Subdivision parcel that is to be used to provide the agreed parking for the Ski Area.

Because the original Parking Lease is a multi-year agreement, it required Town Council approval by ordinance. Since the proposed Amendment to Parking Lease changes the legal description of the Town-owned land that is to be subject to the Lease, it is my recommendation that the Amendment also be approved by ordinance. Accordingly, a proposed ordinance is also enclosed for your consideration.

The 2003 Parking Lease contemplates that the Ski Area's parking spaces may be relocated under certain circumstances. In contemplation of the possibility that the Ski Area's parking spaces may be relocated again at some point in the future, and to avoid the necessity of a two-reading ordinance adoption procedure in the future, Section 3 of the ordinance authorizes the Town Manager to administratively amend the Parking Lease if that becomes necessary in order to reflect any change in the location of the Ski Area's parking spaces.

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

1  
2 *FOR WORKSESSION/FIRST READING – OCT. 27*

3  
4 COUNCIL BILL NO. \_\_\_\_

5  
6 Series 2009

7  
8 AN ORDINANCE APPROVING AN AMENDMENT TO PARKING LEASE WITH VAIL  
9 SUMMIT RESORTS, INC.  
10 (Part of Tract A, Runway Subdivision)  
11

12 WHEREAS, the Town and Vail Summit Resorts, Inc., a Colorado corporation (“VSR”),  
13 entered into that certain Parking Lease dated November 26, 2003 and recorded June 14, 2004  
14 under Reception No. 758998 of the records of the Clerk and Recorder of Summit County,  
15 Colorado (“Lease”), whereby Town leased the “South Block 11 Property” to VSR for its use as  
16 parking in connection with the operation of the Breckenridge Ski Area, all as more fully  
17 described in Lease; and  
18

19 WHEREAS, subsequent to the date of the Lease, Block 11 was subdivided by the filing  
20 of the Final Plat of a Replat of Block 11, An Amended Replat of Breckenridge Airport  
21 Subdivision on August 3, 2005 under Reception No. 797050 of the records of the Clerk and  
22 Recorder of Summit County, Colorado (“Final Plat”), and ownership of Tracts A-1, A-2 and D  
23 created by the Final Plat was vested in the Town; and  
24

25 WHEREAS, Tract D as shown on the Final Plat was resubdivided by the filing of the Plat  
26 of Runway Subdivision on July 28, 2008 under Reception No. 893184 on the records of the  
27 Clerk and Recorder of Summit County, Colorado (“Runway Subdivision”); and  
28

29 WHEREAS, the Town has constructed improvements on a portion of Tract A-1 and on  
30 Tract A-2, which together constituted the South Block 11 Property and, pursuant to the terms of  
31 the Lease allowing for substitution of other Block 11 property to provide the area for the 500  
32 parking spaces required to be provided by Town to VSR, the area for such 500 parking spaces  
33 has been relocated to a portion of Tract A, Runway Subdivision; and  
34

35 WHEREAS, Section 17.9 of the Lease provides that the Lease may be amended by  
36 written agreement executed by the parties; and  
37

38 WHEREAS, the Town and VSR desire to amend the Lease as more fully set forth in the  
39 “Amendment to Parking Lease”, a copy of which is marked Exhibit “A”, attached hereto and  
40 incorporated herein by reference; and  
41

42 WHEREAS, the Town Council has reviewed the proposed Amendment to Parking Lease,  
43 and finds and determines that such document should be approved.  
44

45 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
46 BRECKENRIDGE, COLORADO, as follows:

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Section 1. The proposed Amendment To Parking Lease between the Town and Vail Summit Resorts, Inc., a Colorado corporation, (Exhibit "A" hereto) is approved; and the Town Manager is authorized, empowered and directed to execute such document for and on behalf of the Town of Breckenridge.

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

Section 3. 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 \_\_\_\_\_, 2009. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of \_\_\_\_\_, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:  
  
\_\_\_\_\_  
Mary Jean Loufek, CMC,  
Town Clerk

## AMENDMENT TO PARKING LEASE

This Amendment To Parking Lease ("Amendment") is made and entered into at Breckenridge, Colorado this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Landlord") and VAIL SUMMIT RESORTS, INC., a Colorado corporation ("Tenant").

WHEREAS, Landlord and Tenant entered into that certain Parking Lease dated as of November 26, 2003 ("Lease") and recorded June 14, 2004 under Reception No. 758998 of the records of the Clerk and Recorder of Summit County, Colorado, whereby Landlord leased to Tenant, and Tenant leased from Landlord, the South Block 11 Property; and

WHEREAS, subsequent to the date of the Lease, Block 11 was subdivided by the filing of the Final Plat of a Replat of Block 11, An Amended Replat of Breckenridge Airport Subdivision on August 3, 2005 under Reception No. 797050 of the records of the Clerk and Recorder of Summit County, Colorado ("Final Plat"), and ownership of Tracts A-1, A-2 and D created by the Final Plat was vested in Landlord; and

WHEREAS, Tract D as shown on the Final Plat was resubdivided by the filing of the Plat of Runway Subdivision on July 28, 2008 under Reception No. 893184 on the records of the Clerk and Recorder of Summit County, Colorado ("Runway Subdivision"); and

WHEREAS, Landlord has constructed improvements on a portion of Tract A-1 and on Tract A-2, which together constituted the South Block 11 Property and, pursuant to the terms of the Lease allowing for substitution of other Block 11 property to provide the area for the 500 parking spaces required to be provided by Landlord to Tenant, the area for such 500 parking spaces has been relocated to a portion of Tract A, Runway Subdivision and, by this Amendment, such substitute location will be formalized; and

WHEREAS, Section 17.9 of the Lease provides that the Lease may be amended by written agreement executed by the parties; and

WHEREAS, the Landlord and Tenant desire to amend the Lease as more fully set forth hereafter.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the parties hereby amend the Lease as follows:

Section 1. The reference to Block 11 in Section 2.2.A. of the Lease shall be replaced with Tract A, Runway Subdivision.

Section 2. The area of Tract A, Runway Subdivision to be substituted for the South Block 11 Property and to be subject to the terms of the Lease and this Amendment for purposes of providing the area for at least 500 parking spaces shall be that portion of Tract A, Runway Subdivision depicted on EXHIBIT 'A', attached hereto and incorporated herein by this

reference, and such area depicted on EXHIBIT A hereby is substituted for the South Block 11 Property and subjected to the terms of the Lease and this Amendment.

Section 3. In accordance with Section 2.2 of the Lease, other property may be substituted for the property depicted on EXHIBIT A, and it is agreed that any amendment to the Lease to substitute such other property within Runway Subdivision may be executed by the Town Manager of Landlord pursuant to Landlord's administrative procedures and without the need for approval by the Breckenridge Town Council.

Section 4. All capitalized terms used but not defined in this Amendment shall have the same meaning as provided in the Lease.

Section 5. Except as specifically amended by this Amendment, the Lease shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Lease the date first written above.

LANDLORD:

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By \_\_\_\_\_  
Timothy J. Gagen, Town Manager

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek, CMC,  
Town Clerk

TENANT:

VAIL SUMMIT RESORTS, INC., a Colorado  
corporation

By: \_\_\_\_\_  
Pat Campbell, Vice President and COO,  
Breckenridge Resort

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

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

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LAKE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Pat Campbell, as Vice President and Chief Operating Officer Breckenridge Resort for Vail Summit Resorts, Inc., a Colorado corporation.

