



**BRECKENRIDGE TOWN COUNCIL WORK SESSION**  
**Tuesday, February 22, 2011; 3:00 p.m.**  
**Town Hall Auditorium**

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

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*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:** February 16, 2011

**Re:** Town Council Consent Calendar from the Planning Commission Decisions of the February 15, 2011, Meeting.

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**DECISIONS FROM THE PLANNING COMMISSION AGENDA OF February 15, 2011:**

**CLASS C APPLICATIONS:**

1. Sundowner I Exterior Remodel, PC#2011002, 445 Four O'clock Road

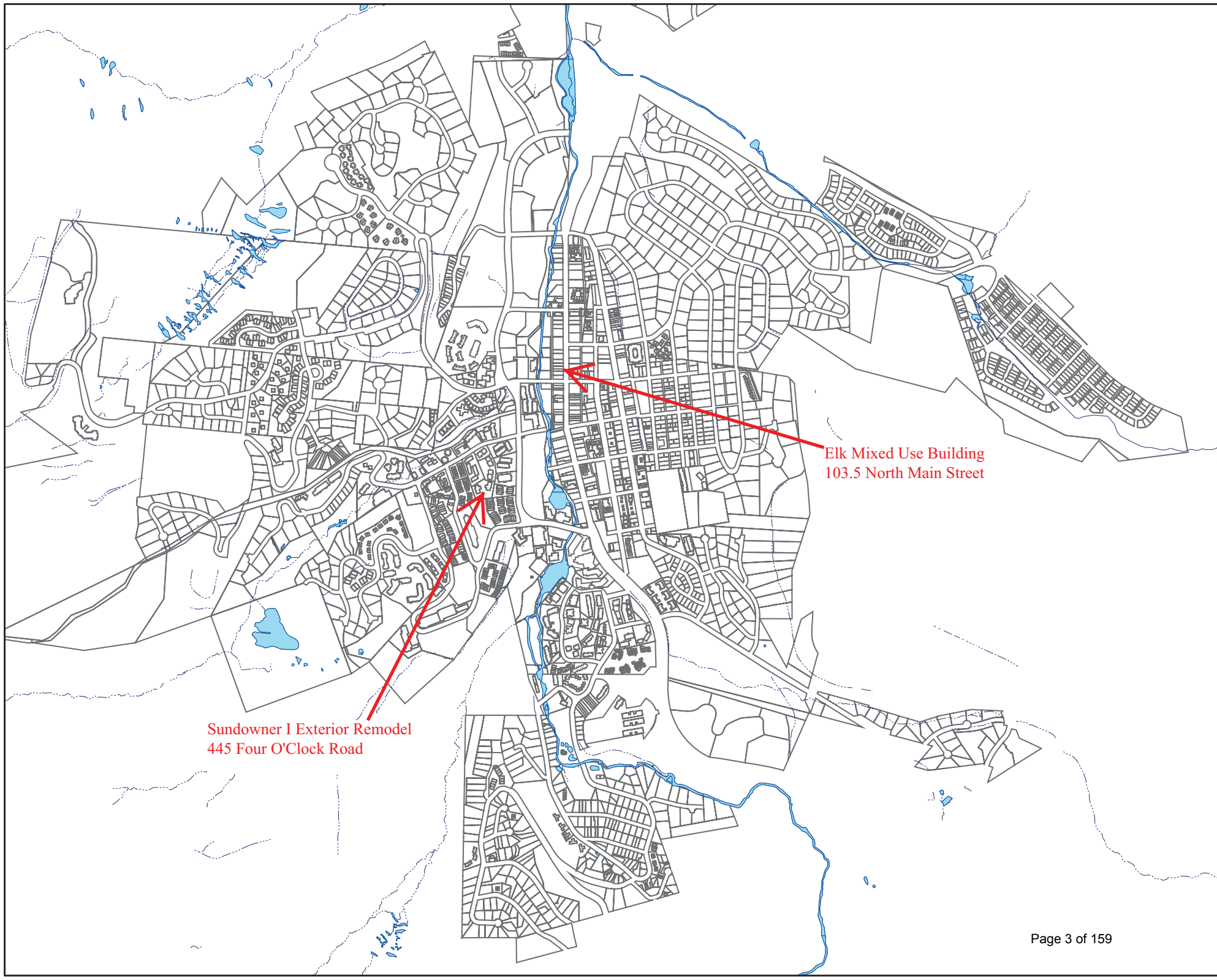
Exterior remodel of two-building condominium complex to include: Replace all exterior material with cedar siding, add new natural stone veneer to base of building, new cedar railings with metal pewter balusters, new timber entry gable features, and four new window locations. Approved.



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# Breckenridge South

printed 2007



Sundowner I Exterior Remodel  
445 Four O'Clock Road

Elk Mixed Use Building  
103.5 North Main Street

PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 p.m.

ROLL CALL

Trip Butler	Kate Christopher	Gretchen Dudney
Rodney Allen	Dan Schroder	Jack Wolfe
Dave Pringle		
Mark Burke (Town Council)		

APPROVAL OF MINUTES

With one change, the February 1, 2010, Planning Commission meeting minutes were approved unanimously (7-0). Mr. Pringle: Page 2 of minutes: “It could be that if we deny or approve an application...”

APPROVAL OF AGENDA

Mr. Neubecker stated that a memo on the Vendor Cart moratorium, which was recently passed by Town Council at first reading, was in the Commissioners’ notebooks. Questions will be discussed during Other Matters at the end of the meeting. With no other changes, the Agenda for the February 15, 2011 Planning Commission meeting was approved unanimously (7-0).

**CONSENT CALENDAR:**

1. Sundowner I Exterior Remodel (JP) PC#2011002; 445 Four O’clock Road

With no requests for call up, the consent calendar was approved as presented.

**WORKSESSIONS:**

1. Forest Health / Voluntary Defensible Space Update (JC & MGT)

Ms. Cram and Mr. Thompson presented an update on the status of the Forest Health and Voluntary Defensible Space programs at the Town of Breckenridge.

Mountain Pine Beetle: In April of 2010 the Mountain Pine Beetle (MPB) Ordinance was updated based on public feedback (including HOAs) and the Red, White and Blue Fire District. The primary changes to the Ordinance are: requirement of annual removal of dead and infested trees; enforcement of Ordinance on a complaint basis; no Class D permit required for approved contractors to remove dead and infested trees. Thirty contractors were on the approved list.

In 2010, Staff received 58 complaints from property owners that reported that their neighbors had not removed required dead and infested trees by the July 15<sup>th</sup> deadline. Staff sent letters to all 58 property owners. All but one property owner complied by removing dead and infested trees shortly thereafter and the last property owner submitted a plan to remove dead and infested trees, which was approved by the Community Development Director.

Staff believes that the current MPB program is working well. We plan to hold contractor training sessions again this spring to continue to educate tree removal contractors on the Town’s current policies, programs and goals for forest health.

Voluntary Defensible Space: In June of 2009 the Town adopted a Mandatory Defensible Space Ordinance. In August of 2009 the Mandatory Ordinance was repealed and replaced with a Voluntary Defensible Space Ordinance to be administered by the Red, White and Blue Fire Protection District (RWB). The Fire Wise Task Force, consisting of one Council member, Town Staff, and several Breckenridge citizens, was also created. In 2009 RWB reported that 250 properties had requested voluntary inspections and subsequently completed creating defensible space around their homes. In 2010 the RWB reported that 29 additional properties had requested inspections and created defensible space. Staff will continue to do public education and review of the program with RWB.

In 2010 staff looked at the subdivisions in Town that should create voluntary defensible space based on their proximity to Forest Service land and large tracts of Open Space. Subdivisions within the Historic District, Wellington Neighborhood and Vista Point/Gibson Heights were not included in the evaluation. Vacant lots were

also not included. Staff estimated that there are approximately 1,674 single family homes that should create defensible space within Town limits. According to information provided by RWB, 279 or 16% of the properties have created Voluntary Defensible Space.

Fuels Reduction and Fuel Breaks: In January of 2010 the Town of Breckenridge and Summit County Open Space applied for the Colorado Forest Watershed Restoration Grant, established by the General Assembly through House Bill 1199, and was selected for a financial assistance matching grant. The Colorado State Forest Service offered the Town and County \$148,259 in state grant funds to support our project titled “Town of Breckenridge and Summit County Fuels Reduction and Watershed Protection Project” on 92 acres.

The goal of the 2010 project was to implement fuels reduction and watershed protection actions on 96 acres of Town of Breckenridge (TOB) and Summit County (County) owned open space lands (40 acres of County land, 34 acres of TOB land, and 22 acres of jointly owned land), all located adjacent to vulnerable residential lots and public infrastructure. The area for this project includes multiple parcels prioritized in a 2008 Town-commissioned study that identified Town-owned open space parcels that were highly susceptible to mountain pine beetle (MPB) infestation and directly adjacent to residential areas. The project area is located in and around the TOB, Farmers Korner subdivision, and the County Commons (County office buildings and hospital). The targeted parcels that the Town and County have been working on include F&D Placer, Discovery Hill Tract D, Highlands 3/Summit Estates, Woods Road/Pence Miller, Lomax Placer, Iowa Hill, Corkscrew, Barney Ford Woods, Moonstone, Blue Danube and the County Commons. This project involves the removal of all dead, infested and susceptible lodgepole pine trees in an effort to create fuel breaks between the more backcountry areas of the Golden Horseshoe and the residential subdivisions. Management actions will include the removing and disposing of standing and downed timber in a fire break configuration, piling of some slash for future prescribed burning by the RWB, and lopping and scattering where appropriate. Lodgepole pines will be targeted for removal, while understory spruce, fir, and aspens will be retained.

In January of 2011 The Town of Breckenridge and Summit County applied for a Colorado Forest Restoration matching grant of \$150,000. The goal of this project is to implement fuels reduction, forest health improvements, fire breaks and watershed protection on approximately 101 acres of Town of Breckenridge and Summit County owned open space lands (3.2 acres of County land, 9.5 acres of TOB land, and 88.4 acres of jointly owned land), located adjacent to residential lots and public infrastructure. The project area is located in and around the TOB, Summit Cove, and the Golden Horseshoe. All projects are located upstream of Dillon Reservoir, Denver's primary water source, and Colorado River headwaters. The Grant funds will be used to remove targeted trees from the following TOB and County owned parcels: Dry Gulch-37 acres, Fishhook-3.2 acres, Corkscrew Flats-7.1 acres, Trappers Glen-2.4 acres, Detroit Placer-29.6 acres, and Rac Jac Way-21.8 acres, for a total of approximately 101 acres. We have also recently adopted the revised landscaping policy, with new guidelines to come.

Gary Green (RWB Fire Chief): Happy with the local and state cooperation. Wildfire is low incident, but very high risk. Work done so far has earned regional and national recognition. Town and staff should be very proud to be on the cutting edge of wildfire preparedness.

Kim Scott (Captain, RWB): It is getting greener here as result of the cuts we've done. It's a package of fire protection, watershed protection, etc. Unique issues here with one road out of town. Education is sometimes face to face, sometimes with HOAs, realtors, insurance companies, etc. We try to work closely with HOAs to address insurance company concerns. We want to educate people of the whole picture for the community, not just their own property.

*Commissioner Questions / Comments:*

Ms. Dudley: The issue of insurance companies may be an concern that the Town Council wants to address on a national issue. Perhaps a letter to someone in Washington, DC? Could you explain about the forest cuts adjacent to forest service? (Capt. Scott: It's probably 2012-2013 before we can get action from the forest service.)

Mr. Schroder: The projection is that all mature pines will die within the decade. There will be a slow down.

Mr. Pringle: Kim, do have any data about lower insurance rates for those who have complied with defensible space? (Capt. Scott: Insurance companies use zip codes, they don't seem to care or know if you have complied. They are not well educated. We've been trying to educate insurance companies.

It's really up to the agent to work on behalf of the homeowner. A lot of the fear of insurance companies is coming from their experience in Boulder/Four Mile Canyon. Some owners are being dropped by their insurance company without even getting much advanced notice.) (Chief Green: It's important to work with your insurance agent to see if rates can be adjusted.) Have pine beetles slowed down? It seems like it was spreading at a regular rate, and then dropped off. (Chief Green: I am interested to see if the extremely low temperatures will have an impact.) (Capt. Scott: It seems to be heading toward the Front Range. I can get that information for you.) (Mr. Grosshuesch: Paul Cada from Forest Service said that we are at the upper elevation reaches of the pine beetle. We also had a few good years of moisture, which has helped. There could also be a lull because some are staying in trees for two seasons. But it did slow down last year, and no one has an explanation for it. ) Has anybody gone back to Barton Creek to see how the forest has regenerated over the past 20 years? (Mr. Allen: Its one of the most diverse forests in the county.) Maybe we should be more proactive in the future about clear cuts and forest management. It may be a good idea to take staff and the Commission on a field trip to see where prescriptive burns have been used. It has come back with good wildlife.

Mr. Burke: How do we know that all 58 property owners have complied? Does staff go out to verify this? (Mr. Thompson: Yes, we do inspections.) To RWB: Will we do anything different this year to educate the public? (Capt. Scott: People were concerned about the mandatory ordinance, maybe that's why we got more participation.). What can Town do to bring attention to this without raising concern? (Mr. Grosshuesch: Ongoing education efforts with defensible space.) (Capt. Scott: We are looking for a variety of media sources. It could be through the water bills. (Ms. Cram: Kim DiLallo and I are working together on this aspect of education.) (Capt. Scott: We are open to other ideas for education.)

#### ***TOWN COUNCIL REPORT:***

Mr. Burke: There was a moratorium on vendor carts. Part of the concern is that there is not a consensus of what the rules should be. Concern is that we would get a lot of new applications, since this has been an agenda topic and people may be getting ready to submit applications. Council will also allow free basement density for commercial landmarked buildings, as an incentive. (Mr. Wolfe: I understand that the Council wants to allow more use of fiber cement siding. Was this a philosophical change? Don't we still want rustic mountain architecture? (Mr. Pringle: This will change the character of the town. Will people be allowed to paint their house bright colors? All we can regulate is chroma and intensity. Now we will see more solid body stains.) (Ms. Christopher: In my experience, this will weed itself out. There may be a few cases that are not what we like, but it usually takes care of itself.)