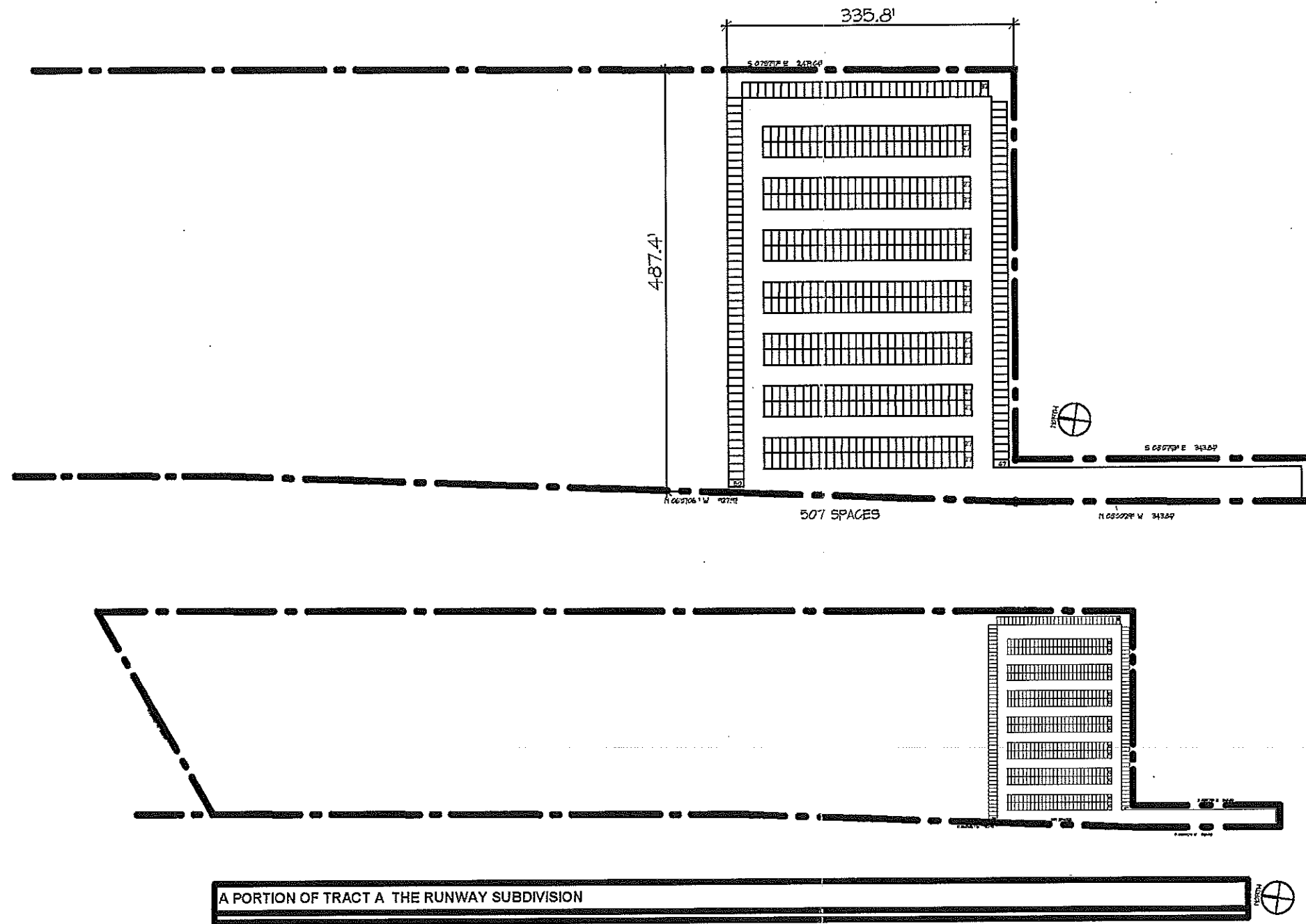
WITNESS my hand and official seal.

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

\_\_\_\_\_  
Notary Public



EXHIBIT 'A'



**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Resolution Approving Entrada Amended Annexation Agreement

DATE: October 20, 2009 (for October 27<sup>th</sup> meeting)

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Enclosed with this memo is the Amended Annexation Agreement for the Entrada development. This is the same document that was submitted to the Council late last week. The proposed amended agreement has already been reviewed and approved by Entrada. Having heard no objection to the wording of the amended agreement from the Council, I believe that the Amended Annexation Agreement is now in final form.

I think it is appropriate for the Council to formally approve the Amended Agreement, even though the Council approved the essential deal points of the document at the last Council meeting. For this reason, I have also enclosed a proposed form of resolution to be used to approve the final text of the amended agreement.

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

1 A RESOLUTION

2  
3 SERIES 2009

4  
5 A RESOLUTION APPROVING AN AMENDED ANNEXATION AND  
6 DEVELOPMENT AGREEMENT WITH ENTRADA AT BRECKENRIDGE,  
7 INC., A COLORADO CORPORATION  
8 (Entrada – 3.98 acres, more or less)  
9

10 WHEREAS, Entrada at Breckenridge, Inc., a Colorado corporation, is the owner of  
11 certain real property (“Property”); and  
12

13 WHEREAS, by Ordinance No. 23, Series 2009, the Town annexed the Property to the  
14 Town; and  
15

16 WHEREAS, Town and Owner previously approved an “Annexation and Development  
17 Agreement” in connection with the annexation of the Property to the Town; and  
18

19 WHEREAS, Owner and Town desire to amend the Annexation and Development  
20 Agreement for the Property as more fully described in the "Amended Annexation and  
21 Development Agreement”, a copy of which is marked Exhibit “A”, attached hereto and  
22 incorporated herein by reference; and  
23

24 WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed  
25 Amended Annexation and Development Agreement, and finds and determines that the approval  
26 of the proposed amended agreement would be in the best interests of the Town and its citizens.  
27

28 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
29 BRECKENRIDGE, COLORADO:  
30

31 Section 1. The proposed Amended Annexation and Development Agreement between  
32 the Town and Entrada at Breckenridge, Inc., a Colorado corporation, (Exhibit "A" hereto) is  
33 approved, and the Town Manager is authorized, empowered and directed to execute such  
34 amended agreement for and on behalf of the Town of Breckenridge.  
35

36 Section 2. If at the time of the adoption of this resolution the Amended Annexation and  
37 Development Agreement with Entrada at Breckenridge, Inc., a Colorado corporation, has already  
38 been executed by the Town Manager, the Town Manager’s previous execution of such amended  
39 agreement for and on behalf of the Town of Breckenridge is hereby ratified, confirmed and  
40 approved.  
41

42 Section 3. This resolution shall become effective upon its adoption.  
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44 RESOLUTION ADOPTED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009.  
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TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By: \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek, CMC,  
Town Clerk

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney                              date

**AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT  
(Entrada)**

THIS AMENDED ANNEXATION AGREEMENT ("*Amended Agreement*") is dated \_\_\_\_\_, 2009 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("*Town*") and ENTRADA AT BRECKENRIDGE, INC., a Colorado Corporation ("*Owner*").

WHEREAS, Owner owns the real property defined as the "Property" in Section 1 of this Amended Agreement; and

WHEREAS, by Ordinance No. 23, Series 2009, the Town annexed the Property to the Town; and

WHEREAS, Town and Owner previously approved that "Annexation and Development Agreement (Entrada)" in connection with the annexation of the Property to the Town; and

WHEREAS, Owner and Town desire to enter into this Amended Agreement to set forth the revised terms and conditions of the annexation of the Owner's property to the Town, all as more fully set forth in this Amended Agreement.

NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** As used in this Amended Agreement, unless the context clearly requires otherwise:

"*Act*" means Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended.

"*Annexation Ordinance*" means the ordinance adopted by the Town Council of the Town of Breckenridge pursuant to the Municipal Annexation Act of 1965 (Section 31-12-101, *et seq.*, C.R.S.) officially annexing the Property to the Town of Breckenridge.

"*Annexation Petition*" means the petition filed by Owner seeking annexation of the Property to the Town.

"*Annexation Surcharge*" means a general annexation fee normally paid to the Town as part of an annexation in lieu of the transfer of raw water to the Town by the annexing party.

"*Applicable Town Ordinances*" means all ordinances of the Town regulating the development, subdivision and use of the Property, as in effect from time to time. Such ordinances include, but are not limited to, the Town's: (i) Development Code, (ii) Street

Standards, (iii) Drainage Ordinance, (iv) Flood Prevention Ordinance, (v) Water Quality Ordinance, (vi) Subdivision Ordinance, (vii) Building, Technical and Construction Codes, (viii) ordinances concerning annexation/water surcharges, (ix) ordinances and resolutions concerning payment of fees, (x) ordinances concerning public dedications; and (xi) all other applicable Town ordinances, resolutions, regulations and policies.

**“Commercial Tract”** means the portion of the Property to be developed by Owner as provided in Section 4.7.

**“Development Code”** means the Town of Breckenridge “Development Code” codified as Chapter 1 of Title 9 of the Breckenridge Town Code.

**“Effective Date”** means the date that this Amended Agreement becomes effective as provided in Section 3.1

**“General Plan of Development”** means the general conceptual plan for the development of the Property as shown on Exhibit "A".

**“Initial Subdivision of the Property”** means: (i) the division of the Property into the Commercial Tract, the Mini-Storage Tract, and the Town Tract as shown on the General Plan of Development; and (ii) the division of the Commercial Tract into two lots of equal size; and (iii) the initial condominiumization of the Commercial Tract of each building located on the Commercial Tract at Owner’s election.

**“Legal Challenge”** means that either: (i) a third party commences a legal proceeding request for reconsideration pursuant to Section 31-12-116, C.R.S., or other action that directly or indirectly challenges the Annexation Ordinance; or (ii) a third party submits a petition for a referendum seeking to reverse or nullify the Annexation Ordinance.

**“Master Plan”** means a plan for the development of the Commercial Tract and the Mini-Storage Tract approved by the Town as described in Section 4.5.

**“Mini-Storage Tract”** means the portion of the Property to be developed by Owner as provided in Section 4.8.

**"Owner"** means Entrada at Breckenridge, Inc., a Colorado Corporation, its successors and assigns, and all other subsequent owners of the Property.

**"Property"** means Tracts A & B, A Subdivision Exemption Plat of Entrada at Breckenridge, as recorded May 29, 2007 under Reception No. 856500 of the records of the Clerk and Recorder of Summit County, Colorado, such two tracts consisting of 3.98 acres.

“**Town Tract**” means the middle lot following the Initial Subdivision of the Property (consisting of at least 1.326 acres, unless otherwise agreed to by the Town) that is to be conveyed by Owner to Town pursuant to Section 4.11.

“**Transferable Development Right**” has the meaning provided in that “Intergovernmental Amended Agreement Between the Town of Breckenridge and the Board of County Commissioners of Summit County, Colorado Concerning Transferred Development Rights”, dated July 11, 2000, and any amendment or replacement agreement (hereinafter referred to as “TDR”).

2. **ANNEXATION.** The Property will be annexed to the Town. Annexation of the Property will be in accordance with the terms and conditions of the Annexation Petition; this Amended Agreement; the Colorado Municipal Annexation Act of 1965, as amended (Section 31-12-101, *et seq.*, C.R.S.); and the Applicable Town Ordinances.

3. **EFFECTIVE DATE.**

3.1 **Effective Date Defined.** The Effective Date of this Amended Agreement is the date on which the last of the following conditions precedent has been satisfied:

- (a) this Amended Agreement has been signed by both the Town and the Owner;
- (b) the Town has approved the Master Plan; the Initial Subdivision of the Property; and the initial site specific development plan(s) for the development of the Commercial Tract and Mini-Storage Tract all as described in Section 4, and no action of any type challenging such approvals has been filed within the time allowed by law;
- (c) The Town ordinance amending the Land Use District 5 Guidelines to make mini-storage and bank uses “acceptable” service commercial uses in Land Use District 5 has become effective. Such action is necessary in order to cause the development of the Commercial Tract and the Mini-Storage Tract pursuant to this Amended Agreement to: (i) meet Policy 2/Absolute (Land Use Guidelines) of the Development Code; and (ii) justify an assessment of zero negative points under Policy 2/Relative (Land Use Guidelines) of the Development Code; and
- (d) The Town ordinance amending the Land Use District 5 Guidelines to eliminate required parking for the mini-storage facility on the Mini-Storage Tract (but not to eliminate required parking for any office located the Mini-Storage Tract) has become effective.

3.2 **No Recording Prior to Satisfaction of Conditions.** Until all of the conditions precedent set forth in Section 3.1 have been satisfied, none of the items described in Section 31-12-113(2)(a)(II)A, C.R.S., will be recorded.

4. **INITIAL ZONING; DEVELOPMENT OF THE PROPERTY.**

4.1 **Initial Land Use District Designation.** Upon annexation the Property will be placed in Land Use District 5.

4.2 **Density.**

- (a) Density for the buildings proposed on the Commercial Tract and Mini-Storage Tract pursuant to Exhibit A will be calculated using the total square footage of the Property as a whole, which is 173,272 square feet, and not based on the buildings as they relate to the individual tracts and the subdivided lots on which each respective building is situated.
- (b) Density on the Commercial Tract and the Mini-Storage Tract will not exceed a combined total of 41,280.4 square feet. No increase in density above 41,280.4 square feet is allowed without the Town's express consent.
- (c) A maximum of 15,030.4 square feet of office/commercial density may be developed on the Commercial Tract; and a maximum of 26,250 square feet of mini-storage density may be developed on the Mini-Storage Tract.
- (d) Owner's use of density is subject to the Town's right to review and approve such use as part of the Town's land use review process for the Commercial Tract and Mini-Storage Tract.
- (e) Pursuant to Section D of Policy 3 (Absolute) of the Development Code, because the Property is located outside of the Town's Conservation District a maximum of ten percent (10%) of the total combined density for the Commercial Tract and the Mini-Storage Tract shall be excluded from the calculated density if such excluded density is used to construct "employee housing" as defined in the Development Code.
- (f) The affordable housing development which the Town intends (but is not required) to construct on the Town Tract does not require any density.

4.3 **General Plan of Development.** The Property will be developed generally in accordance with the General Plan of Development attached hereto as Exhibit A, unless otherwise agreed to by both parties. However, both parties acknowledge that additional planning, evaluation, and design will be necessary before a final plan for improvements, roads, utilities, and other public improvements can be prepared and a subdivision plat filed. Such additional planning, evaluation, and design will be done as part of the Town's land use review process described in this Section 4.

4.4 **Land Use Review Process Pending Annexation.** In accordance with the authority provided by Section 31-12-116, C.R.S., the Owner's proposed



subdivision of the Property and development of the Commercial Tract and the Mini-Storage Tract will be processed by the Town during the annexation process. However, as provided by law, Owner and Town acknowledge that final approval of the Initial Subdivision of the Property and the development of the Commercial Tract and Mini-Storage Tract cannot become effective prior to the date when the Annexation Ordinance is passed on final reading.

4.5 **Master Plan; Site Specific Development Plans.** The initial development of the Property will be subject to a Master Plan to be approved pursuant to Policy 39 of the Development Code, as well as the site specific development permits for the Initial Subdivision of the Property and the initial development of the Commercial Tract and the Mini-Storage Tract. The Master Plan will include all provisions required by law to be included in a master plan, and in addition will provide that the density for the Mini-Storage Tract may not be converted to use for any purpose other than mini-storage without the Town's discretionary (non-governmental) approval. Such restriction will survive the termination or expiration of the Master Plan and will be fully enforceable thereafter.

4.6 **Initial Subdivision of the Property.**

- (a) Prior to any development the Property will initially be subdivided into three tracts of approximately equal size as generally depicted on the General Plan of Development. The Commercial Tract will simultaneously be re-subdivided into two lots of equal size, each containing one site for each of the two buildings that are to be constructed on the Commercial Tract as generally depicted on the General Plan of Development.
- (b) The Town is responsible for processing the application for Initial Subdivision of the Property. The Town will pay all expenses incurred in connection with such process; provided, however, that Owner will pay the cost of the required survey and the subdivision plat for the Initial Subdivision of the Property. Owner will provide any reasonable assistance required in processing the Initial Subdivision of the Property.

4.7 **Development of Commercial Tract.**

- (a) The Commercial Tract is the western lot abutting Highway 9 as shown on the General Plan of Development. It will consist of two buildings, the zoned uses of which are: bank, office and employee housing. The Commercial Tract will be resubdivided into two lots of equal size. One building will be located on each resubdivided lot. Subject to the purchase of additional density as described in Section 4.10, Owner may develop a maximum of 7,264 gross square feet of density on lot 1 of the Commercial Tract and a maximum of 7,764.4 gross square feet of density on lot 2 of the Commercial Tract. The development of the Commercial Tract is

subject to the Town's right to review and approve the proposed development as part of the Town's land use review process.

- (b) As part of the Town's land use review of the proposed development of the Commercial Lot, Owner will provide, at its sole expense, a study conducted by a qualified consultant acceptable to the Town of the traffic impacts associated with its proposed development of the Commercial Lot and the Mini-Storage Lot. Owner will comply with the recommendations of the traffic study if required by the Town.

#### 4.8 **Development of Mini-Storage Tract.**

- (a) The Mini-Storage Tract is the eastern lot as shown on the General Plan of Development. It will contain three mini-storage buildings and a small office. Subject to the purchase of additional density as described in Section 4.10, Owner may develop a maximum of 26,250 gross square feet of density on the Mini-Storage Tract. The development of the Mini-Storage Tract is subject to the Town's right to review and approve the proposed development as part of the Town's land use review process.
- (b) The Master Plan may include a proposal for the construction of a security fence along 3 sides of the Mini-Storage Tract, the height of which shall not exceed 8 feet. When the fence along the east property line of the Property existing as of the date of this Amended Agreement must be replaced, it will be replaced with a fence matching the Town-approved fence to be installed along the perimeter of the remainder of the Property, or such other type of fence as may be approved by the Town.

4.9 **Northern Access.** Owner acknowledges that the Town wants a northern access to the Property to be provided across land owned by the Summit Ridge Homeowners' Association (the "**HOA**"). The parties acknowledge that a Cross Easement Agreement dated September 2, 2005 and recorded September 22, 2005 under Reception No. 801773 of the records of the Clerk and Recorder of Summit County, Colorado ("the "**Cross Easement Agreement**") that the Owner and the Town thought provided the desired northern access to the Property. However, the HOA has contested the validity and enforceability of the Cross Easement Agreement, and at the time of the signing of this Amended Agreement the Owner and the HOA are involved in civil litigation in the Summit County District Court concerning such the Cross Easement Agreement (Case No. 2007CV\_\_\_\_)(the "**Access Lawsuit**"). Accordingly, in order to attempt to provide the northern access to the Property desired by the Town it is agreed as follows:

- (a) Subject to the provisions of this Section 4.9, Owner commits to use its best efforts to attempt to obtain a valid easement from the HOA either through negotiation and settlement of the Access Lawsuit, or through diligent and good faith prosecution of the Access Lawsuit to a successful

conclusion. If Owner is unsuccessful in obtaining the access easement from the HOA, the rights of the parties will be as provided in this Section.