#### ***PRELIMINARY HEARINGS:***

1. The Elk Mixed Use Building (MM) PC#2011001; 105 North Main Street

Mr. Mosher presented an application to construct a 3,015 square foot mixed use building with commercial/retail and workforce housing uses. The commercial/retail use occurs on the front portion of the site on three levels (one below grade). The residential workforce housing will be below grade at the back portion of the site. There will be an attached garage for the residential use. This proposal was heard as a worksession on November 2, 2010. At that time, the applicant and agent were seeking to closely replicate the historic Elk Hotel building, based on a photo. After that worksession the proposal was abandoned. This proposal is to replicate the building massing and form from Main Street, with the proposed east elevation conforming to a commercial/retail appearance rather than the historic hotel.

Prior to buying this property (by the applicant or the neighbor to the north) there was a parking and snow stacking easement recorded, which was also approved by the Town. It stated that all parking and snow stacking met town codes up to build-out of the property. The easement goes past the property line, onto the Gold Pan property. The proposed building encroaches into the parking easement, which the Town Attorney has stated is OK. But we will not recognize the parking off the property. 65% commercial and 35% residential are proposed. Residential is below grade in the rear.

The character of the old Elk Hotel was more residential. This building has a commercial character on the lower level, which is consistent with the historic use on the south side of this character area. Density is over 9 UPA, with negative points. Average module size should be less than 1,400 square feet. The two modules are broken up with a flat roof connector. Mr. Mosher read from policy 80A in the Handbook of Design Standards, on module size and dimensions. “Connector links should be used to link smaller modules.” Mr. Mosher showed graphically how a change could be made to these plans.

Outbuilding should be more rustic in character, less detail than what is shown on the plans. The main building is one and one-half story tall, but covered porch brings the scale down along the Main Street elevation. The proposed building materials include cut stone, like on Struve Building (122 S. Main Street). North elevation, stone is very tall, should be changed to look like an accent or foundation. It might confuse the historic character if stone was allowed too tall. Staff would like to see both bay windows come off the proposal since this is a commercial building, not residential. The railing on flat roof portion should be simplified to be in better compliance with Historic District designs. Only two dormers are proposed on the main building.

On the plans, the building are dimensioned at the recommended relative setbacks, but measured to the foundation, not to the roof overhang. Eaves should be measured for setbacks. As drawn, there would be negative six (-6) points incurred. (Mr. Pringle: Where do we allow eave encroachments?) That is in the absolute Policy 9, not the relative portion. Mid-block connection will be paid for and constructed by the applicant on both properties (Lots 79 and 80), with neighbor’s approval. Applicant will build the walkway and landscape it, and get positive points. The site has 11% permeable space, but the dimensions and areas are too small to qualify as open space as defined in the Code. Any open space must be five feet minimum in any direction, and at least 50 square feet, to qualify. Therefore, no open space is provided. That would mean -6 points are incurred. Staff has three suggestions: One option to help mitigate this is to seek positive points under the newly adopted Energy Policy. This is our preferred option as it is how the Code functions. Another option is to reduce the building footprint to obtain the needed open space. The last option, and the most difficult to justify, is to provide open space in the future, when Riverwalk is expanded behind this property, and this on-site parking could go into Parking Service Area (thus becoming open space). But we don’t know if or when the Riverwalk expansion would happen. (Mr. Pringle: Could there be a covenant we could get to ensure this provision of open space in the future that runs with the land?) Yes, but Town Attorney and Staff are uncomfortable with that route.

Two bedroom employee housing unit proposed on lower level. Drainage information will be provided at last meeting.

#### **Staff Recommendation**

With this property (and the neighboring lot) sharing a parking/snow stacking agreement, the development of the property has inherent site restrictions and parking / snow stacking benefits to the properties.

Overall, Staff believes the Applicant is off to a good start on creating a viable infill project along this portion of Main Street. Staff had the following questions for the Commission:

1. Did the Commission support the breakup of the module sizes?
2. Did the Commission believe the one-story flat roof portion of the building would be adequately hidden from public view?
3. Did the Commission support the massing and form (main structure and outbuilding) as shown on the plans?
4. Did the Commission support Staff’s interpretation on lessening the detail on the outbuilding?
5. Did the Commission believe the bay windows should be removed from the commercial building?
6. Of the three options Staff described regarding open space, did the Commission have comments on the preferred option?

We would also like comment on the proposed concept of the connector element not literally following the Priority Policy 80/A.

Janet Sutterley, Architect and Agent: I want to review the changes from last year's worksession. The front module size is down to 1,195 sq. ft. We originally wanted the above ground density up to the maximum 12 UPA, but reduced that, which also reduced the negative points incurred. It was suggested by the Commission that we reduce the overall height of the main building, so we dropped it by 16 inches. We also abandoned any planned historic replication and chose to follow the massing of the historic structure instead. I see all of the issues (questions) listed at the back of the report as similar issues.

As for the required link as described under Policy 80/A, the purpose of a link is to separate larger modules, to reduce mass and scale. Yes, a flat roof is proposed on the plans, but a portion is also an upper level deck between the modules. It's a useful space. I was not looking at it so much as a flat roof, but as a useable space. Links are also used on historic structures to protect and expose as much historic fabric as possible, but this is new construction in this case. We will still have the minimum two foot setback to the connector on the north side of the connector link, and it will be seen from the walkway. On the south side, it requires a site specific solution since this abuts a two-story tall flat wall. In this case a literal interpretation is contrived and does not function. It would lead to a dark space where people could hang out and do "things". It will have to be fenced off anyway to discourage pedestrian activity in the space. It will be dark, icy, and plants won't grow. It makes more sense to treat link as I have proposed, filling in against the property line.

We stepped back the south front corner of building to maintain visibility of the historic window at the Gold Pan (NE corner). Behind the Gold Pan and past the edge of the building, we maintain natural light to window well of the employee housing unit below. There is plenty of past precedent for not having literal link: The Bailey Building (Welcome Center), Starbucks, and most notably, the neighboring building (to the north). In each case, those were site specific solutions. One project where the link criteria is the recently approved McAdoo building. But that was on a footprint lot within a master plan. And most importantly, the sides of the building could be seen from all angles of the lot. This should be on a "case by case" basis, but a literal link is not appropriate on this project.

My real hot button is the open space requirement. We have 11.3% permeable area on the site. Since none of this qualifies as open space, we have been told the proposal will receive negative six (-6) points. I looked at recent projects around Town and specifically in the Historic Commercial Core. This issue has been dealt with in a loose manner. Open space and permeable space have been lumped together. None of the projects I reviewed followed this definition. (Ms. Sutterley discussed some of these projects.) Would like the Commission to consider this. We do have some open space areas. I feel like our 11.3% should be at least partially counted. I am inclined to support -3 points, not -6 points.

Ms. Sutterley then discussed the roof overhang encroachments.

Items 4 and 5 from the staff report are easy to address. Dealing with bay windows and stone, as well as the detailing on the outbuilding can be addressed at the next hearing. One example of the level of detail wanted on the garage is the ornate trim on the stable behind the Brown Hotel. We are re-thinking the use of the stone. We want to have something interesting to look at as pedestrians walk through the site between Lots 79 and 80. We are supposed to be a residential character, and residential buildings did have bay windows. (Mr. Mosher noted that this character area is both residential and commercial with commercial uses historically seen on the south end of this area, where this development is proposed.)

Mr. Grosshuesch: When you look at the first floor, it's a commercial character on the building. If you used a form based approach, the bay window would apply, since the character would be residential. But this is a commercial use with a gable and dormers. But the front of the building is commercial. It's confusing as to what this building is trying to be.

*Commissioner Questions / Comments:*

Ms. Dudney: Seems like there are many issues with this application: The overhang, the open space, the connector design, bay windows, and the quantity of stone siding. Is the connector policy an Absolute Policy? (Mr. Mosher: Yes.) Is there any precedent for public safety reasons to not require the link? (Mr. Mosher: there have been a few.) Is there any way to get less than -6 points for open space? Ms. Dudney asked about the letter from Mr. Reggie Gray of the Gold Pan. (Staff clarified his concerns about the potential water damage and unwanted foot-traffic with a



traditional link against his north building wall.)

*Final Comments:* The connector link issue is not an issue and meets the intent. Convinced by what Janet has said, for public safety, that the southern portion should be filled in. Neighbor supports this design, and there is some precedent at a similar situation at the Welcome Center. Support the connector as designed. Open space is subjective, -3 or -6 points. Applicant is making an effort to make an “open-space” walkway through site attractive and landscaped. The bay windows: anything designed by a committee is not very good. I don’t have problem with the one bay window on the north side. However, I respect both Ms. Sutterley’s and Mr. Mosher’s opinions. Staff questions: #1: Fine as is. #2 Flat roof is fine, #4: Detail is non issue. Open space, -3 points.

Ms. Christopher: Would you move the north side of the building to affect setbacks and the 2-foot link requirement? (Ms. Sutterley: It just affects the garage. Garage would move about one foot north increasing the offset. Part of the walkway would be at the edge of the north property line.

*Final Comments:* Appreciate changes from the worksession. I don’t support the flat roof and believe it is too visible. 2 feet of space between buildings bothers me. Agree with Mr. Schroder, that a classic “dumbbell” connector design is what we should stick to. If this doesn’t always work, as you suggested, maybe we need to change code in future to address these situations. Covered porch is not visible from the street; it’s the front portion I have an issue with. Detailing is something we can discuss in the future. Bay windows, I agree with Mr. Pringle. North and east elevations don’t match as a residential and commercial look. I don’t mind seeing them, but they do not go along with commercial nature of the front of the building, appreciate the permeable space that has been provided and the walkway, so maybe -3 instead of -6 points. #1 for the last option on open space points.

Mr. Schroder: Final Comments: I have a problem with the fact that the connector requirement is an absolute policy. I disagree that the link as presented meets the intent, given its abutment to the Gold Pan, and problems with ice. As shown is the way it should be. I think the policy is wrong in this case though. Perhaps staff could address this with precedent. Support roof flat portion as presented. Bay window: The change of character areas (from Commercial Core to this one) occurs at north side of the Gold Pan building. I’m ok with the bay window on the north side of this building. I like the way the bay window works, because we are in a transition between two different Character Areas. Support Option #1, negative points, on the open space solution. I would support -3 points on open space, because this is close to the open space requirement.

Mr. Wolfe: The commercial buildings you are referring to in your examples of link situations have only 2 foot separations of the sides. What I liked the most about this building when it first came in was the transition from commercial to residential. That’s why I have less issue with the bay window on the north side. Would the entire link be visible? Could the project be approved if it did not meet Policy 80A? (Mr. Mosher: No, it’s a Priority Policy and therefore an absolute policy under Policy 5, unless it’s determined by the Commission to not apply or it has met the intent of the Policy.)

*Final Comments:* Supports items #1, 2, 3 with adjustment to garage. #4 is a non issue. #5: Agree with Mr. Butler: Bay window on the north side adds some commercial interest. I support taking bay window off on street side. Support removing bay window on the north, or make the building look more commercial. My biggest issue is on open space. There is a purpose for having the open space. I don’t support Option #3 on the concept of the expansion of the Riverwalk. There must be a better way to solve the open space issue.

Mr. Butler: What if parking is permeable? Would it count as open space? (Mr. Neubecker: No, it’s more than an issue of permeability; it’s a question of use of the open space for recreation and plantings, etc.).

*Final Comments:* OK on #1, 2, 3. On #5, commercial character of that block, I’d rather see the façade lean toward commercial. I’d rather let go of the bay window on the north side, for the sake of the commercial use. It was a good transition from Gold Pan. In favor of -3 points for open space with staff support.

Mr. Pringle: Do you think that the objective of having a link is met, even though the literal requirement may not be met? (Mosher: This is an absolute policy and we have some precedent of the Commission

supporting some deviation in some cases. It is really up to the Commission to decide. There is some benefit to the Gold Pan to have the flat roof, to avoid water/ice damage and foot traffic.) Is there a way to close off the area for public safety? (Ms. Sutterley: Reggie Gray is thinking of ways to stabilize the Gold Pan before or during construction of this building.)

Final Comments: Support #1, 2 and 3 as shown. There is benefit to using the link as shown. We achieve the goal on the north side. #4: You need to work out how much detail is right. #5, if we can strengthen the residential look from the front...then bay windows is appropriate. As shown it lends itself to commercial look in the front, in which case the bay window is not appropriate. Don't think you should get -6 points, but points should be consistent with how points have been allocated in the past. Try to craft a covenant so that if the Town does expand Riverwalk, future owner is compelled to cooperate.

Mr. Allen: Are you open to this idea of a covenant for the parking to become open space in the future? (Ms. Sutterley: Yes, my client and the neighboring property owner are open to this idea.) (Mr. Mosher: Please note that even if the parking is removed, all residential parking is required to remain on site. So, we'll still see a driveway and garage on this site.) Mr. Mosher: Will you please read the entire Policy 80A on connector links to the Commission? (Mr. Mosher read the policy.) To Ms. Sutterley - Please explain how roof water will not drain to the south, toward Gold Pan. (Ms. Sutterley showed how the drainage and roofs will work.) To Mr. Mosher - Please explain Policy 99 (confusing historic character) with the bay window proposals. (Mr. Mosher: In this historic character area, and for that matter all historic character areas, bay windows were only seen on residences, not on commercial buildings. We have no historic commercial structures with bay windows. Buildings in this portion of the character area were originally commercial uses. There are residential structures to the north with bay windows.) What is the code trying to replicate here? Commercial or residential character? (Mr. Mosher - We believe this block is commercial.)  
*Final Comments:* Agree with Mr. Wolfe about the open space, but the north side open space should be counted. I don't think 11% permeable counts as "open space". Not meeting the intent of providing open space. I like the intent on not providing an "opium den" on the south side by following the link definition exactly. But the code says connector must be two-thirds the size of the modules to be connected. Bay windows, agree 100% with Mr. Pringle - either a residential look or a commercial look, not both. Staff questions - #1: Support. #2: Flat roof is hidden from public view. Still hung up on policy 198, which states that primary facades should be 1 – 1.5 stories tall, and if taller should be set back. Not sure that you meet policy 198.