- (b) Owner will engage the services of a competent attorney or attorneys to represent it in connection with all stages of the Access Lawsuit. Owner will pay all attorneys' fees and costs incurred by it in connection with the Access Lawsuit, either at trial or on appeal, and will indemnify and defend the Town from any liability, including, but not limited to, attorneys' fees and costs, related to the Access Lawsuit.
- (c) Owner will provide the Town with periodic written reports as to the status of the Access Lawsuit at least every six months, or more frequently if requested by the Town. Owner will provide the Town with copies of any non-privileged documents requested by the Town relating to the Access Lawsuit, and with copies of any final order entered in the Access Lawsuit.
- (d) Owner will not voluntarily dismiss the Access Lawsuit without first obtaining the Town's prior written consent, which consent may be granted, withheld or conditionally approved by the Town in its sole and absolute discretion. The entry of an order dismissing the Access Lawsuit pursuant to the voluntary motion of the Owner, or by the court for Owner's failure to prosecute the Access Lawsuit or any appeal thereof, will be treated as a "final non-appealable judgment" as described in subsection (e) of this section.
- (e) As used in this section, the term "final non-appealable judgment" means:
  - (i) the last action of a court of competent jurisdiction that settles the rights of the Owner and HOA and disposes of all issues in the Access Lawsuit (except the award of costs and attorneys' fees, if applicable, and the enforcement of the judgment) and from which no appeal is permitted or has been granted within any applicable time period; or
  - (ii) the voluntary dismissal of the Access Lawsuit pursuant to a negotiated settlement between the Owner and the HOA with the Town's prior written consent.
- (f) If Owner is unsuccessful in obtaining the access from the HOA in the trial court, Owner will appeal such adverse decision to the Colorado Court of Appeals. If Owner is unsuccessful in obtaining the access from the HOA in the Colorado Court of Appeals, Owner will petition for certiorari review of the Court of Appeals decision by the Colorado Supreme Court. If certiorari review is granted by the Colorado Supreme Court, Owner will pursue such appeal to its conclusion. If certiorari review is denied by the

Colorado Supreme Court, the provisions of subsection (m) of this section will apply.

- (g) If Owner obtains a favorable judgment in the Access Lawsuit at either the trial court level or in the Colorado Court of Appeals, and the HOA appeals such judgment, Owner will defend such appeal to its conclusion.
- (h) During the pendency of the Access Lawsuit Owner may build two of the three buildings to be located on the Mini-Storage Site because such construction does not require any of the TDRs to be transferred to the Mini-Storage by the Town pursuant to Section 4.11 of this Amended Agreement. However, Owner may not obtain a building permit for the third building to be located on the Mini-Storage Site without making the TDR Deposit described in subsection (i) of this section. Notwithstanding any provision of this Amended Agreement or other applicable law, during the pendency of the Access Lawsuit Town is not required to issue a building permit for the construction of the third building to be located on the Mini-Storage Site unless and until the Owner has made the TDR Deposit described in subsection (i) of this section.
- (i) At any time during the pendency of the Access Lawsuit, the Owner may elect to deposit into escrow with Land Title Guarantee of Breckenridge, or other escrow agent acceptable to Town (the “*Escrow Agent*”), a sum equal to the then-current cost of purchasing two TDRs under the Town’s and Summit County’s Transferable Development Rights Program<sup>1</sup> (the “*TDR Deposit*”). The TDR Deposit will be held by the Escrow Agent in an interest-bearing account with instructions to deliver such funds (both principal and interest) to:
  - (i) the Town upon the entry of a final nonappealable judgment of competent jurisdiction determining that the Owner is not entitled to the access easement from the HOA, or
  - (ii) the Owner upon the entry of a final nonappealable judgment of competent jurisdiction determining that the Owner is is entitled to the access easement from the HOA.
- (j) Upon the depositing of the TDR Deposit with the Escrow Agent the Town will, upon the request of the Owner, transfer all of the TDRs required to be transferred pursuant to Section 4.11 of this Agreement and issue a building permit for the construction of the third building to be constructed on the Mini-Storage Site.

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<sup>1</sup> The parties acknowledge and agree that as of the date of the execution of this Amended Agreement the cost of purchasing one Transferable Development Right is \$44,600.

(k) Pending the entry of a final non-appealable judgment in the Access Lawsuit Town has no obligation to transfer two of the TDRS described in Section 4.11 of this Amended Agreement unless and until Owner has deposited the TDR Deposit with the Escrow Agent pursuant to subsection (i) of this subsection.

(l) If:

(i) the TDR Deposit has not been made as provided in subsection (i), and

(ii) the final non-appealable judgment of a court of competent jurisdiction determines that Owner is not entitled to the access easement from the HOA,

then within ninety days of the entry of such judgment Owner will pay to Town a non-refundable sum equal to the TDR Deposit. If Owner fails to pay such sum to the Town within such ninety day period, the Town is forever relieved of any obligation to transfer any TDRs to Owner or the Commercial or Mini-Tract Sites pursuant to Section 4.11 of this Amended Agreement. In such event, Owner will execute such documentation as may be required by Town to confirm the release of the Town's obligation to transfer any TDRs pursuant to Section 4.11 of this Amended Agreement, and if Owner should fail or refuse to execute such documentation within thirty days after Town's request, Town may prepare and record with the Clerk and Recorder of Summit County, Colorado a notice reciting the applicable facts and confirming the release of the Town's obligation to transfer any TDRs pursuant to Section 4.11 of this Amended Agreement. If Town properly records the notice described in the preceding sentence, Owner releases and discharges the Town from any liability in connection with the recording of such notice. The right to withhold the transfer of any TDRs to the Owner or the Commercial or Mini-Tract Sites is the Town's exclusive remedy for the Owner's failure to timely pay the sum due to Town pursuant to this subsection (l).

(m) Owner will reimburse the Town for its attorneys' fees incurred in connection with the preparation of this Amended Agreement beginning with fees incurred by the Town on October 14, 2009.

4.10 **Shared Curb Cut.** There will be a shared curb cut access for the Commercial Tract and the Town Tract along the southerly side of the Property in a location to be determined as part of the Town's formal land use review process. In connection with the shared curb cut, each party will provide appropriate easements to the other party to allow use of the shared curb cut.

4.11 **Transferable Development Rights.** Town will provide to Owner at Town expense 6.626 TDRs for Owner's use in developing the Commercial and Mini-Storage Tract. The transferable development rights will be provided by the Town when required for the proposed development. Owner shall be responsible for the purchase of any TDRs required to construct more than 41,280.4 square feet on the Commercial and Mini-storage Tracts, subject to Section 4.2(b).

4.12 **Conveyance and Development of Town Tract.**

- (a) The Owner will convey the Town Tract to the Town contemporaneously with the recording of the initial subdivision plat of the Property as described in Section 4.6 with the Summit County Clerk and Recorder's Office. The Owner will transfer the Town Tract to the Town without payment of monetary consideration to the Owner by the Town. Such conveyance will be made by general warranty deed in a form acceptable to the Town Attorney, and, unless otherwise agreed by the Town, will be made free and clear of all liens and encumbrances, except for the lien of the general property taxes for 2008 and subsequent years.
- (b) The Town may (but is not required to) use the Town Tract for the development of affordable housing or for such other use as the Town in its discretion may determine.
- (c) The Town will provide the Owner with a copy of the Town's proposed plan for the initial development and use of the Town Tract; provided, however, that Owner will have no right to approve the Town's plan for the initial development and use of the Town Tract, and the Town may proceed with its plan for the initial development and use of the Town Tract without obtaining the approval or consent of Owner.

4.13 **Development Review, Building, Impact, and Permitting Fees.**

- (a) The Town waives all building, development, impact and permitting fees of any type associated with:
  - (i) the Master Plan as described in Section 4.5;
  - (ii) Initial Subdivision of the Property as described in Section 4.6;
  - (iii) the initial development of both the Commercial Tract and the Mini-Storage Tract and the construction of any buildings thereon as described in Sections 4.7 and 4.8 and depicted in Exhibit A hereof; and
  - (iv) the initial condominium conversion of the Commercial Tract or each building located on the Commercial Tract individually,

provided the condominium conversion is initiated within two years of the date of the issuance by the Town of the first certificate of occupancy for either of the buildings to be located on the Commercial Tract.

- (b) The waiver described in subsection (a) applies only to the development of the Commercial Tract and Mini-Storage Tracts as described in this Amended Agreement, and does not apply to any other resubdivision of the Commercial Tract or the Mini-Storage Tract, or to any subsequent development of either the Commercial Tract or the Mini-Storage Tract occurring after certificates of occupancy have been issued by the Town for both of the buildings to be located on the Commercial Tract and the three (3) buildings to be located on the Mini-Storage Tract pursuant to Exhibit A. If either :
- (i) Owner or Owner's successor in interest proposes a substantial modification to the Town- approved development permit for the initial subdivision and development of the Property; or
  - (ii) the vested property rights for the Town-approved development permit for the initial subdivision and development of the Property expire without the Property being subdivided and fully developed in accordance with such permit, or the vested property rights for the initial subdivision and development of the Property pursuant to the Town-approved development permit are proposed to be extended by the Owner or the Owner's successor in interest,

then the Town may require a modification of the waiver(s) provided for in subsection (a) of this Section.

- (c) The Town will pay for all personnel and professional fees it incurs in reviewing the land use applications for:
- (i) the initial Master Plan as described in Section 4.5;
  - (ii) the Initial Subdivision of the Property as described in Section 4.6;
  - (iii) the initial site specific development permits for the Commercial Tract and the Mini-Storage Tract as described in Sections 4.8 and 4.8; and
  - (iv) the initial condominium conversion of the buildings to be located on the Commercial Tract.

This section is to be liberally construed so as to ensure that Owner pays no Town fees of any kind for the initial entitlement and permitting process

involved in the initial development of the Commercial Tract and the Mini-Storage Tract as described in this Amended Agreement other than:

- (i) all fees associated with Owner's TDRs as described in Section 4.10;
- (ii) the cost of Owner's own consultants; and
- (iii) the cost of preparing the survey and subdivision plat required for the Initial Subdivision of the Property, and the cost of the preparation of any survey and subdivision plat required in connection with the initial condominium conversion of the Commercial Tract, or the buildings to be located on the Commercial Tract, as determined by Owner.

4.14 **Compliance with Town Ordinances.** Upon annexation of the Property to the Town, subdivision and development of the Commercial Tract and the Mini-Storage Tract will conform in all respects with the Applicable Town Ordinances.

4.15 **No Obligation to Develop.** Owner has no obligation to develop all or any portion of the Commercial Tract and Mini-Storage Tract, and will have no liability to the Town or any other party for its failure to develop all or any part of such properties. Owner and the Town contemplate that the Commercial and Mini-Storage Properties will be developed as market conditions dictate and allow.

## 5. **OWNER'S RIGHT TO PREVENT ANNEXATION.**

5.1 If Owner is not satisfied with the results of the Town's land use approval for either the Commercial Tract or the Mini-Storage Tract (or both), Owner may withdraw the entire Annexation Petition up to the time of the final adoption of the Annexation Ordinance. To cause withdrawal of the Annexation Petition Owner must provide written notice of withdrawal to Town in the manner provided in Section 18.8.

5.2 Upon Town's receipt of Owner's timely notice of withdrawal of the Annexation Petition, Town will terminate all proceedings to annex the Property to the Town.

5.3 If Town does not receive written notice of withdrawal of the Annexation Petition prior to the time of the final adoption of the Annexation Ordinance, Owner will have irrevocably waived the right to withdraw the Annexation Petition.

## 6. **UTILITY SERVICE AND PUBLIC IMPROVEMENTS.**

### 6.1 **Extensions of Utility Services and Public Improvements.**

- (a) Except as provided in Section 10 concerning the fees for connecting to the Town's public water system, Owner will pay all costs of acquiring,



designing, constructing and connecting all public improvements and utility services necessary to serve the Commercial Tract and the Mini-Storage Tract, which may include some of the following: parking, curbs, gutters, sanitary and drainage sewers (including, but not limited to, sewer tap fees), water, lighting, electricity, telephone, gas, and fiber optics, all in accordance with applicable Town or utility provider standards and specifications.

- (b) Owner will dedicate to the Town and applicable utility providers, without charge, and free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of all utility lines and other public improvements required for the development of the Commercial Tract and the Mini-Storage Tract. Upon request Owner will also convey the Owner's utility improvements to the appropriate utility provider upon completion and acceptance of the improvements.
- (c) Owner and the Town will work together on installing utility infrastructure to the greatest extent possible to efficiently install the utilities in the most cost effective manner.

6.2 **Reimbursement For Improvements.** Pursuant to Section 9-2-3-7 of the Breckenridge Town Code, Owner may be eligible for reimbursement from future connector(s) to the public improvements and utility services described in Section 6.1 which are extended by Owner to the Commercial Tract and the Mini-Storage Tract. Any claim for reimbursement will be subject to the provisions and requirements of Section 9-2-3-7 of the Breckenridge Town Code. Nothing in this Section limits the legislative authority of the Town to amend or repeal Section 9-2-3-7 after the Effective Date.

## 7. PUBLIC DEDICATIONS.

- 7.1 Owner will make those utility dedications described in Section 6.1.
- 7.2 Owner will dedicate to the Town an 8 foot easement along the southern-most boundary of the Property adjacent to and paralleling CR 450 along the entire length of the Property for purposes of constructing a pathway as depicted on the General Plan of Development.
- 7.3 The Town agrees that no further exactions or dedications, except as expressly stated in this Amended Agreement, shall be required as part of the development of the Commercial and Mini-storage Tracts. The Town further agrees to waive any open space requirements or any fees in lieu thereof in association with the subdivision and/or development of the Commercial and Mini-Storage Tracts.
- 7.4 The Town is responsible for the design, construction, and maintenance of all improvements of any kind, including the costs associated therewith, to or situated

on dedicated land, including, but not limited to, the pathway, affordable housing or other improvements, parking lots, curbs, gutters, sanitary and drainage sewers, lighting, and utility extensions necessary to serve the Town Tract.

- 7.5 Owner agrees to convey to the Town by appropriate conveyance document acceptable in form and substance to the Town Attorney any and all rights it has in the Dowdy Well.
8. **ANNEXATION SURCHARGE.** No annexation surcharge is required to be paid to the Town in connection with the annexation of the Property.
9. **NO COST BENEFIT ANALYSIS.** The Town agrees that Entrada shall not have to complete a cost benefit analysis as part of its application for annexation to the Town.
10. **WATER CHARGES.** The Town waives all water tap fees (called water “Plant Investment Fees” under the Town ordinances) for the Commercial Tract and Mini-storage Tract. As required by Section 12-4-9(A) of the Breckenridge Town Code the Town finds that Owner’s development of the Property (including the conveyance of the Town Tract to the Town) will provide a substantial public benefit justifying the waiver of the Plant Investment Fees. Owner, its successors and assigns, will pay for water service delivered by the Town to the Commercial Tract and the Mini-Storage Tracts as the then-current in-Town water rates. Water users on the Commercial Tract and Mini-Storage Tract are subject to all rules, regulations and ordinances pertaining to the Town's water utility system, including all future amendments.
11. **VESTED PROPERTY RIGHTS.** Upon Final Approval, Owner waives all vested property rights existing on the Property prior to its annexation to the Town. Further, nothing contained in this Amended Agreement constitutes a vested property right for the Property. Owner will be entitled to vested property rights as provided in Section 9-1-17-11 of the Breckenridge Town Code, or such other vested rights as may be provided by law.
12. **REPRESENTATIONS AND WARRANTIES.**
  - 12.1 **Representations and Warranties by the Town.** The Town represents and warrants to Owner as follows:
    - (a) The Town is a Colorado home-rule municipality and has the power to enter into, and has taken all actions to date required to authorize, this Amended Agreement and to carry out its obligations under this Amended Agreement;
    - (b) The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Amended Agreement that has not been disclosed in writing to the Owner;

- (c) The execution and delivery of this Amended Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Amended Agreement will not conflict with or contravene any law, order, rule or regulation applicable to the Town or to the Applicable Town Ordinances or any other Town ordinances;
- (d) This Amended Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms. In accordance with Section 13, the Town will defend the validity of this Amended Agreement in the event of any litigation arising under this Amended Agreement naming the Town as a party or challenging the authority of the Town to enter into or perform its obligations under this Amended Agreement. Should the foregoing representation and warranty of the Town prove to be inaccurate, in whole or in part, such inaccuracy will constitute a material default or breach by the Town under this Amended Agreement. The Town recognizes that the Owner intends to commence construction and expend substantial monies in reliance upon the accuracy of the representation and warranty of the Town as set forth in this Subsection 12.1(d), but Owner acknowledges that it proceeds at its own risk until such time as the Annexation Ordinance is approved.

**12.2 Representations and Warranties by the Owner.** The Owner represents and warrants to the Town as follows:

- (a) The Owner is duly organized, validly existing corporation and in good standing under the laws of the State of Colorado; is qualified to do business in the State of Colorado; and has the legal capacity and the authority to enter into and perform its obligations under this Amended Agreement;
- (b) The Owner knows of no litigation, proceeding or investigation, or threat of any of the same, contesting the powers of the Town, the Owner or any of its principals or officials with respect to this Amended Agreement that has not been disclosed in writing to the Town; and
- (c) This Amended Agreement constitutes a valid and binding obligation of the Owner, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights.

**13. COOPERATION IN DEFENDING LEGAL CHALLENGES.**

- 13.1 If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of the annexation of the Property, the initial zoning of

the Property, the Master Plan, the Initial Subdivision of the Property, or the initial site specific development plans for the Commercial and Mini-Storage Tracts, all as described in Section 4, the Owner and the Town will cooperate in defending such action or proceeding. The Town will take the lead role in defending any such action, including, but not limited to, preparing all pleadings and other required documents, accomplishing any necessary service of process, generating necessary correspondence among the parties and paying one hundred percent (100%) of both court filing fees and the costs of any expert witnesses, depositions, interrogatories, transcripts or other similar costs. Each party will pay its own attorney fees.

- 13.2 Although it is the intent of this Section that the Town will cooperate with the Owner in defending any legal proceeding so long as the Owner determines to continue such defense, if there is a controlling decision of the Supreme Court of the United States, Tenth Circuit Court of Appeals, Supreme Court of the State of Colorado, or Colorado Court of Appeals governing one or more of the issues raised in the legal proceeding which is adverse to the Town's position, the Town will not be obligated to contest or continue the defense of such issue.

14. **REMEDIES.**

- 14.1 **Breach by Owner.** If the Town gives notice to the Owner that Owner is in default under this Amended Agreement and Owner does not cure that default within 30 days following written notice from the Town, the Town has the following remedies which will be cumulative:

- (a) injunctive relief;
- (b) specific performance; and
- (c) any other remedy available at law or in equity, except damages.