Public Comment: Jeff Palomo (owner of neighboring building to north): I have comments on the open space and parking at the rear. I'll wait until this issue is developed further. On-site parking is very valuable to our property. But what is the compensation if it is removed?

**OTHER MATTERS:**

Mr. Neubecker presented a summary of the Saving Places Historic Preservation Conference, held February 2-5, 2011. All Commissioners who attended found the conference very valuable.

*Commissioner Comments:*

Mr. Christopher: It was a great jump start for being new. I also think that the Ski Town Forum was my favorite. We were surrounded by other people with similar issues. It was a good way to learn about our peers.

Mr. Butler: I really liked it. It sounded dry when I signed up, but glad that I went.

Mr. Neubecker presented a memo summarizing the Vendor Cart moratorium recently passed by Town Council. No applications for Vendor Carts will be accepted for one year (until February 8, 2012), unless Policy 36A is updated first.

**ADJOURNMENT:**

The meeting was adjourned at 10:10 pm.

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Rodney Allen, Chair

# MEMO

**TO:** Mayor & Town Council  
**FROM:** Tim Gagen, Town Manager  
**DATE:** February 16, 2011

**SUBJECT:** Committee Reports for 2.22.11 Council Packet

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

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<b>Wildfire Council</b>	<b>Peter Grosshuesch</b>	<b>February 10, 2011</b>
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### ***Breckenridge Fuels Project***

USFS staff stated that this project is at the top of their priority list. They expect approval of their biological assessment and approval to do work in road-less areas by the end of February with a decision on the EIS soon thereafter. They expect to prepare 750 acres this year, but probably won't do any cutting this year due to budget deficiencies.

### ***Weed Control***

The Wild Fire Council recommended that in addition to fuels reduction expenditures for HOA sponsored projects, that \$10,000 be appropriated for follow-up weed control efforts.

### ***1A Funds***

A Wild Fire Council subcommittee will prepare a list of recommendations for the use of unspent 1A funds that are being held for forest management related projects.

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<b>CDOT</b>	<b>Tim Gagen</b>	<b>February 2011</b>
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CDOT had their quarterly update meeting with Summit County this past week. *Highlights included:*

- No new funding has been identified for the Tiger to Agape/Hwy 9 section or the Fairview & Hwy 9 intersection, both of which are still a priority for CDOT.
- Summit County will get a new CDOT resident engineer in the next 30 days to replace Scott McDaniels, who got promoted at CDOT.
- CDOT plans a band-aid resurfacing of Hwy 9 North of Coyne Valley where the road is deteriorating.
- Hwy 91 to Fremont Pass is scheduled for resurfacing in 2011.
- Tunnel traffic was down 3% in 2010.
- CDOT is starting a preliminary evaluation of the bottle-neck related to the twin tunnels in Clear Creek County.
- CDOT is also trying to identify additional funding for Hwy 9 and 4 O'Clock Road and plans to start the right-of-way acquisition process soon.
- Breck Free Ride and Summit Stage were successful in getting tourist grants this year.
- The conceptual study of the Silverthorne interchange is on-going.

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<b>Liquor Licensing Authority</b>	<b>MJ Loufek</b>	<b>February 15, 2011</b>
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- All consent calendar items were approved.
- The Town Clerk updated the LLA on pending legislation that proposes to increase the number of special event permits that a non-profit can apply for during a calendar year from 10 to 15. Permits will be allowed to be granted locally, without state authority approval.
- Town staff and LLA members were invited to attend a webinar on "Building Alliances to Manage Nightlife & Sociability" on March 8.

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

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

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

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INTEROFFICE MEMORANDUM

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**TO:** TIM GAGEN, TOWN MANAGER  
**FROM:** CLERK AND FINANCE DIVISION  
**SUBJECT:** DECEMBER 2010 FINANCIAL VARIANCE HIGHLIGHTS MEMO  
**DATE:** 2/15/2011

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This report highlights variations between the 2010 budget and actual figures for the Town of Breckenridge for the period ending December 31, 2010. It includes some year-end adjustments such as supplemental appropriations, but does not represent the *final* 2010 financials as there will be additional year-end audit adjustments during the preparation of the Comprehensive Annual Financial Report (CAFR).

**Fund Updates:**

**General Fund**

2010 revenue ended the year at 102% of budget. This is a decrease from the November variance due to the supplemental appropriations (additions to budget) of over \$2.3 million in revenue. One new variance was in the Property Tax/Excise Transfer (which includes a few other items) line which was attributable to 401A forfeitures, investment income, and refunds of expenditures. The remaining variations in actual to budgeted revenue attributed to prior months are summarized on page 2 of this memo.

Expenses also ended the year favorable to the 2010 budget at 92% overall. Again, this is a decrease from the November variance memo due to supplemental appropriations of \$1.3 million. Remaining expense variations from prior months are recapped on page 2 of this memo.

**Excise Fund:** Revenue ended 2010 at 113% of budget as of December 31. This variance does not include an unexpected receipt of \$1.2 million from the state for sales tax that was incorporated into the supplemental resolutions.

Not including the above mentioned one-time payment, Sales Tax collections were ahead of budget by 7% (\$850k) and accommodation tax collections exceeded budgeted revenue by 18% (\$249k).

RETT collections through December 31, 2010 exceeded budget by \$1.16 million or 47%: \$3.7 million collected vs. \$2.5 million budgeted.

Excise Fund transfers were made according to the 2010 annual budget as well as the supplemental appropriations of \$118.5k.

**All Funds**

The Marketing Fund ended the year \$112k ahead of budgeted revenues due to Sales (\$12k) and Accommodation Tax (\$51k) as well as an increase in Business License revenues (\$47k).

The Housing Fund ended the year \$522k short of their revenue budget due to the budgeted Sale of Assets (Valley Brook) that did not take place until 2011.

The Capital Fund will roll over \$534k of previous spending authority to 2011 to complete already approved projects.

The Open Space Fund ended the year under budgeted expenditures by \$246k due to the Land acquisition line item.

**Variations explained in prior memos that continue to appear in the reports:**

**General Fund:**

- Revenue favorable to the 2010 budget at 102% after supplemental appropriations:
  - Building Services Admin is ahead of budget by \$82k. YTD revenue collected is 119% of the year-end 2010 budget. Multiple small projects (remodels, etc.) as well as the large Village at Breckenridge remodel contributed to this favorable variance.
  - Municipal Court over budget by \$61k primarily due to increase in traffic fines
  - Planning Services over budget by \$70k due to a grant related to 2009 expenditures that was not received until 2010.
  - Recreation Operations Program is below budget by \$251k due to changes in the product mix and slow sales of the Worker Appreciation and Non Resident passes.
  
- Expenditures are below budget at 92% after supplemental appropriations:
  - PD Patrol Services, Facilities Admin, Recreation Operations and Ice Rink Operations contribute the majority of this variance primarily due to less than budgeted utilities and staffing.

**Utility (Water) Fund:**

- Revenue under budget by \$165k primarily due to Plant Investment Fees
- Expenditures are less than budget by \$2.6 million due to the Major System Improvements that are budgeted each year but have not yet been made.

**Golf Fund:** ended the year with revenue at 97% of budget (\$74k under) and expenditures below budget at 95% or \$152k.

**Garage Fund:** expenses are under budget by \$664k due to less than budgeted expenditures on fuel, parts, repair and maintenance as well as capital acquisitions of automobiles and other equipment/machinery.

**TOWN OF BRECKENRIDGE  
GENERAL FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 12 MONTHS ENDING DECEMBER 31, 2010**

100 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR				CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	2009 ACTUAL/ 2010 ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>REVENUE</b>										
MUNICIPAL COURT PROGRAM	197,937	202,220	98%	84%	235,922	174,605	61,317	135%	174,605	135%
ADVICE & LITIGATION PROGRAM	-	-	0%	0%	1,046,746	1,046,746	-	100%	1,046,746	100%
ADMINISTRATIVE MGT PROGRAM	6,445	6,445	100%	408%	1,580	302	1,278	523%	302	523%
SPECIAL EVENTS/COMM PROGRAM	132,372	132,372	100%	24%	546,860	526,952	19,908	104%	526,952	104%
TOWN CLERK ADMIN PROGRAM	27,616	27,616	100%	83%	33,319	20,751	12,568	161%	20,751	161%
TRANSIT ADMIN PROGRAM	95,000	95,000	100%	95%	100,000	100,000	-	100%	100,000	100%
TRANSIT SERVICES PROGRAM	523,810	523,810	100%	81%	642,861	589,065	53,796	109%	589,065	109%
PUBLIC SAFETY ADMIN/RECORDS	100,104	100,104	100%	120%	83,092	95,244	(12,152)	87%	95,244	87%
PUBLIC SAFETY COMMNTY SVC PROG	629,566	629,566	100%	122%	517,400	485,446	31,954	107%	485,446	107%
PLANNING SERVICES ADMIN PROGRM	178,389	178,389	100%	87%	204,413	137,280	67,133	149%	137,280	149%
ARTS DISTRICT	-	-	0%	0%	27,329	5,260	22,069	520%	5,260	520%
BUILDING SERVICES ADMIN PROGRM	441,249	441,249	100%	85%	521,286	438,796	82,490	119%	438,796	119%
PUBLIC WORKS ADMIN PROGRAM	497,231	518,338	96%	86%	575,770	532,685	43,085	108%	532,685	108%
STREETS PROGRAM	49,700	50,558	98%	119%	41,785	32,509	9,276	129%	32,509	129%
PARKS PROGRAM	-	-	0%	0%	31,043	-	31,043	N/A	-	N/A
FACILITIES ADMIN PROGRAM	12,961	12,961	100%	19%	69,661	38,600	31,061	180%	38,600	180%
ENGINEERING ADMIN PROGRAM	3,741	3,741	100%	218%	1,717	404	1,313	425%	404	425%
RECREATION ADMIN PROGRAM	(5,733)	19,267	-30%	0%	-	-	-	N/A	-	N/A
RECREATION PROGRAM	348,049	373,049	93%	105%	331,139	359,038	(27,899)	92%	359,038	92%
RECREATION OPERATIONS PROGRAM	1,423,719	1,473,946	97%	101%	1,415,219	1,712,402	(297,183)	83%	1,712,402	83%
NORDIC CENTER OPERATIONS	184,784	184,784	100%	87%	212,438	174,659	37,779	122%	174,659	122%
ICE RINK OPERATIONS PROGRAM	607,544	607,544	100%	100%	608,782	645,709	(36,927)	94%	645,709	94%
PROPERTY TAX/EXCISE TRANSFER	17,598,916	17,495,095	101%	104%	16,878,314	16,531,684	346,630	102%	16,531,684	102%
COMMITTEES	-	-	0%	0%	2,000	2,000	-	100%	2,000	100%
<b>TOTAL REVENUE</b>	<b>23,053,113</b>	<b>23,075,767</b>	<b>100%</b>	<b>96%</b>	<b>24,130,008</b>	<b>23,650,237</b>	<b>479,771</b>	<b>102%</b>	<b>23,650,237</b>	<b>102%</b>



**TOWN OF BRECKENRIDGE  
GENERAL FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 12 MONTHS ENDING DECEMBER 31, 2010**

100 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR				CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	2009 ACTUAL/ 2010 ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>EXPENDITURES</b>										
LAW & POLICY MAKING PROGRAM	123,282	124,649	99%	97%	127,216	129,070	1,854	99%	129,070	99%
MUNICIPAL COURT PROGRAM	177,088	178,662	99%	97%	183,470	204,254	20,784	90%	204,254	90%
ADVICE & LITIGATION PROGRAM	579,503	668,210	87%	284%	203,897	229,008	25,111	89%	229,008	89%
ADMINISTRATIVE MGT PROGRAM	505,266	536,021	94%	95%	530,946	595,917	64,971	89%	595,917	89%
HUMAN RESOURCES ADMIN PROGRAM	416,942	412,117	101%	107%	390,129	433,459	43,330	90%	433,459	90%
SPECIAL EVENTS/COMM PROGRAM	603,004	593,856	102%	59%	1,028,766	1,036,091	7,325	99%	1,036,091	99%
TOWN CLERK ADMIN PROGRAM	249,320	248,439	100%	97%	255,850	277,204	21,354	92%	277,204	92%
LICENSES & PERMITS PROGRAM	1,718	1,718	100%	82%	2,083	-	(2,083)	N/A	-	N/A
FINANCE ADMINISTRATION PROGRAM	273,153	280,391	97%	94%	291,792	317,483	25,691	92%	317,483	92%
ACCOUNTING PROGRAM	323,235	318,069	102%	98%	329,693	353,961	24,268	93%	353,961	93%
TRANSIT ADMIN PROGRAM	120,737	122,251	99%	99%	121,780	122,140	360	100%	122,140	100%
TRANSIT SERVICES PROGRAM	2,143,354	2,161,853	99%	95%	2,254,041	2,356,546	102,505	96%	2,356,546	96%
PUBLIC SAFETY ADMIN/RECORDS	870,708	878,406	99%	96%	905,297	880,098	(25,199)	103%	880,098	103%
PUBLIC SAFETY COMMUNICATN PROG	320,942	320,942	100%	98%	326,791	333,522	6,731	98%	333,522	98%
PUBLIC SAFETY PATROL SVCS PROG	1,820,736	1,836,204	99%	118%	1,543,116	1,826,775	283,659	84%	1,826,775	84%
PUBLIC SAFETY COMMNTY SVC PROG	434,162	439,598	99%	103%	423,277	511,088	87,811	83%	511,088	83%
PLANNING SERVICES ADMIN PROGRAM	1,141,113	1,166,696	98%	100%	1,141,289	1,234,543	93,254	92%	1,234,543	92%
ARTS DISTRICT	(120)	(120)	100%	0%	30,487	-	(30,487)	N/A	-	N/A
BUILDING SERVICES ADMIN PROGRAM	419,210	402,077	104%	105%	400,531	417,602	17,071	96%	417,602	96%
PUBLIC WORKS ADMIN PROGRAM	501,601	498,308	101%	105%	478,757	503,464	24,707	95%	503,464	95%
STREETS PROGRAM	1,785,448	1,797,524	99%	100%	1,788,096	1,906,768	118,672	94%	1,906,768	94%
PARKS PROGRAM	1,056,490	1,071,289	99%	100%	1,056,805	1,140,838	84,033	93%	1,140,838	93%
FACILITIES ADMIN PROGRAM	1,398,959	1,391,327	101%	114%	1,228,626	1,438,310	209,684	85%	1,438,310	85%
ENGINEERING ADMIN PROGRAM	318,368	333,603	95%	103%	309,446	300,728	(8,718)	103%	300,728	103%
CONTINGENCIES	204,050	204,050	100%	154%	132,620	132,500	(120)	100%	132,500	100%
RECREATION ADMIN PROGRAM	632,331	703,099	90%	102%	617,805	661,727	43,922	93%	661,727	93%
RECREATION PROGRAM	566,604	565,985	100%	104%	545,321	627,016	81,695	87%	627,016	87%
RECREATION OPERATIONS PROGRAM	1,741,994	1,737,236	100%	106%	1,644,627	1,877,907	233,280	88%	1,877,907	88%
NORDIC CENTER OPERATIONS	290,367	292,260	99%	110%	263,367	253,771	(9,596)	104%	253,771	104%
ICE RINK OPERATIONS PROGRAM	975,678	984,999	99%	102%	958,271	1,116,633	158,362	86%	1,116,633	86%
LONG TERM DEBT	418,017	413,659	101%	100%	416,966	417,120	154	100%	417,120	100%
SHORT TERM DEBT	133,274	133,274	100%	104%	128,441	128,542	101	100%	128,542	100%
COMMITTEES	2,293	2,293	100%	17%	13,657	46,784	33,127	29%	46,784	29%
<b>TOTAL EXPENDITURES</b>	<b>20,552,393</b>	<b>20,822,511</b>	<b>99%</b>	<b>102%</b>	<b>20,122,332</b>	<b>21,860,869</b>	<b>1,738,537</b>	<b>92%</b>	<b>21,860,869</b>	<b>92%</b>
<b>REVENUE LESS EXPENDITURES</b>	<b>2,500,720</b>	<b>2,253,256</b>			<b>4,007,676</b>	<b>1,789,368</b>	<b>2,218,308</b>		<b>1,789,368</b>	

**TOWN OF BRECKENRIDGE  
EXCISE TAX FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 12 MONTHS ENDING DECEMBER 31, 2010**

100 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2009 vs. 2010 ACTUAL % VARIANCE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>TAX REVENUE</b>										
SALES TAX	11,790,792	11,969,634	99%	114%	13,460,725	12,611,609	849,116	107%	12,611,609	107%
ACCOMODATIONS TAX	1,477,316	1,477,316	100%	109%	1,607,129	1,358,423	248,706	118%	1,358,423	118%
CIGARETTE TAX	53,698	53,698	100%	95%	51,070	60,000	(8,930)	85%	60,000	85%
TELEPHONE FRANCHISE TAX	28,708	28,708	100%	95%	27,154	29,999	(2,845)	91%	29,999	91%
PUBLIC SERVICE FRANCHISE	693,123	693,123	100%	90%	621,971	549,998	71,973	113%	549,998	113%
CABLEVISION FRANCHISE TAX	144,795	144,795	100%	106%	153,277	149,998	3,279	102%	149,998	102%
REAL ESTATE TRANSFER TAX	2,861,119	2,861,119	100%	128%	3,662,879	2,499,999	1,162,880	147%	2,499,999	147%
INVESTMENT INCOME	52,050	5,168	1007%	106%	55,208	75,000	(19,792)	74%	75,000	74%
<b>TOTAL FUND REVENUE</b>	<b>17,101,601</b>	<b>17,233,561</b>	<b>99%</b>	<b>115%</b>	<b>19,639,413</b>	<b>17,335,026</b>	<b>2,304,387</b>	<b>113%</b>	<b>17,335,026</b>	<b>113%</b>
<b>EXCISE TAX DEBT SERVICE</b>										
COP FEES	2100	2,100	0%	0%	650	800	150	81%	800	81%
2005 COP'S PRINCIPAL	275,000	275,000	100%	56%	155,000	155,000	-	100%	155,000	0%
2005 COP'S INTEREST	291,140	291,140	100%	49%	142,825	142,825	-	100%	142,825	100%
2007 COP'S PRINCIPAL	0	0	N/A	N/A	130,000	129,996	(4)	100%	129,996	100%
2007 COP'S INTEREST	0	0	N/A	N/A	138,065	138,060	(5)	100%	138,060	100%
<b>TOTAL EXCISE TAX DEBT SERVICE</b>	<b>568,240</b>	<b>568,240</b>	<b>100%</b>	<b>100%</b>	<b>566,540</b>	<b>566,681</b>	<b>141</b>	<b>100%</b>	<b>566,681</b>	<b>100%</b>
<b>TRANSFERS</b>										
TRANSFER TO GENERAL FUND	12,180,000	12,180,000	100%	93%	11,387,676	11,387,676	-	100%	11,387,676	100%
TRANSFER TO GOLF FUND	0	0	0%	N/A	129,996	129,996	-	100%	129,996	100%
TRANSFERS TO CAPITAL FUND	2,604,002	2,604,002	100%	41%	1,074,504	1,074,504	-	100%	1,074,504	100%
TRANSFER TO MARKETING	435,000	435,000	100%	169%	733,296	733,296	-	100%	733,296	100%
TRFS TO EMPLOYEE HSG FUND	2,093,748	2,093,748	100%	111%	2,332,920	2,332,920	-	100%	2,332,920	100%
TRFS TO SPECIAL PROJECTS FUND	809,005	809,005	100%	45%	365,004	365,004	-	100%	365,004	100%
<b>TOTAL TRANSFERS</b>	<b>18,121,755</b>	<b>18,121,755</b>	<b>100%</b>	<b>88%</b>	<b>16,023,396</b>	<b>16,023,396</b>	<b>-</b>	<b>100%</b>	<b>16,023,396</b>	<b>100%</b>
<b>TOTAL FUND EXPENDITURES</b>	<b>18,689,995</b>	<b>18,689,995</b>	<b>100%</b>	<b>89%</b>	<b>16,589,936</b>	<b>16,590,077</b>	<b>141</b>	<b>100%</b>	<b>16,590,077</b>	<b>100%</b>
<b>NET REVENUE OVER EXPENDITURES</b>	<b>(1,588,394)</b>	<b>(1,456,434)</b>			<b>3,049,477</b>	<b>744,949</b>	<b>2,304,528</b>		<b>744,949</b>	

**TOWN OF BRECKENRIDGE  
ALL FUNDS  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 12 MONTHS ENDING DECEMBER 31, 2010**

100 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2009 ACTUAL/ 2010 ACTUAL % CHANGE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL AS A % OF BUDGET	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>REVENUE</b>										
1 GENERAL FUND	23,053,113	23,075,766	100%	105%	24,130,010	23,650,237	479,773	102%	23,650,237	102%
2 UTILITY FUND	2,837,820	2,774,197	102%	102%	2,893,139	3,057,733	(164,594)	95%	3,057,733	95%
3 CAPITAL FUND	2,908,862	2,893,302	101%	49%	1,438,792	1,342,000	96,792	107%	1,142,000	126%
4 MARKETING FUND	1,557,494	1,557,764	100%	123%	1,910,411	1,798,362	112,049	106%	1,798,362	106%
5 GOLF COURSE FUND	2,712,584	2,697,807	101%	105%	2,860,237	2,933,858	(73,621)	97%	2,933,858	97%
6 EXCISE TAX FUND	17,101,601	17,233,561	99%	115%	19,639,413	17,335,026	2,304,387	113%	17,335,026	113%
7 HOUSING FUND	3,242,453	3,213,472	101%	127%	4,102,789	4,625,296	(522,507)	89%	4,625,296	89%
8 OPEN SPACE ACQUISITION FUND	1,763,285	1,767,706	100%	105%	1,847,526	1,812,434	35,092	102%	1,812,434	102%
9 CONSERVATION TRUST FUND	33611	33,502	100%	97%	32,550	32,152	398	101%	32,152	101%
10 GARAGE SERVICES FUND	2,809,412	2,399,012	117%	108%	3,039,176	3,000,641	38,535	101%	3,000,641	101%
11 INFORMATION TECHNOLOGY FUND	974,841	974,841	100%	107%	1,043,978	1,043,976	2	100%	1,043,976	100%
12 FACILITIES MAINTENANCE FUND	232,410	232,410	100%	99%	230,436	230,412	24	100%	230,412	100%
13 SPECIAL PROJECTS FUND	809,081	809,081	100%	54%	434,004	415,004	19,000	105%	415,004	105%
<b>TOTAL REVENUE</b>	<b>60,036,567</b>	<b>59,662,421</b>	<b>101%</b>	<b>106%</b>	<b>63,602,461</b>	<b>61,277,131</b>	<b>2,325,330</b>	<b>104%</b>	<b>61,077,131</b>	<b>104%</b>
<b>EXPENDITURES</b>										
1 GENERAL FUND	21,218,977	21,489,094	99%	98%	20,881,791	22,620,329	1,738,538	92%	22,620,329	92%
2 UTILITY FUND	2,357,749	2,964,861	80%	100%	2,356,028	4,991,109	2,635,081	47%	4,991,109	47%
3 CAPITAL FUND	3,905,277	3,905,277	100%	33%	1,271,527	1,805,223	533,696	70%	1,805,223	70%
4 MARKETING FUND	1,752,538	1,752,538	100%	102%	1,788,213	1,803,122	14,909	99%	1,803,122	99%
5 GOLF COURSE FUND	3,730,472	3,324,969	112%	76%	2,829,565	2,981,152	151,587	95%	2,981,152	95%
6 EXCISE TAX FUND	18,689,995	18,689,995	100%	89%	16,589,936	16,590,077	141	100%	16,590,077	100%
7 HOUSING FUND	1,507,369	1,507,369	100%	273%	4,119,633	4,081,625	(38,008)	101%	4,081,625	101%
8 OPEN SPACE ACQUISITION FUND	2,195,057	2,183,712	101%	80%	1,754,898	2,000,457	245,559	88%	2,000,457	88%
9 CONSERVATION TRUST FUND	30,996	30,996	100%	100%	30,996	30,996	-	100%	30,996	100%
10 GARAGE SERVICES FUND	1,371,182	1,795,038	76%	126%	1,721,251	2,384,919	663,668	72%	2,384,919	72%
11 INFORMATION TECHNOLOGY FUND	681,542	681,542	100%	90%	614,483	726,290	111,807	85%	726,290	85%
12 FACILITIES MAINTENANCE FUND	203,193	203,193	0%	N/A	85,963	86,000	37	100%	86,000	100%
13 SPECIAL PROJECTS FUND	810,791	810,791	100%	48%	388,903	459,999	71,096	85%	459,999	85%
<b>TOTAL EXPENDITURES</b>	<b>58,455,138</b>	<b>59,339,375</b>	<b>99%</b>	<b>93%</b>	<b>54,433,187</b>	<b>60,561,298</b>	<b>6,128,111</b>	<b>90%</b>	<b>60,561,298</b>	<b>90%</b>
	<b>1,581,429</b>	<b>323,046</b>			<b>9,169,274</b>	<b>715,833</b>	<b>8,453,441</b>		<b>515,833</b>	

**TOWN OF BRECKENRIDGE  
ALL FUNDS, NET OF TRANSFERS  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 12 MONTHS ENDING DECEMBER 31, 2010**