The Town will extend the cure period if the nature of the default is such that it cannot reasonably be remedied within 30 days, provided Owner commences the corrective action within 30 days and diligently pursues such correction thereafter. The Town may, in addition to other remedies, withhold approval of any or all building or other permits applied for by the Owner on the Commercial Tract or Mini-Storage Tract, or withhold issuance of certificates of occupancy, until the default or defaults has or have been cured.

- 14.2 **Breach by Town.** If Owner alleges the Town is in default under this Amended Agreement and the Town does not cure this default within 30 days following written notice from Owner, Owner has the following remedies which will be cumulative:

- (a) injunctive relief;

- (b) specific performance; and
- (c) any other remedy available at law or in equity, except damages.

Any remedy available to Owner is limited by the Act. Owner will extend the cure period if the nature of the default is such that it cannot reasonably be remedied within 30 days, provided the Town commences corrective action within 30 days and diligently pursues such correction thereafter.

14.3 **No Remedy For Delay.** The Town is not responsible for and the Owner has no remedy against the Town if development of the Commercial Tract and the Mini-Storage Tract is prevented or delayed for reasons beyond the control of the Town.

14.4 **Mediation.** If a dispute between the Town and the Owner related to the interpretation or enforcement of this Amended Agreement occurs, the parties will endeavor to settle the dispute by mediation with a neutral third party before commencing litigation; provided, however, that either party may seek a preliminary injunction or other provisional judicial relief if, in its judgment, such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the parties will continue to participate in good faith in mediation. If the parties encounter difficulty in agreeing on a neutral third party, they may each appoint a neutral third party, such third parties to appoint a neutral third party to mediate. Each party will pay its own attorneys' fees incurred in connection with a mediation.

15. **DISCONNECTION:**

15.1 **Disconnection Governed By Statute.** Following the Effective Date Owner's right to seek disconnection of the Commercial Tract and the Mini-Storage Tract is limited to those circumstances described in Section 31-12-119, C.R.S.

15.2 **Dedications and Conveyances Made Before Disconnection.** In the event of disconnection of the Property from the Town for any reason, the Town's infrastructure and service obligations required by this Amended Agreement will be void and of no further force and effect, but all dedications and conveyances made under this Amended Agreement will continue in full force and effect unless vacated in the manner provided by law.

16. **GOVERNMENTAL IMMUNITY.** In entering into this Amended Agreement the Town is relying on, and does not waive or intend to waive by any provision of this Amended Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Act, or any other limitation, right, immunity, defense or protection otherwise available to Town, its officers, or its employees.

17. **ANNUAL APPROPRIATION.** Financial obligations of the Town under this Amended Agreement payable after the 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 Amended Agreement do 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.
18. **MISCELLANEOUS.**
- 18.1 **Recording.** This Amended Agreement will be recorded in the Summit County Clerk and Recorder's Office in order to put prospective purchasers of the Property or other interested parties on notice as to the terms and conditions contained herein.
- 18.2 **Entire Amended Agreement.** This Amended Agreement sets forth the entire understanding between the parties concerning the annexation of the Property to the Town, and no other agreement, oral or written, made prior to the date of this Amended Agreement which conflicts with the terms of this Amended Agreement is valid as between the parties.
- 18.3 **Modification.** This Amended Agreement may not be modified except in writing executed by all parties hereto. Oral amendments to this Amended Agreement are not permitted.
- 18.4 **Amended Agreement Runs With The Land.** This Amended Agreement runs with the land and is binding upon the Town and the Owner, its successors and assigns, and all persons who may hereafter acquire any interest in the Property, or any part thereof.
- 18.5 **Assignment.** The Owner will have the right, without the consent of the Town, to assign or transfer all or any portion of its interests, rights or obligations under this Amended Agreement to any affiliate of the Owner or to any third party acquiring an interest or estate in the Property, including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels or of any improvements now or hereafter located within the Property. The express assumption of any of the Owner's obligations under this Amended Agreement by its assignee or transferee will relieve the Owner of any further obligations under this Amended Agreement with respect to the matter so assumed if such release is approved in writing by the Town, which approval will not be unreasonably withheld or delayed. The Owner will give the Town written notice of any such assignment or assumption.
- 18.6 **Severability.** If any provision of this Amended Agreement is found to be invalid, illegal, or unenforceable in any respect in a final, non-appealable decision of a court of competent jurisdiction, the validity, legality and enforceability of the

remaining provisions of this Amended Agreement will not in any way be affected or impaired by such determination.

- 18.7 **Attorney's Fees.** If any action is brought in a court of law by either party to this Amended Agreement concerning the enforcement, interpretation or construction of this Amended Agreement, the prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.
- 18.8 **Notices.** All notices required or permitted under this Amended Agreement must be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies, directed as follows:

If intended for Town to:

Town of Breckenridge  
P.O. Box 168  
150 Ski Hill Road  
Breckenridge, Colorado 80424  
Attn: Town Manager  
Telecopier number: (970) 547-3104  
Telephone number: (970) 453-2251

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

Timothy H. Berry, Esq.  
Timothy H. Berry, P.C.  
131 West 5th Street  
P. O. Box 2  
Leadville, Colorado 80461  
Telecopier number: (719) 486-3039  
Telephone number: (719) 486-1889

If intended for Owner to:

Kurt Ave / Kirk Mickelsen  
PO Box 7399, PMB 193  
Breckenridge, CO 80424  
Telecopier number: (970) 262-7580  
Telephone number: (970) 453-6700

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

David P. Michel, Esq.  
Michel & McQuain, LLC  
P. O. Box 409

Winter Park, CO 80482  
Telecopier number: (970) 726-8333  
Telephone number: (970) 726-3023

Any notice delivered by mail in accordance with this Section will be deemed to have been duly given and received on the third business day after the same is deposited in any post office or postal box regularly maintained by the United States postal service. Any notice delivered by telecopier in accordance with this Section will be deemed to have been duly given and received upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same day to the intended recipient. Any notice delivered by hand or commercial carrier will be deemed to have been duly given and received upon actual receipt. Either party, by notice given as provided above, may change the address to which future notices may be sent. E-mail is not a valid method for giving notice under this Amended Agreement.

- 18.9 **Waiver.** The failure of either party to exercise any of its rights under this Amended Agreement is not a waiver of those rights. A party waives only those rights specified in writing and signed by either party waiving such rights.
- 18.10 **Applicable Law.** This Amended Agreement is to be interpreted in accordance with the laws of the State of Colorado.
- 18.11 **Section Headings.** Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Amended Agreement.
- 18.12 **Terminology.** Wherever applicable, the pronouns in this Amended Agreement designating the masculine or neuter applies equally to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Amended Agreement, the singular includes the plural, and the plural includes the singular. The term “will” indicate a mandatory obligation to be done or performed.
- 18.13 **Incorporation of Exhibits.** All exhibits referred to in this Amended Agreement are incorporated into and made a part of this Amended Agreement.
- 18.14 **No Adverse Construction.** Both parties acknowledge having had the opportunity to participate in the drafting of this Amended Agreement. This Amended Agreement is not to be construed against either party based upon authorship.
- 18.15 **Town Authority.** This Amended Agreement was approved by Resolution No. \_\_\_\_\_, Series 2009, adopted by the Town Council of the Town of Breckenridge, Colorado on \_\_\_\_\_, 2009.

TOWN OF BRECKENRIDGE, a Colorado

ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT



Town corporation

By: \_\_\_\_\_  
Timothy J. Gagen, Town Manager

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek CMC,  
Town Clerk

ENTRADA AT BRECKENRIDGE, INC.,  
a Colorado Corporation

By: \_\_\_\_\_  
Kirk Mickelsen, Vice President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek CMC, Town Clerk, of the Town of Breckenridge, a Colorado Town corporation.

WITNESS my hand and official seal.

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

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Kirk Mickelsen, as Vice President of Entrada at Breckenridge, Inc., a Colorado Corporation.

WITNESS my hand and official seal.

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

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

**General Plan of Development**

**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Public Service Company License Agreement (for Wellington Neighborhood Path)

DATE: October 20, 2009 (for October 27<sup>th</sup> meeting)

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The Town has recently acquired a parcel of land from the Wellington Neighborhood Homeowners Association. The land was acquired to allow for the construction and operation of the pedestrian pathway that the Council has previously discussed and approved.

The land acquired by the Town is subject to an easement owned by Public Service Company of Colorado. Even though the Town owns the land, the PSCo easement precludes the Town from constructing the pathway without obtaining PSCo's consent. This is because Colorado law provides that a landowner cannot use its land in a way that impermissibly interferes with an easement holder's rights, and PSCo has indicated that the construction of a public path within its easement would be an impermissible interference with its easement rights.

However, PSCo will grant the Town formal permission to use the easement to construct the path by entering into a License Agreement with the Town. A proposed License Agreement between the Town and PSCo has been negotiated, and now needs to be formally approved by the Council.

Enclosed with this memo is a resolution approving the License Agreement. The License Agreement itself is Exhibit A to the resolution. The agreement is a standard PSCo form, but has been customized to preserve the Town's protections under the Colorado Governmental Immunity Act. The agreement also limits the Town's obligation to indemnify PSCo for injuries arising on the path by providing that such indemnification is required only "(t)o the extent permitted by law." Both the reference to the Governmental Immunity Act and the limit on the Town's indemnification obligation are good provisions for the Town.