100 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2009 ACTUAL/ 2010 ACTUAL % CHANGE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % CHANGE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>REVENUE</b>										
1 GENERAL FUND	10,482,678	10,505,331	100%	118%	12,340,190	11,860,417	479,773	104%	11,860,417	104%
2 UTILITY FUND	2,837,820	2,774,197	102%	102%	2,893,139	3,057,733	(164,594)	95%	3,057,733	95%
3 CAPITAL FUND	304,860	289,300	105%	119%	364,288	267,496	96,792	136%	267,496	136%
4 MARKETING FUND	1,122,494	1,122,764	100%	105%	1,177,115	1,065,066	112,049	111%	1,065,066	111%
5 GOLF COURSE FUND	2,712,694	2,697,807	101%	101%	2,731,911	2,803,862	(71,951)	97%	2,803,862	97%
6 EXCISE TAX FUND	17,101,601	17,233,561	99%	115%	19,639,413	17,335,026	2,304,387	113%	17,335,026	113%
7 HOUSING FUND	1,148,705	1,119,724	103%	158%	1,816,103	2,292,376	(476,273)	79%	2,292,376	79%
8 OPEN SPACE ACQUISITION FUND	1,763,285	1,767,706	100%	105%	1,847,526	1,812,434	35,092	102%	1,812,434	102%
9 CONSERVATION TRUST FUND	33,611	33,502	100%	97%	32,550	32,152	398	101%	32,152	101%
10 GARAGE SERVICES FUND	490,125	79,725	615%	116%	569,995	531,460	38,535	0%	531,460	107%
11 INFORMATION TECHNOLOGY FUND	0	0	N/A	N/A	2	-	2	0%	-	0%
12 FACILITIES MAINTENANCE FUND	0	0	N/A	N/A	-	-	-	N/A	-	N/A
13 SPECIAL PROJECTS FUND	76	76	100%	90789%	69,000	50,000	19,000	N/A	50,000	138%
<b>TOTAL REVENUE</b>	<b>37,997,949</b>	<b>37,623,693</b>	<b>101%</b>	<b>114%</b>	<b>43,481,232</b>	<b>41,108,022</b>	<b>2,373,210</b>	<b>106%</b>	<b>41,108,022</b>	<b>106%</b>
<b>EXPENDITURES</b>										
1 GENERAL FUND	18,272,044	18,542,278	99%	97%	17,719,534	19,459,021	1,739,487	91%	19,459,021	91%
2 UTILITY FUND	1,934,220	2,541,332	76%	99%	1,911,392	4,546,485	2,635,093	42%	4,546,485	42%
3 CAPITAL FUND	3,905,277	3,905,277	100%	33%	1,271,527	1,805,223	533,696	70%	1,805,223	70%
4 MARKETING FUND	1,752,538	1,752,538	100%	102%	1,788,213	1,803,122	14,909	99%	1,803,122	99%
5 GOLF COURSE FUND	2,420,195	2,014,692	120%	90%	2,170,105	2,321,692	151,587	93%	2,321,692	93%
6 EXCISE TAX FUND	568,240	568,240	100%	100%	566,540	566,681	141	N/A	566,681	100%
7 HOUSING FUND	1,507,369	1,507,369	100%	273%	4,119,633	4,081,625	(38,008)	101%	4,081,625	101%
8 OPEN SPACE ACQUISITION FUND	2,191,744	2,180,399	101%	80%	1,748,886	1,994,445	245,559	88%	1,994,445	88%
9 CONSERVATION TRUST FUND	0	0	N/A	N/A	0	0	-	N/A	0	N/A
10 GARAGE SERVICES FUND	1,371,182	1,795,038	76%	124%	1,706,119	2,369,799	663,680	72%	2,369,799	72%
11 INFORMATION TECHNOLOGY FUND	678,897	678,897	100%	90%	611,735	723,542	111,807	85%	723,542	85%
12 FACILITIES MAINTENANCE FUND	203,193	203,193	100%	42%	85,963	86,000	37	N/A	86,000	N/A
13 SPECIAL PROJECTS FUND	810,791	810,791	100%	48%	388,903	459,999	71,096	85%	459,999	85%
<b>TOTAL EXPENDITURES</b>	<b>35,615,690</b>	<b>36,500,044</b>	<b>98%</b>	<b>96%</b>	<b>34,088,550</b>	<b>40,217,634</b>	<b>6,129,084</b>	<b>85%</b>	<b>40,217,634</b>	<b>85%</b>
<b>Revenue Less Expenditures</b>	<b>2,382,259</b>	<b>1,123,649</b>			<b>9,392,682</b>	<b>890,388</b>	<b>8,502,294</b>		<b>890,388</b>	

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INTEROFFICE MEMORANDUM

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**TO:** TIM GAGEN, TOWN MANAGER  
**FROM:** CLERK AND FINANCE DIVISION  
**SUBJECT:** JANUARY 2011 FINANCIAL VARIANCE HIGHLIGHTS MEMO  
**DATE:** 2/15/2011

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This report highlights variations between the 2011 budget and actual figures for the Town of Breckenridge for the period ending January 31, 2011.

**Fund Updates:**

**General Fund**

Revenue is on track at 103% of YTD budget.

Expenses are also right in line with YTD budget. The "Grants to Other Agencies" line is at 99% due to timing. We funded 2011 grants in January but their budget is spread out over 12 months.

**Excise Fund:** Sales tax revenue received in January is accrued back to the prior year, so sales and accommodation taxes are not budgeted and will not be reported until February.

RETT collections through January 31, 2011 exceeded budget by 60% or \$69k

Excise Fund transfers were made according to the 2011 without variation.

**All Funds**

Utility Fund: the revenue variance is due to timing.

Capital Fund: the budget for both revenues and expenditures in the Capital Fund is reflected at 100% as the expenditures in the Capital Fund do not follow a particular trend.

Housing Fund: the revenue variance is due to the timing of the sale of assets (Valley Brook units). Similarly, the expenditure variance is due to Valley Brook.

Open Space YTD expenditures exceed budget due to the timing of the acquisition of 2856 Ski Hill Road.

**TOWN OF BRECKENRIDGE  
GENERAL FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 1 MONTHS ENDING JANUARY 31, 2011**

8 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR				CURRENT YEAR						
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	2010 ACTUAL/ 2011 ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT	
<b>REVENUE</b>											
MUNICIPAL COURT PROGRAM	11,050	235,922	5%	82%	13,520	15,012	(1,492)	90%	204,668	7%	
ADVICE & LITIGATION PROGRAM	-	1,046,746	0%	0%	-	-	-	N/A	-	N/A	
SPECIAL EVENTS/COMM PROGRAM	14,510	546,860	3%	385%	3,765	28,112	(24,347)	13%	417,406	1%	
TOWN CLERK ADMIN PROGRAM	7,457	33,319	22%	8773%	85	983	(898)	9%	21,001	0%	
FINANCE ADMINISTRATION PROGRAM	1,055	1,332	79%	0%	-	17	(17)	0%	204	0%	
TRANSIT ADMIN PROGRM	-	100,000	0%	0%	-	-	-	N/A	32,000	0%	
TRANSIT SERVICES PROGRAM	40,688	642,861	6%	100%	40,688	37,503	3,185	108%	484,067	8%	
PUBLIC SAFETY ADMIN/RECORDS	366	83,092	0%	10%	3,537	1,688	1,849	210%	18,001	20%	
PUBLIC SAFETY COMMNTY SVC PROG	30,623	517,400	6%	21%	142,560	86,170	56,390	165%	510,600	28%	
PLANNING SERVICES ADMIN PROGRM	7,305	204,413	4%	136%	5,381	2,706	2,675	199%	87,567	6%	
ARTS DISTRICT	-	27,329	0%	0%	-	2,168	(2,168)	0%	26,016	0%	
BUILDING SERVICES ADMIN PROGRM	14,427	521,286	3%	47%	30,920	22,111	8,809	140%	525,362	6%	
PUBLIC WORKS ADMIN PROGRAM	23,618	575,770	4%	82%	28,774	2,570	26,204	1120%	582,689	5%	
STREETS PROGRAM	13,717	41,785	33%	461%	2,976	83	2,893	3586%	33,196	9%	
PARKS PROGRAM	8,902	31,043	29%	424%	2,100	-	2,100	N/A	-	N/A	
FACILITIES ADMIN PROGRAM	3,966	69,661	6%	67%	5,961	-	5,961	N/A	46,800	13%	
ENGINEERING ADMIN PROGRAM	1	1,717	0%	0%	1,080	28	1,052	3857%	2,200	49%	
RECREATION PROGRAM	18,924	331,139	6%	55%	34,391	28,943	5,448	119%	347,031	10%	
RECREATION OPERATIONS PROGRAM	138,015	1,415,219	10%	97%	142,160	150,593	(8,433)	94%	1,473,275	10%	
NORDIC CENTER OPERATIONS	47,073	212,438	22%	115%	40,862	35,639	5,223	115%	159,210	26%	
ICE RINK OPERATIONS PROGRAM	85,512	608,782	14%	115%	74,317	96,763	(22,446)	77%	674,990	11%	
PROPERTY TAX/EXCISE TRANSFER	1,000,544	16,878,314	6%	111%	902,022	915,182	(13,160)	99%	15,167,584	6%	
COMMITTEES	-	2,000	0%	0%	-	-	-	N/A	-	N/A	
<b>TOTAL REVENUE</b>	<b>1,467,803</b>	<b>24,130,008</b>	<b>6%</b>	<b>100%</b>	<b>1,475,099</b>	<b>1,426,096</b>	<b>49,003</b>	<b>103%</b>	<b>20,812,069</b>	<b>7%</b>	

**TOWN OF BRECKENRIDGE  
GENERAL FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 1 MONTHS ENDING JANUARY 31, 2011**

8 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR				CURRENT YEAR						
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	2010 ACTUAL/ 2011 ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT	
<b>EXPENDITURES</b>											
LAW & POLICY MAKING PROGRAM	10,835	127,216	9%	110%	9,846	34,586	24,740	28%	146,253	7%	
MUNICIPAL COURT PROGRAM	11,700	183,470	6%	93%	12,543	13,247	704	95%	218,010	6%	
ADVICE & LITIGATION PROGRAM	26,134	203,897	13%	188%	13,914	59	(13,855)	23583%	228,584	6%	
ADMINISTRATIVE MGT PROGRAM	84,181	530,946	16%	106%	79,140	70,824	(8,316)	112%	608,521	13%	
HUMAN RESOURCES ADMIN PROGRAM	26,515	390,129	7%	77%	34,476	32,366	(2,110)	107%	424,000	8%	
SPECIAL EVENTS/COMM PROGRAM	49,442	1,028,766	5%	144%	34,291	58,371	24,080	59%	905,028	4%	
TOWN CLERK ADMIN PROGRAM	18,794	255,850	7%	98%	19,255	18,689	(566)	103%	288,586	7%	
FINANCE ADMINISTRATION PROGRAM	21,425	291,792	7%	81%	26,526	21,088	(5,438)	126%	328,172	8%	
ACCOUNTING PROGRAM	20,379	329,693	6%	85%	23,925	27,398	3,473	87%	377,757	6%	
TRANSIT ADMIN PROGRAM	8,425	121,780	7%	22%	38,955	11,900	(27,055)	327%	190,556	20%	
TRANSIT SERVICES PROGRAM	193,820	2,254,041	9%	108%	180,239	180,551	312	100%	1,887,814	10%	
PUBLIC SAFETY ADMIN/RECORDS	74,965	905,297	8%	79%	94,325	83,208	(11,117)	113%	883,295	11%	
PUBLIC SAFETY COMMUNICATN PROG	80,250	326,791	25%	0%	-	78,559	78,559	0%	305,139	0%	
PUBLIC SAFETY PATROL SVCS PROG	133,540	1,543,116	9%	94%	141,695	156,786	15,091	90%	1,736,121	8%	
PUBLIC SAFETY COMMNTY SVC PROG	34,128	423,277	8%	95%	35,888	45,981	10,093	78%	494,378	7%	
PLANNING SERVICES ADMIN PROGRAM	83,530	1,141,289	7%	90%	92,900	82,865	(10,035)	112%	1,104,145	8%	
ARTS DISTRICT	2,412	30,487	8%	522%	462	1,457	995	32%	25,984	2%	
BUILDING SERVICES ADMIN PROGRAM	28,488	400,531	7%	88%	32,426	30,209	(2,217)	107%	404,624	8%	
PUBLIC WORKS ADMIN PROGRAM	34,641	478,757	7%	87%	39,735	32,843	(6,892)	121%	534,348	7%	
STREETS PROGRAM	154,491	1,788,096	9%	103%	149,799	148,819	(980)	101%	1,717,186	9%	
PARKS PROGRAM	78,725	1,056,805	7%	98%	80,593	70,436	(10,157)	114%	1,159,109	7%	
FACILITIES ADMIN PROGRAM	107,880	1,228,626	9%	81%	133,279	85,402	(47,877)	156%	1,344,429	10%	
ENGINEERING ADMIN PROGRAM	21,159	309,446	7%	66%	32,113	26,676	(5,437)	120%	317,405	10%	
GRANTS TO OTHER AGENCIES	102,200	132,620	77%	85%	120,850	10,208	(110,642)	1184%	122,496	99%	
RECREATION ADMIN PROGRAM	50,933	617,805	8%	80%	63,418	44,361	(19,057)	143%	642,277	10%	
RECREATION PROGRAM	26,589	545,321	5%	72%	36,899	33,319	(3,580)	111%	629,021	6%	
RECREATION OPERATIONS PROGRAM	124,743	1,644,627	8%	82%	152,268	111,389	(40,879)	137%	1,888,001	8%	
NORDIC CENTER OPERATIONS	29,936	263,367	11%	126%	23,701	14,608	(9,093)	162%	241,566	10%	
ICE RINK OPERATIONS PROGRAM	73,442	958,271	8%	104%	70,904	64,981	(5,923)	109%	1,125,615	6%	
LONG TERM DEBT	-	416,966	0%	0%	-	-	-	0%	419,851	0%	
SHORT TERM DEBT	-	128,441	0%	0%	-	-	-	0%	-	N/A	
GENERAL EXPENDITURES	-	47,143	0%	0%	2,867	-	(2,867)	0%	-	N/A	
COMMITTEES	382	13,657	3%	0%	-	4,166	4,166	0%	49,992	0%	
<b>TOTAL EXPENDITURES</b>	<b>1,714,141</b>	<b>20,122,332</b>	<b>9%</b>	<b>96%</b>	<b>1,777,232</b>	<b>1,595,352</b>	<b>(181,880)</b>	<b>111%</b>	<b>20,748,263</b>	<b>9%</b>	
<b>REVENUE LESS EXPENDITURES</b>	<b>(246,338)</b>	<b>4,007,676</b>			<b>(302,133)</b>	<b>(169,256)</b>	<b>(132,877)</b>		<b>63,806</b>		

**TOWN OF BRECKENRIDGE  
EXCISE TAX FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 1 MONTHS ENDING JANUARY 31, 2011**

8 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2010 vs. 2011 ACTUAL % VARIANCE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>TAX REVENUE</b>										
SALES TAX	622	13,460,725	0%	1427%	8,874	1,724	7,150	515%	12,381,645	0%
ACCOMODATIONS TAX	-	1,607,129	0%	N/A	3,657	-	3,657	N/A	1,478,709	0%
CIGARETTE TAX	4,041	51,070	8%	106%	4,286	4,168	118	103%	48,001	9%
TELEPHONE FRANCHISE TAX	55	27,154	0%	60%	33	-	33	N/A	28,500	0%
PUBLIC SERVICE FRANCHISE	-	621,971	0%	N/A	0	-	-	N/A	600,003	0%
CABLEVISION FRANCHISE TAX	-	153,277	0%	N/A	0	-	-	N/A	140,000	0%
REAL ESTATE TRANSFER TAX	588,874	3,662,879	16%	31%	184,371	115,354	69,017	160%	2,700,002	7%
INVESTMENT INCOME	5,493	55,208	10%	-10%	(531)	4,285	(4,816)	-12%	51,420	-1%
<b>TOTAL FUND REVENUE</b>	<b>599,085</b>	<b>19,639,413</b>	<b>3%</b>	<b>33%</b>	<b>200,690</b>	<b>125,531</b>	<b>75,159</b>	<b>160%</b>	<b>17,428,280</b>	<b>1%</b>
<b>EXCISE TAX DEBT SERVICE</b>										
COP FEES	0	650	0%	0%	0	0	-	N/A	-	N/A
2005 COP'S PRINCIPAL	0	155,000	0%	N/A	0	-	-	N/A	165,000	0%
2005 COP'S INTEREST	0	142,825	0%	N/A	0	0	-	N/A	137,014	0%
2007 COP'S PRINCIPAL	0	130,000	0%	N/A	0	0	-	N/A	135,000	0%
2007 COP'S INTEREST	0	138,065	0%	N/A	0	0	-	N/A	132,864	0%
<b>TOTAL EXCISE TAX DEBT SERVICE</b>	<b>0</b>	<b>566,540</b>	<b>0%</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>-</b>	<b>N/A</b>	<b>569,878</b>	<b>0%</b>
<b>TRANSFERS</b>										
TRANSFER TO GENERAL FUND	948,973	11,387,676	8%	91%	863,508	863,508	-	100%	10,362,096	8%
TRANSFER TO GOLF FUND	10,833	129,996	0%	N/A	20,833	20,833	-	100%	249,996	8%
TRANSFERS TO CAPITAL FUND	79,667	1,074,504	7%	148%	117,583	117,583	-	100%	1,411,007	8%
TRANSFER TO MARKETING	61,108	733,296	8%	55%	33,851	33,851	-	100%	369,671	9%
TRFS TO EMPLOYEE HSG FUND	194,410	2,332,920	8%	111%	215,089	215,089	-	100%	2,581,068	8%
TRFS TO SPECIAL PROJECTS FUND	30,417	365,004	8%	108%	32,917	32,917	-	100%	395,004	8%
<b>TOTAL TRANSFERS</b>	<b>1,325,408</b>	<b>16,023,396</b>	<b>8%</b>	<b>97%</b>	<b>1,283,781</b>	<b>1,283,781</b>	<b>-</b>	<b>100%</b>	<b>15,368,842</b>	<b>8%</b>
<b>TOTAL FUND EXPENDITURES</b>	<b>1,325,408</b>	<b>16,589,936</b>	<b>8%</b>	<b>97%</b>	<b>1,283,781</b>	<b>1,283,781</b>	<b>-</b>	<b>100%</b>	<b>15,938,720</b>	<b>8%</b>
<b>NET REVENUE OVER EXPENDITURES</b>	<b>(726,323)</b>	<b>3,049,477</b>			<b>(1,083,091)</b>	<b>(1,158,250)</b>	<b>75,159</b>		<b>1,489,560</b>	



**TOWN OF BRECKENRIDGE  
ALL FUNDS  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 1 MONTHS ENDING JANUARY 31, 2011**

8 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2009 ACTUAL/ 2010 ACTUAL % CHANGE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL AS A % OF BUDGET	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>REVENUE</b>										
1 GENERAL FUND	1,467,800	24,130,010	6%	101%	1,475,696	1,426,096	49,600	103%	20,812,069	7%
2 UTILITY FUND	-70,841	2,893,139	-2%	-36%	25,470	266,449	(240,979)	10%	2,944,244	1%
3 CAPITAL FUND	90,009	1,438,792	6%	152%	137,261	1,657,636	(1,520,375)	8%	1,657,636	8%
4 MARKETING FUND	147,684	1,910,411	8%	78%	115,486	84,438	31,048	137%	2,122,449	5%
5 GOLF COURSE FUND	14,140	2,860,237	0%	168%	23,805	1,319	22,486	1805%	2,269,730	1%
6 EXCISE TAX FUND	599,086	19,639,413	3%	33%	200,691	125,531	75,160	160%	17,428,280	1%
7 HOUSING FUND	213,150	4,149,023	5%	107%	228,154	442,040	(213,886)	52%	5,618,810	4%
8 OPEN SPACE ACQUISITION FUND	49,966	1,847,526	3%	16%	7,969	9,414	(1,445)	85%	1,745,020	0%
9 CONSERVATION TRUST FUND	9	32,550	0%	-11%	-1	7	(8)	-14%	32,083	0%
10 GARAGE SERVICES FUND	213,585	3,039,176	7%	83%	176,464	171,914	4,550	103%	2,144,466	8%
11 INFORMATION TECHNOLOGY FUND	86,998	1,043,978	8%	85%	73,872	73,872	-	100%	886,464	8%
12 FACILITIES MAINTENANCE FUND	19,203	230,436	8%	115%	22,091	22,088	3	100%	265,056	8%
13 SPECIAL PROJECTS FUND	30,417	434,004	7%	108%	32,917	32,917	-	100%	395,004	8%
<b>TOTAL REVENUE</b>	<b>2,861,206</b>	<b>63,648,695</b>	<b>4%</b>	<b>88%</b>	<b>2,519,875</b>	<b>4,313,721</b>	<b>(1,793,846)</b>	<b>58%</b>	<b>58,321,311</b>	<b>4%</b>
<b>EXPENDITURES</b>										
1 GENERAL FUND	1,714,143	20,881,791	8%	104%	1,777,232	1,595,352	(181,880)	111%	20,748,263	9%
2 UTILITY FUND	164,660	2,356,028	7%	124%	203,428	310,732	107,304	65%	5,293,563	4%
3 CAPITAL FUND	3,773	1,271,527	0%	206%	7,769	1,674,117	1,666,348	0%	1,674,117	0%
4 MARKETING FUND	311,162	1,788,213	17%	95%	296,624	287,924	(8,700)	103%	2,122,452	14%
5 GOLF COURSE FUND	41,264	2,829,565	1%	113%	46,533	66,633	20,100	70%	2,268,821	2%
6 EXCISE TAX FUND	1,325,408	16,589,936	8%	97%	1,283,781	1,228,573	(55,208)	104%	15,938,720	8%
7 HOUSING FUND	170,600	4,119,633	4%	385%	656,760	71,741	(585,019)	915%	6,350,971	10%
8 OPEN SPACE ACQUISITION FUND	171,107	1,754,898	10%	964%	1,649,510	407,064	(1,242,446)	405%	3,094,093	53%
9 CONSERVATION TRUST FUND	2,583	30,996	8%	142%	3,667	3,667	-	100%	43,998	8%
10 GARAGE SERVICES FUND	285,520	1,721,251	17%	41%	116,427	135,579	19,152	86%	1,982,668	6%
11 INFORMATION TECHNOLOGY FUND	55,151	614,483	9%	196%	107,902	62,145	(45,757)	174%	769,777	14%
12 FACILITIES MAINTENANCE FUND	-	85,963	0%	N/A	0	3,286	3,286	0%	76,078	0%
13 SPECIAL PROJECTS FUND	0	388,903	0%	N/A	67,500	76,691	9,191	88%	395,001	17%
<b>TOTAL EXPENDITURES</b>	<b>4,245,371</b>	<b>54,433,187</b>	<b>8%</b>	<b>146%</b>	<b>6,217,133</b>	<b>5,923,504</b>	<b>(293,629)</b>	<b>105%</b>	<b>60,758,522</b>	<b>10%</b>
	<b>(1,384,165)</b>	<b>9,215,508</b>			<b>(3,697,258)</b>	<b>(1,609,783)</b>	<b>(2,087,475)</b>		<b>(2,437,211)</b>	

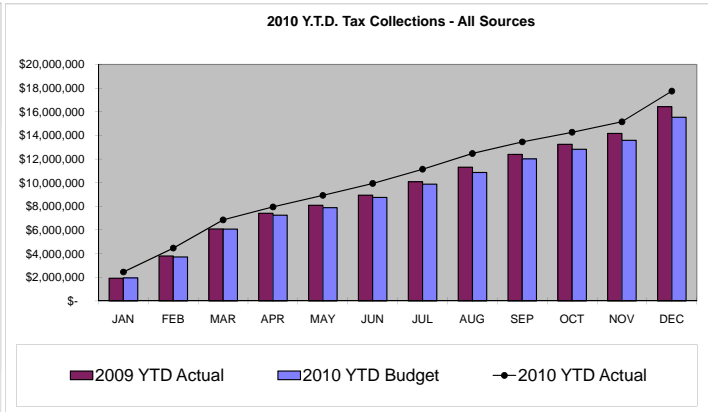
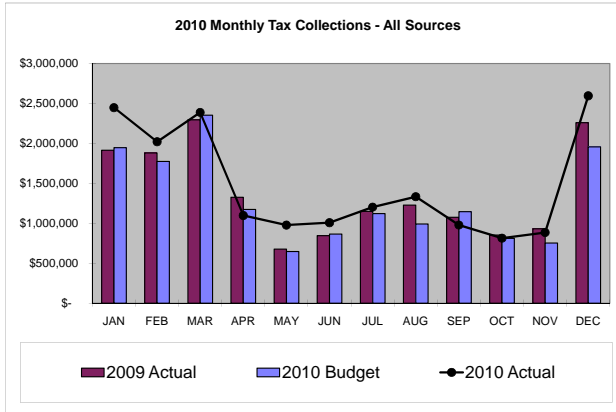
**TOWN OF BRECKENRIDGE  
ALL FUNDS, NET OF TRANSFERS  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 1 MONTHS ENDING JANUARY 31, 2011**

8 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2009 ACTUAL/ 2010 ACTUAL % CHANGE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % CHANGE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>REVENUE</b>										
1 GENERAL FUND	485,315	12,340,190	4%	119%	577,671	528,071	49,600	109%	10,035,769	6%
2 UTILITY FUND	-70,841	2,893,139	-2%	-36%	25,470	266,449	(240,979)	10%	2,944,244	1%
3 CAPITAL FUND	10,342	364,288	3%	190%	19,678	246,636	(226,958)	8%	246,636	8%
4 MARKETING FUND	86,576	1,177,115	7%	94%	81,635	50,587	31,048	161%	1,752,778	5%
5 GOLF COURSE FUND	3,307	2,731,911	0%	90%	2,972	1,319	1,653	225%	2,019,730	0%
6 EXCISE TAX FUND	599,086	19,639,413	3%	33%	200,691	125,531	75,160	160%	17,428,280	1%
7 HOUSING FUND	18,740	1,816,103	1%	70%	13,065	226,951	(213,886)	6%	3,037,742	0%
8 OPEN SPACE ACQUISITION FUND	49,966	1,847,526	3%	16%	7,969	9,414	(1,445)	85%	1,745,020	0%
9 CONSERVATION TRUST FUND	9	32,550	0%	-11%	(1)	7	(8)	-14%	32,083	0%
10 GARAGE SERVICES FUND	7,820	569,995	1%	58%	4,550	-	4,550	0%	81,498	6%
11 INFORMATION TECHNOLOGY FUND	0	2	0%	N/A	-	-	-	0%	-	0%
12 FACILITIES MAINTENANCE FUND	0	0	N/A	N/A	-	-	-	N/A	-	N/A
13 SPECIAL PROJECTS FUND	0	69,000	0%	N/A	-	-	-	N/A	-	N/A
<b>TOTAL REVENUE</b>	<b>1,190,320</b>	<b>43,481,232</b>	<b>3%</b>	<b>78%</b>	<b>933,700</b>	<b>1,454,965</b>	<b>(521,265)</b>	<b>64%</b>	<b>39,323,780</b>	<b>2%</b>
<b>EXPENDITURES</b>										
1 GENERAL FUND	1,513,869	17,719,534	9%	107%	1,613,360	1,431,479	(181,881)	113%	18,781,775	9%
2 UTILITY FUND	127,607	1,911,392	7%	129%	164,210	271,514	107,304	60%	4,822,947	3%
3 CAPITAL FUND	3,773	1,271,527	0%	206%	7,769	1,674,117	1,666,348	0%	1,674,117	0%
4 MARKETING FUND	311,162	1,788,213	17%	95%	296,624	287,924	(8,700)	103%	2,122,452	14%
5 GOLF COURSE FUND	41,264	2,170,105	2%	113%	46,533	66,633	20,100	70%	2,268,821	2%
6 EXCISE TAX FUND	-	566,540	0%	N/A	-	0	-	N/A	569,878	0%
7 HOUSING FUND	170,600	4,119,633	4%	385%	656,760	71,741	(585,019)	915%	6,350,971	10%
8 OPEN SPACE ACQUISITION FUND	170,606	1,748,886	10%	966%	1,648,746	406,300	(1,242,446)	406%	3,084,925	53%
9 CONSERVATION TRUST FUND	0	0	N/A	N/A	0	0	-	N/A	0	N/A
10 GARAGE SERVICES FUND	284,259	1,706,119	17%	40%	114,145	133,297	19,152	86%	1,955,284	6%
11 INFORMATION TECHNOLOGY FUND	54,922	611,735	9%	196%	107,607	61,850	(45,757)	174%	766,237	14%
12 FACILITIES MAINTENANCE FUND	0	85,963	0%	N/A	0	3,286	3,286	N/A	76,078	N/A
13 SPECIAL PROJECTS FUND	0	388,903	0%	N/A	67,500	76,691	9,191	88%	395,001	17%
<b>TOTAL EXPENDITURES</b>	<b>2,678,062</b>	<b>34,088,550</b>	<b>8%</b>	<b>176%</b>	<b>4,723,254</b>	<b>4,484,832</b>	<b>(238,422)</b>	<b>105%</b>	<b>42,868,486</b>	<b>11%</b>
<b>Revenue Less Expenditures</b>	<b>(1,487,742)</b>	<b>9,392,682</b>			<b>(3,789,554)</b>	<b>(3,029,867)</b>	<b>(759,687)</b>		<b>(3,544,706)</b>	