I have reviewed the License Agreement and am satisfied with its contents. I have no objection to the Town entering into the proposed License Agreement with PSCo.

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

1 ***FOR WORKSESSION/ADOPTION – OCT. 27***

2  
3 A RESOLUTION

4  
5 SERIES 2009

6  
7 A RESOLUTION APPROVING A LICENSE AGREEMENT WITH PUBLIC SERVICE  
8 COMPANY OF COLORADO  
9

10 WHEREAS, the Town desires to obtain a license to use an easement owned by Public  
11 Service Company of Colorado (“PSCo”) for the construction of a pedestrian pathway; and  
12

13 WHEREAS, PSCo has agreed to grant the requested license to the Town; and  
14

15 WHEREAS, a proposed form of License Agreement between the Town and PSCo has  
16 been prepared, a copy of which is marked Exhibit “A”, attached hereto and incorporated herein  
17 by reference; and  
18

19 WHEREAS, the Town Council has reviewed the proposed License Agreement, and finds  
20 and determines that it should be approved.  
21

22 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
23 BRECKENRIDGE, COLORADO, as follows:  
24

25 Section 1. The proposed License Agreement between the Town and Public Service  
26 Company of Colorado (Exhibit "A" hereto) is approved; and the Town Manager is hereby  
27 authorized, empowered, and directed to execute such License Agreement for and on behalf of the  
28 Town of Breckenridge.  
29

30 Section 2. If at the time of the adoption of this resolution the proposed License  
31 Agreement with Public Service Company of Colorado has already been executed by the Town  
32 Manager, the Town Manager’s previous execution of such License Agreement for and on behalf  
33 of the Town of Breckenridge is hereby ratified, confirmed and approved.  
34

35 Section 3. Minor changes to or amendments of the approved agreement may be made by  
36 the Town Manager if the Town Attorney certifies in writing that the proposed changes or  
37 amendments do not substantially affect the consideration to be received or paid by the Town  
38 pursuant to the approved agreement, or the essential elements of the approved agreement.  
39

40 Section 4. This resolution shall become effective upon its adoption.  
41

42 RESOLUTION APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_, 2009.  
43  
44  
45

TOWN OF BRECKENRIDGE

By \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek,  
CMC, Town Clerk

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney                      Date

Licensee: Town of Breckenridge  
Investigation #: 2009-170  
Line No. Dillon-Breckenridge 230kV  
Plat No. 1170-002.12  
10/09

File With Document #: 90300  
Agent: Lee  
Engineer: Cozad  
Section 32 Twp 6 S Rge 77 W  
County Summit

## LICENSE AGREEMENT

This LICENSE AGREEMENT ("License") is made this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between PUBLIC SERVICE COMPANY OF COLORADO, a Colorado Corporation hereinafter called "Licensor," and the TOWN OF BRECKENRIDE hereafter called "Licensee."

### RECITALS

A. Licensor is the owner of an **easement or right-of-way** for utility facilities (the "Premises"), and desires to protect the facilities located thereon and preserve the future use of said easement or right-of-way, which is more particularly described as follows:

A parcel of land located in Section 32, T.6 S., R. 77 W., 6<sup>th</sup> P.M., Summit County, Colorado, as described at Reception No. 171334 in the office of the Summit County Clerk and recorder.

B. Licensee desires to construct a paved pedestrian walkway ("licensed facility") in, under, or along portions of the Premises as more particularly shown on Exhibit A, attached hereto and made a part hereof, and desires to obtain Licensor's permission therefore.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor hereby grants to Licensee, with respect to such interest as Licensor may have in the Premises, the authorization to construct, operate, maintain, repair, inspect, remove, and replace the licensed facility in, on, under, or along the Premises, subject to the following:

(1) Licensor is the owner of a limited interest in the Premises. Licensee shall bear the sole obligation of obtaining from the fee title owner of the Premises or others owning proprietary interest in the Premises, such authority or rights as Licensee may need in addition to this license for Licensee's use of the Premises. Licensee agrees that any authorization granted herein is subject to Licensee obtaining such additional authorization.

(2) Licensor intends to use the Premises for the construction, operation, maintenance, repair, replacement, and relocation of its utility facilities, and the rights herein granted to Licensee for the use of the Premises are subject to the rights of Licensor to use the Premises for such purposes, which rights Licensor hereby expressly reserves.

(3) Licensee shall contact the Utility Notification Center of Colorado (1-800-922-1987) for location of any underground utilities, at least two working days prior to the commencement of construction on the Premises. Further, if Licensor has constructed electric transmission facilities on the Premises, Licensee shall contact Licensor's Electric Transmission Lines department at (303) 273-4669 at least four working days prior to the commencement of construction on the Premises. At the discretion of Licensor's Electric Transmission Lines department, construction activities on the Premises shall be performed only when Licensor's representative is present. The instructions of such representative relating to the protection of Licensor's facilities will be followed by Licensee, and will be considered conditions of this authorization.

(4) Licensee shall not do or permit to be done any blasting above, underneath, or near facilities on the Premises without first having received prior written permission from Licensor. Any blasting shall be done in the presence of a representative of Licensor and in accordance with directions such representative may give for the protection or safety of facilities in the area.

(5) Any damage to the Premises, or to Licensor's facilities located on the Premises, as a result of the construction, operation, maintenance, repair, inspection, removal, replacement, or relocation of the licensed facility shall be paid for or repaired at the expense of Licensee.

(6) Licensee agrees and understands that if Licensor has constructed natural gas gathering, storage, transmission, distribution, or related facilities on the Premises, Licensee has been fully advised by Licensor that such natural gas facilities may now transport and may continue to transport natural gas at significant pressures. Licensee shall advise all of its employees, agents, contractors, and other persons who enter upon the Premises, pursuant to the provisions of this license, of the existence and nature of such natural gas facilities and the danger and risk involved.

(7) Licensee agrees and understands that the natural gas facilities of Licensor, if located on the Premises, may be subject to cathodic protection by rectifier and related anode beds, and that Licensor shall not be liable for stray current or interfering signals induced in the licensed facility as a result of the operating of Licensor's cathodic protection system.

(8) Licensee agrees and understands that if Licensor has constructed electric transmission, distribution, or related facilities on the Premises, Licensee has been fully advised by Licensor that such electric facilities may now transmit and may continue to transmit electric current at significant voltages, and that the conductors on electric lines may not be insulated. Licensee shall advise all of its employees, agents, contractors, and other persons who enter upon the Premises, pursuant to the provisions of this license, of the existence and nature of such electric facilities and the potential danger and risk involved.

(9) (a) (i) As used in this license, the term "Claims" means (1) losses, liabilities, and expenses of any sort, including attorneys' fees; (2) fines and penalties; (3) environmental costs, including, but not limited to, investigation, removal, remedial, and restoration costs, and consultant and other fees and expenses; and (4) any and all other costs or expenses.

(ii) As used in this license, the term "Injury" means (1) death, personal injury, or property damage; (2) loss of profits or other economic injury; (3) disease or actual or threatened health effect; and (4) any consequential or other damages.

(b) To the extent permitted by law, Licensee covenants and agrees to at all times protect, indemnify, hold harmless, and defend Licensor, its directors, officers, agents, employees, successors, assigns, parents, subsidiaries, and affiliates from and against any and all Claims arising from, alleged to arise from, or related to any Injury allegedly or actually occurring, imposed as a result of, arising from, or related to (1) this license; (2) the construction, existence, maintenance, operation, repair, inspection, removal, replacement, or relocation of the electric transmission or distribution; natural gas gathering, storage, transmission, or distribution; or any other utility facilities located on the Premises; or (3) Licensee's or any other person's presence at the Premises as a result of or related to this license.

(c) Licensee's duty to protect, indemnify, hold harmless, and defend hereunder shall apply to any and all Claims and Injury, including, but not limited to:

(i) Claims asserted by any person or entity, including, but not limited to, employees of Licensee or its contractors, subcontractors, or their employees;

(ii) Claims arising from, or alleged to be arising in any way from, the existence at or near the Premises of (1) electric power generation, transmission, distribution, or related facilities; (2) electricity or electromagnetic fields; (3) natural gas gathering, storage, transmission, distribution, or related facilities; or



(iii) Claims arising from, or alleged to be arising in any way from, the acts or omissions of Licensee, its sublessees, invitees, agents, or employees.

(d) By agreeing to indemnification hereunder, Licensee does not waive any provisions of the Colorado Governmental Immunity Act.

(10) A copy of this license shall be on the Premises and available during construction of the licensed facility.

(11) This license is not transferable or assignable without the express written permission of Licensor.

(12) Upon abandonment of the use of the Premises by Licensee or removal of the licensed facilities, this license shall terminate.

(13) This license shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

(14) This license may be executed in two original counterparts, each of which shall be deemed an original of this instrument.

(15) Additional Provisions:

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

PUBLIC SERVICE COMPANY OF COLORADO

By: \_\_\_\_\_  
Jay Herrmann, Regional VP  
Xcel Energy Services, Inc.  
Agent for Public Service Company of Colorado

Agreed to and accepted by Licensee this 21st day of October, 2009.