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

Sales Period	2009 Collections			2010 Budget			2010 Monthly			2010 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2009	% of Budget	Actual	% Change from 2009	% of Budget
JAN	\$ 1,914,193	\$ 1,914,193	11.7%	\$ 1,946,599	\$ 1,946,599	12.5%	\$ 2,446,840	27.8%	125.7%	\$ 2,446,840	27.8%	125.7%
FEB	\$ 1,880,837	\$ 3,795,030	23.1%	\$ 1,773,619	\$ 3,720,218	24.0%	\$ 2,019,951	7.4%	113.9%	4,466,791	17.7%	120.1%
MAR	\$ 2,293,993	\$ 6,089,023	37.1%	\$ 2,351,856	\$ 6,072,074	39.1%	\$ 2,387,949	4.1%	101.5%	6,854,740	12.6%	112.9%
APR	\$ 1,325,730	\$ 7,414,752	45.1%	\$ 1,172,250	\$ 7,244,324	46.6%	\$ 1,097,078	-17.2%	93.6%	7,951,818	7.2%	109.8%
MAY	\$ 676,634	\$ 8,091,386	49.3%	\$ 646,259	\$ 7,890,583	50.8%	\$ 976,999	44.4%	151.2%	8,928,817	10.3%	113.2%
JUN	\$ 844,559	\$ 8,935,945	54.4%	\$ 864,354	\$ 8,754,938	56.4%	\$ 1,006,981	19.2%	116.5%	9,935,798	11.2%	113.5%
JUL	\$ 1,148,282	\$ 10,084,227	61.4%	\$ 1,121,936	\$ 9,876,873	63.6%	\$ 1,202,708	4.7%	107.2%	11,138,506	10.5%	112.8%
AUG	\$ 1,226,749	\$ 11,310,975	68.8%	\$ 991,855	\$ 10,868,729	70.0%	\$ 1,331,994	8.6%	134.3%	12,470,500	10.3%	114.7%
SEP	\$ 1,075,451	\$ 12,386,427	75.4%	\$ 1,144,450	\$ 12,013,179	77.3%	\$ 978,488	-9.0%	85.5%	13,448,988	8.6%	112.0%
OCT	\$ 853,659	\$ 13,240,086	80.6%	\$ 811,550	\$ 12,824,728	82.6%	\$ 813,640	-4.7%	100.3%	14,262,627	7.7%	111.2%
NOV	\$ 930,260	\$ 14,170,346	86.3%	\$ 751,933	\$ 13,576,661	87.4%	\$ 884,439	-4.9%	117.6%	15,147,066	6.9%	111.6%
DEC	\$ 2,258,751	\$ 16,429,097	100.0%	\$ 1,956,122	\$ 15,532,784	100.0%	\$ 2,595,030	14.9%	132.7%	\$ 17,742,096	8.0%	114.2%

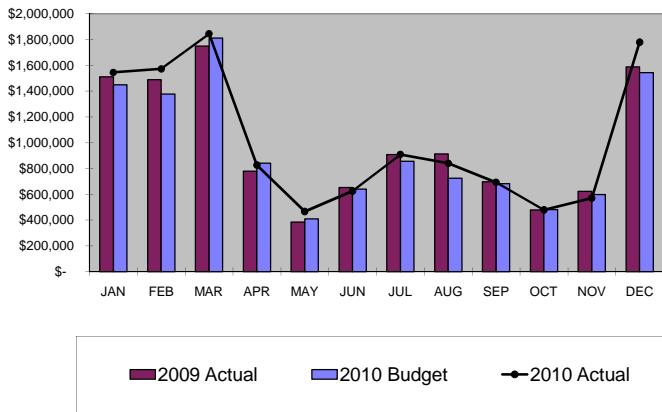


<b>Prior Year Actual and Current Year Budget Variances</b>					
	TOTAL	Sales	Accommodations	RETT	Housing
vs. Nov 09 Actual	336,278	191,130	89,099	47,780	8,270
vs. Nov 10 Budget	638,908	236,304	139,784	260,280	2,541
vs. YTD 09 Actual	1,312,999	377,139	87,639	801,759	46,461
vs. YTD 10 Budget	2,209,312	741,121	228,285	1,162,879	77,027

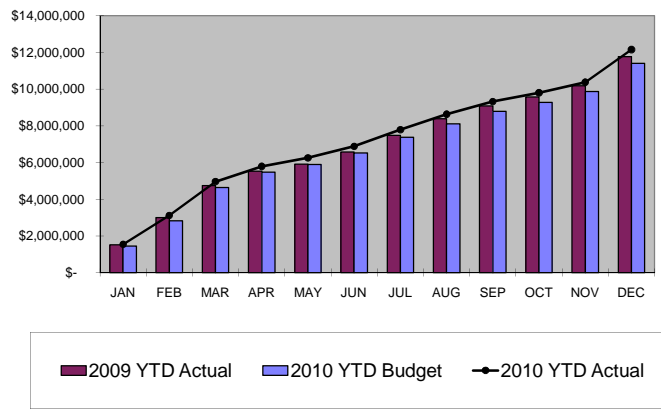
**TOWN OF BRECKENRIDGE  
SALES TAX COLLECTIONS  
REPORTED IN THE PERIOD EARNED**

Sales Period	2009 Collections			2010 Budget			2010 Monthly			2010 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2009	% of Budget	Actual	% Change from 2009	% of Budget
JAN	\$ 1,511,420	\$ 1,511,420	12.8%	\$ 1,448,519	\$ 1,448,519	12.7%	\$ 1,544,725	2.2%	106.6%	\$ 1,544,725	2.2%	106.6%
FEB	1,488,667	3,000,087	25.5%	1,376,650	2,825,169	24.8%	\$ 1,572,567	5.6%	114.2%	3,117,292	3.9%	110.3%
MAR	1,749,041	4,749,128	40.3%	1,810,355	4,635,524	40.6%	\$ 1,844,677	5.5%	101.9%	4,961,969	4.5%	107.0%
APR	780,544	5,529,671	47.0%	841,764	5,477,288	48.0%	\$ 826,063	5.8%	98.1%	5,788,032	4.7%	105.7%
MAY	384,759	5,914,431	50.2%	410,164	5,887,452	51.6%	\$ 466,655	21.3%	113.8%	6,254,686	5.8%	106.2%
JUN	651,911	6,566,341	55.8%	640,134	6,527,586	57.2%	\$ 625,370	-4.1%	97.7%	6,880,056	4.8%	105.4%
JUL	907,582	7,473,924	63.5%	855,252	7,382,838	64.7%	\$ 909,629	0.2%	106.4%	7,789,685	4.2%	105.5%
AUG	914,206	8,388,129	71.2%	725,780	8,108,618	71.1%	\$ 840,855	-8.0%	115.9%	8,630,540	2.9%	106.4%
SEP	697,168	9,085,297	77.2%	682,331	8,790,948	77.0%	\$ 693,592	-0.5%	101.7%	9,324,132	2.6%	106.1%
OCT	479,350	9,564,648	81.2%	480,780	9,271,728	81.2%	\$ 478,831	-0.1%	99.6%	9,802,962	2.5%	105.7%
NOV	623,385	10,188,032	86.5%	597,497	9,869,225	86.5%	\$ 571,080	-8.4%	95.6%	10,374,042	1.8%	105.1%
DEC	\$ 1,587,558	\$ 11,775,591	100.0%	\$ 1,542,384	11,411,609	100.0%	\$ 1,778,688	12.0%	115.3%	\$ 12,152,730	3.2%	106.5%

2010 Monthly Sales Tax Collections



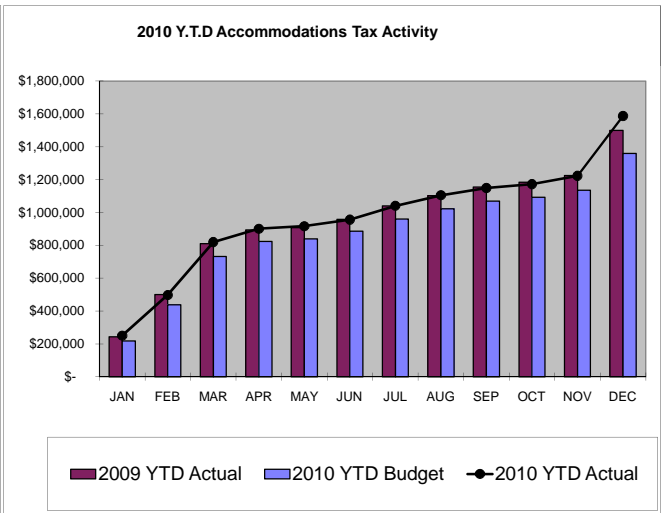
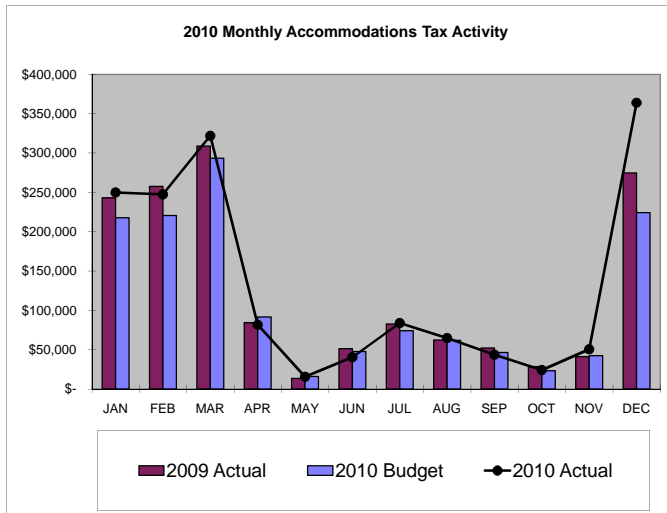
2010 Y.T.D. Sales Tax Collections



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

Sales Period	2009 Collections			2010 Budget			2010 Monthly			2010 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2009	% of Budget	Actual	% Change from 2009	% of Budget
JAN	\$ 242,816	\$ 242,816	16.2%	\$ 217,666	\$ 217,666	16.0%	\$ 249,870	2.9%	114.8%	\$ 249,870	2.9%	114.8%
FEB	257,415	500,230	33.4%	220,378	438,044	32.2%	\$ 247,373	-3.9%	112.2%	497,243	-0.6%	113.5%
MAR	309,038	809,268	54.0%	293,538	731,582	53.9%	\$ 321,989	4.2%	109.7%	819,232	1.2%	112.0%
APR	84,113	893,382	59.6%	91,571	823,153	60.6%	\$ 81,598	-3.0%	89.1%	900,830	0.8%	109.4%
MAY	13,349	906,730	60.5%	15,721	838,874	61.8%	\$ 15,464	15.8%	98.4%	916,294	1.1%	109.2%
JUN	51,189	957,919	63.9%	47,743	886,617	65.3%	\$ 40,202	-21.5%	84.2%	956,496	-0.1%	107.9%
JUL	82,671	1,040,591	69.4%	73,957	960,574	70.7%	\$ 83,775	1.3%	113.3%	1,040,271	0.0%	108.3%
AUG	62,207	1,102,798	73.6%	61,895	1,022,468	75.3%	\$ 64,597	3.8%	104.4%	1,104,867	0.2%	108.1%
SEP	52,076	1,154,873	77.0%	46,421	1,068,889	78.7%	\$ 43,509	-16.5%	93.7%	1,148,376	-0.6%	107.4%
OCT	28,488	1,183,361	78.9%	23,199	1,092,088	80.4%	\$ 23,958	-15.9%	103.3%	1,172,334	-0.9%	107.3%
NOV	40,901	1,224,262	81.7%	42,213	1,134,300	83.5%	\$ 50,468	23.4%	119.6%	1,222,802	-0.1%	107.8%
DEC	\$ 274,807	\$ 1,499,070	100.0%	\$ 224,123	1,358,423	100.0%	\$ 363,906	32.4%	162.4%	\$ 1,586,708	5.8%	116.8%

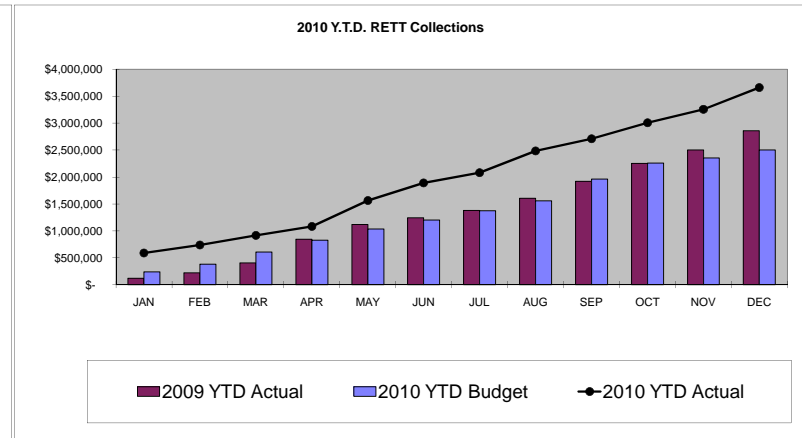
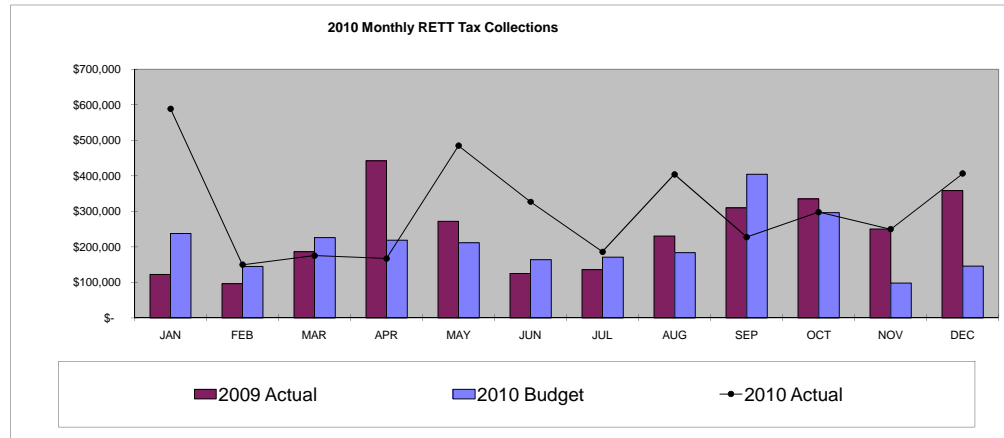
Accommodation tax amounts reflect collections at the 2% rate.



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

Sales Period	2007 Collections			2009 Collections			2010 Budget			2010 Monthly				2010 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 2009	Actual	% of Budget	% Change from 2007	% Change from 2009
JAN	\$ 352,958	\$ 352,958	6.2%	\$ 122,238	\$ 122,238	4.3%	\$ 237,814	\$ 237,814	9.51%	\$ 588,874	247.6%	66.8%	381.7%	\$ 588,874	247.6%	66.8%	381.7%
FEB	342,995	695,953	12.3%	96,379	218,617	7.6%	144,335	382,149	15.29%	149,303	103.4%	-56.5%	54.9%	738,178	193.2%	6.1%	237.7%
MAR	271,817	967,770	17.1%	185,714	404,331	14.1%	225,613	607,762	24.31%	175,161	77.6%	-35.6%	-5.7%	913,339	150.3%	-5.6%	125.9%
APR	564,624	1,532,394	27.0%	442,039	846,370	29.6%	218,626	826,388	33.06%	167,038	76.4%	-70.4%	-62.2%	1,080,377	130.7%	-29.5%	27.6%
MAY	533,680	2,066,074	36.4%	271,393	1,117,763	39.1%	211,243	1,037,631	41.51%	484,618	229.4%	-9.2%	78.6%	1,564,995	150.8%	-24.3%	40.0%
JUN	522,999	2,589,073	45.6%	124,822	1,242,585	43.4%	163,352	1,200,983	48.04%	326,779	200.0%	-37.5%	161.8%	1,891,775	157.5%	-26.9%	52.2%
JUL	343,610	2,932,683	51.7%	135,393	1,377,977	48.2%	170,942	1,371,925	54.88%	186,067	108.8%	-45.8%	37.4%	2,077,841	151.5%	-29.1%	50.8%
AUG	594,349	3,527,032	62.1%	230,014	1,607,991	56.2%	183,756	1,555,681	62.23%	404,004	219.9%	-32.0%	75.6%	2,481,846	159.5%	-29.6%	54.3%
SEP	711,996	4,239,028	74.7%	309,701	1,917,692	67.0%	404,440	1,960,121	78.40%	227,440	56.2%	-68.1%	-26.6%	2,709,285	138.2%	-36.1%	41.3%
OCT	392,752	4,631,779	81.6%	334,899	2,252,591	78.7%	296,502	2,256,623	90.26%	297,809	100.4%	-24.2%	-11.1%	3,007,094	133.3%	-35.1%	33.5%
NOV	459,147	5,090,926	89.7%	250,106	2,502,697	87.5%	97,454	2,354,077	94.16%	249,583	256.1%	-45.6%	-0.2%	3,256,677	138.3%	-36.0%	30.1%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 358,422	\$ 2,861,119	100.0%	\$ 145,922	2,500,000	100.00%	\$ 406,202	278.4%	-30.5%	13.3%	\$ 3,662,879	146.5%	-35.5%	28.0%

December #s are as of 12/31/10



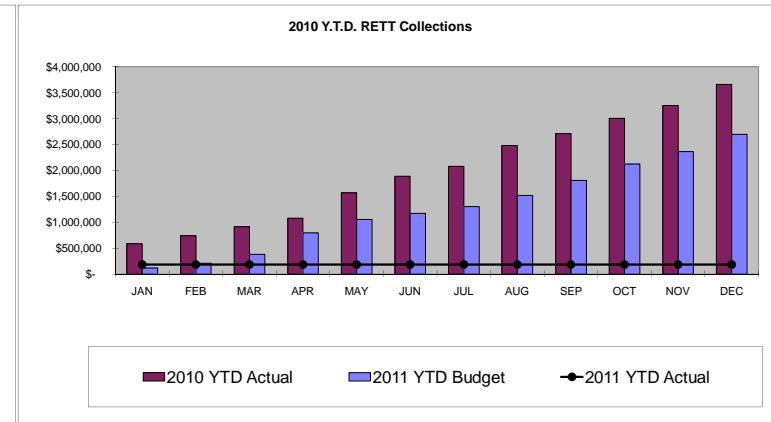
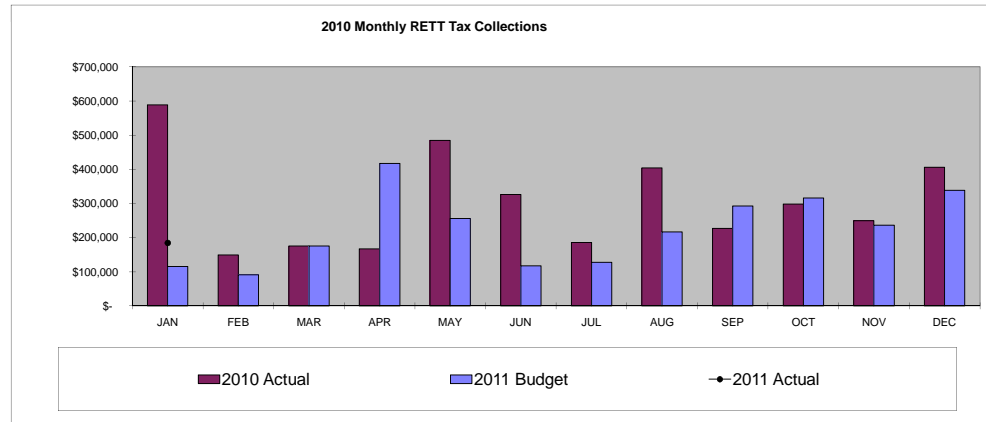
**RETT Churn Estimates**

	YTD	1 Ski Hill	Grand Lodge	Beaver Run	Total Projects	YTD (projects excluded)	Year End	
2009	2,861,119		(450,000)		(450,000)	2,411,119	2,411,119	actual
2010	3,662,879	(445,042)	(543,903)	(220,000)	(1,208,945)	2,453,934	2,453,934	actual

**NOTES:** The above table shows 2009 actual RETT results as of 11/30 compared to 2010 RETT results as of 11/30. Non-recurring projects are then subtracted and the remaining activity is compared. This analysis shows that 2010 actual RETT activity, excluding projects, is 1.7% above 2009 levels.

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

Sales Period	2007 Collections			2010 Collections			2011 Budget			2011 Monthly				2010 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 2010	Actual	% of Budget	% Change from 2007	% Change from 2010
JAN	\$ 352,958	\$ 352,958	6.2%	\$ 588,874	\$ 588,874	16.1%	\$ 115,354	\$ 115,354	4.3%	\$ 184,371	159.8%	-47.8%	-68.7%	\$ 184,371	159.8%	-47.8%	-68.7%
FEB	342,995	695,953	12.3%	149,303	738,178	20.2%	90,951	206,306	7.6%	0.0%	n/a	n/a	n/a	184,371	89.4%	-73.5%	-75.0%
MAR	271,817	967,770	17.1%	175,161	913,339	24.9%	175,256	381,562	14.1%	0.0%	n/a	n/a	n/a	184,371	48.3%	-80.9%	-79.8%
APR	564,624	1,532,394	27.0%	167,038	1,080,377	29.5%	417,147	798,708	29.6%	0.0%	n/a	n/a	n/a	184,371	23.1%	-88.0%	-82.9%
MAY	533,680	2,066,074	36.4%	484,618	1,564,995	42.7%	256,110	1,054,819	39.1%	0.0%	n/a	n/a	n/a	184,371	17.5%	-91.1%	-88.2%
JUN	522,999	2,589,073	45.6%	326,779	1,891,775	51.6%	117,793	1,172,611	43.4%	0.0%	n/a	n/a	n/a	184,371	15.7%	-92.9%	-90.3%
JUL	343,610	2,932,683	51.7%	186,067	2,077,841	56.7%	127,768	1,300,380	48.2%	0.0%	n/a	n/a	n/a	184,371	14.2%	-93.7%	-91.1%
AUG	594,349	3,527,032	62.1%	404,004	2,481,846	67.8%	217,061	1,517,440	56.2%	0.0%	n/a	n/a	n/a	184,371	12.2%	-94.8%	-92.6%
SEP	711,996	4,239,028	74.7%	227,440	2,709,285	74.0%	292,261	1,809,701	67.0%	0.0%	n/a	n/a	n/a	184,371	10.2%	-95.7%	-93.2%
OCT	392,752	4,631,779	81.6%	297,809	3,007,094	82.1%	316,040	2,125,742	78.7%	0.0%	n/a	n/a	n/a	184,371	8.7%	-96.0%	-93.9%
NOV	459,147	5,090,926	89.7%	249,583	3,256,677	88.9%	236,022	2,361,764	87.5%	0.0%	n/a	n/a	n/a	184,371	7.8%	-96.4%	-94.3%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 406,202	\$ 3,662,879	100.0%	\$ 338,238	\$ 2,700,002	100.0%	0.0%	n/a	n/a	n/a	\$ 184,371	6.8%	-96.8%	-95.0%



**RETT Churn Estimates**

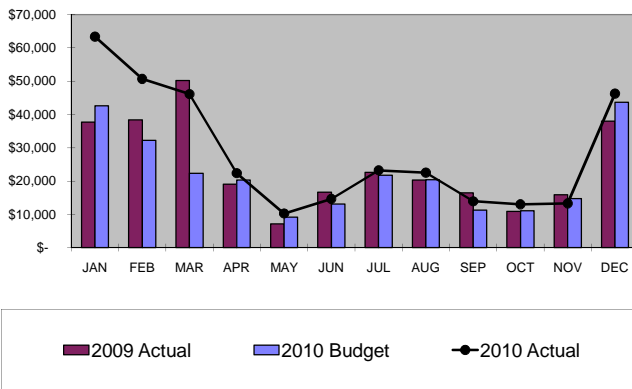
YTD	RETT Churn Estimates					YTD (projects excluded)		
	1 Ski Hill	Grand Lodge	Beaver Run	Water House	Total Projects	Year End	Year End	Year End
2010	588,874	(445,042)	(543,903)	(220,000)	(35,908)	(1,244,853)	371,086	3,662,879 actual
2011	184,371				(53,370)	(53,370)	237,741	2,700,002 budget

**NOTES:** The above table shows 2010 actual RETT results as of 1/31 compared to 2011 RETT results as of 1/31. New Construction is then subtracted and the remaining activity is compared.

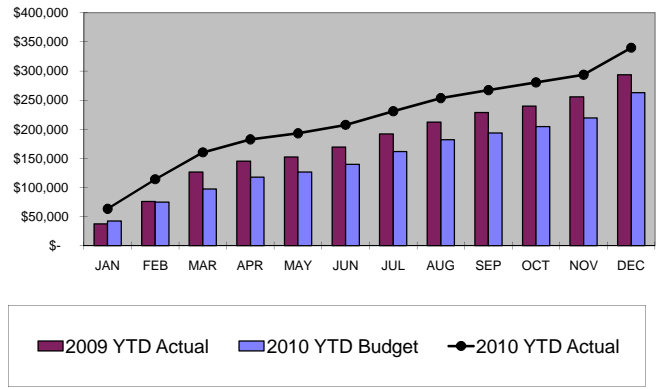
**TOWN OF BRECKENRIDGE**  
**AFFORDABLE HOUSING SALES TAX COLLECTIONS**  
**REPORTED IN THE PERIOD EARNED**

Sales Period	2009 Collections			2010 Budget			2010 Monthly			2010 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2009	% of Budget	Actual	% Change from 2009	% of Budget
JAN	\$ 37,720	\$ 37,720	12.9%	\$ 42,600	\$ 42,600	12.2%	\$ 63,372	68.0%	148.8%	\$ 63,372	68.0%	148.8%
FEB	38,376	76,096	13.1%	32,256	74,855	11.9%	\$ 50,707	32.1%	157.2%	114,079	49.9%	152.4%
MAR	50,200	126,296	17.1%	22,350	97,205	15.6%	\$ 46,121	-8.1%	206.4%	160,200	26.8%	164.8%
APR	19,034	145,330	6.5%	20,289	117,495	7.3%	\$ 22,379	17.6%	110.3%	182,579	25.6%	155.4%
MAY	7,133	152,462	2.4%	9,131	126,626	3.0%	\$ 10,262	43.9%	112.4%	192,841	26.5%	152.3%
JUN	16,637	169,100	5.7%	13,126	139,752	5.4%	\$ 14,630	-12.1%	111.5%	207,471	22.7%	148.5%
JUL	22,635	191,735	7.7%	21,785	161,537	7.5%	\$ 23,238	2.7%	106.7%	230,709	20.3%	142.8%
AUG	20,323	212,058	6.9%	20,425	181,962	6.6%	\$ 22,538	10.9%	110.3%	253,247	19.4%	139.2%
SEP	16,506	228,564	5.6