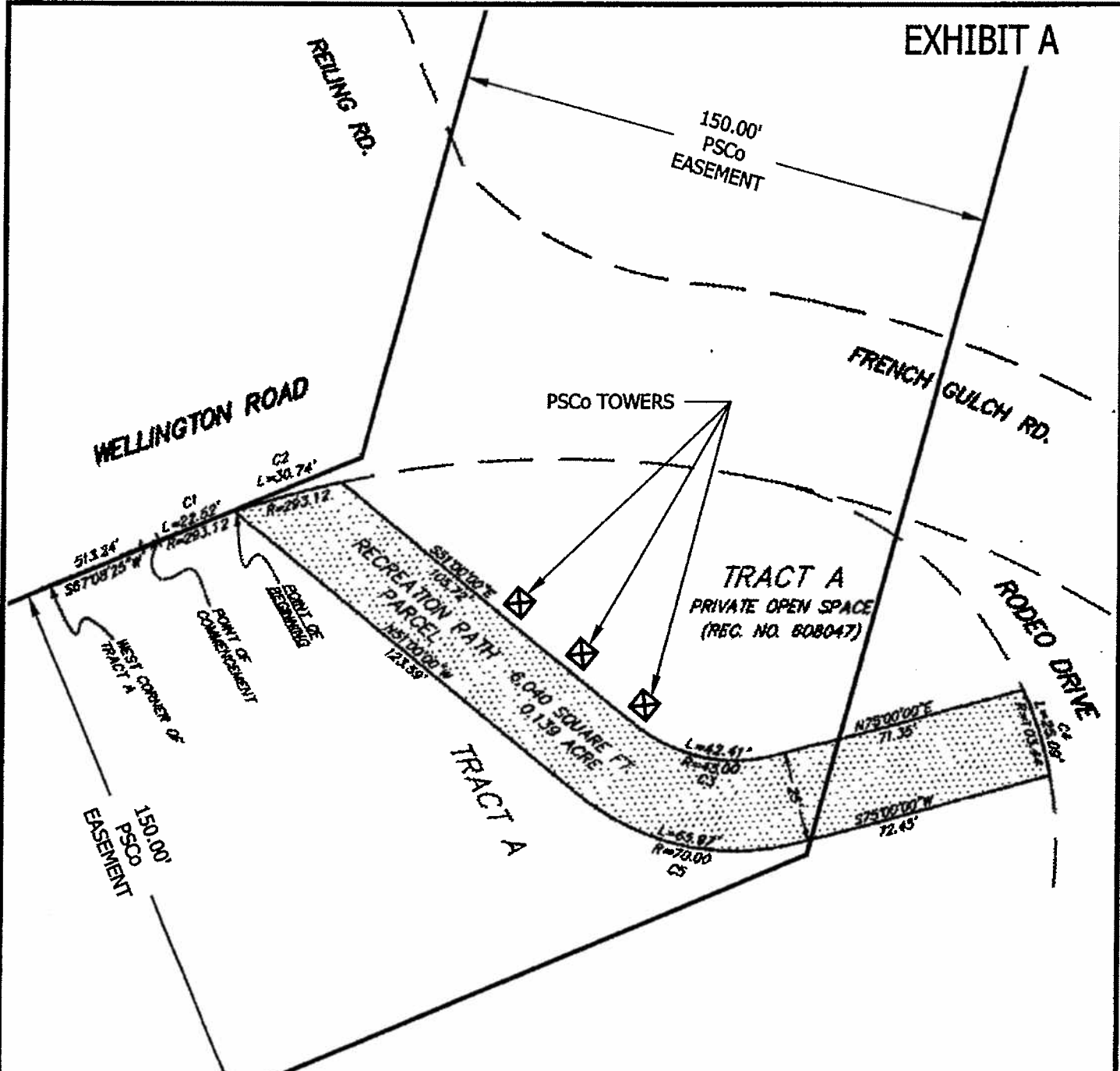
Town of Breckenridge

  
\_\_\_\_\_  
Tim Gagen, Town Manager

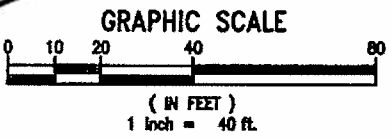
150 Ski Hill Road  
P.O. Box 168  
Breckenridge, CO 80424

970-453-3161

# EXHIBIT A



NOTE:  
THIS SKETCH IS MEANT FOR INFORMATIONAL PURPOSES ONLY.  
IT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.



CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C1	22.52'	283.12'	47°10'	S89°20'54"W	22.52'
C2	30.74'	283.12'	67°03'	N74°33'16"E	30.73'
C3	42.41'	43.00'	54°00'00"	S70°00'00"E	42.06'
C4	25.09'	70.00'	135°34'00"	S17°30'46"E	24.02'
C5	63.97'	70.00'	54°00'00"	N70°00'00"W	63.58'

DWG: L2009-170ML\_EXHIBIT-A.dwg

LICENSEE: <b>TOWN OF BRECKENRIDGE</b>		INVESTIGATION NO.: 2009-170	
SECTION 32 6TH PRINCIPAL MERIDIAN	TOWNSHIP: 6 SOUTH SUMMIT COUNTY, COLORADO	SCALE: 1"=40' DRAWN BY: RW/cah	
PLAT NO.: 1170-002.12		DOCUMENT NO.: 90300	AGENT: M. LEE
		DATE: 10-20-09	



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## MEMORANDUM

**TO:** Town Council

**FROM:** Mark Truckey, Assistant Director of Community Development

**DATE:** October 16, 2009

**SUBJECT:** Town Comprehensive Plan Annual Reaffirmation

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Attached is a resolution re-adopting the Town's Comprehensive Plan as the Town's annexation plan. The Colorado Revised Statutes relating to annexations require that all annexations be planned in a manner consistent with an annexation plan for the three mile area surrounding the Town. The Town's Comprehensive Plan serves as its annexation plan and it must be current within one year of any annexation. Therefore, the Town has reaffirmed the existing Comprehensive Plan by resolution on an annual basis.

This is largely a house-keeping matter, as no changes to the plan itself are proposed with this action.

**FOR ADOPTION - OCTOBER 27, 2009**

A RESOLUTION

SERIES 2009

A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE COMPREHENSIVE PLAN AS THE TOWN'S ANNEXATION PLAN PURSUANT TO SECTION 31-12-105(1)(e), C.R.S.

WHEREAS, Section 31-12-105(1)(e), C.R.S., requires that prior to completion of any annexation a municipality shall have in place a plan for the area proposed to be annexed, in which the plan shall generally describe certain matters described in such statute; and

WHEREAS, Section 31-12-105(1)(e), C.R.S., further requires that the annexation plan be updated at least once annually; and

WHEREAS, the Town Council finds and determines that the Town of Breckenridge Comprehensive Plan satisfies the requirements of an annexation plan under Section 31-12-105(1)(e), C.R.S., and should serve as the Town's annexation plan required by such statute.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO.

Section 1. The Town of Breckenridge Comprehensive Plan, with the accompanying maps, plats, charts, and descriptive matter, is adopted as the Town's Annexation Plan pursuant to Section 31-12-105(1)(e), C.R.S.

Section 2. This resolution shall become effective upon adoption.

RESOLUTION APPROVED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2009.

TOWN OF BRECKENRIDGE

By \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

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Mary Jean Loufek, CMC,  
Town Clerk

APPROVED IN FORM

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Town Attorney                      date



## Scheduled Meetings, Important Dates and Events

**Shading indicates Council 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. All Council Meetings are held in the Council Chambers, 150 Ski Hill Road, Breckenridge.*

### **OCTOBER 2009**

Tuesday, October 13; 3:00/7:30pm	***BUDGET RETREAT***
Tuesday, October 13; NO WORK SESSION/7:30pm	First Meeting of the Month
October 16; 8am; Location TBD	Coffee Talk
Tuesday, October 27; 3:00/7:30pm	Second Meeting of the Month
Thursday, October 29-30	CAST- Grand Junction

### **NOVEMBER 2009**

Tuesday, November 10; 3:00/7:30pm	First Meeting of the Month
Tuesday, November 24; 3:00/7:30pm	Second Meeting of the Month
Thursday, November 26-27	Town Hall Closed for Thanksgiving

### **FUTURE DATES**

Friday, December 4	Town Holiday Party
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### **OTHER MEETINGS**

1 <sup>st</sup> & 3 <sup>rd</sup> Tuesday of the Month; 7:00pm	Planning Commission; Council Chambers
1 <sup>st</sup> Wednesday of the Month; 4:00pm	Public Art Commission; 3 <sup>rd</sup> floor Conf Room
2 <sup>nd</sup> & 4 <sup>th</sup> Tuesday of the Month; 1:30pm	Board of County Commissioners; County
2 <sup>nd</sup> Wednesday of the Month; 12 pm	Breckenridge Heritage Alliance
2 <sup>nd</sup> Thursday of the Month; 5:30pm	Sanitation District
3 <sup>rd</sup> Monday of the Month; 5:30pm	BOSAC; 3 <sup>rd</sup> floor Conf Room
3 <sup>rd</sup> Thursday of the Month; 7:00pm	Red White and Blue; Main Fire Station
4 <sup>th</sup> Wednesday of the Month; 9am	Summit Combined Housing Authority
Last Wednesday of the Month; 8am	Breckenridge Resort Chamber; BRC Offices

Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition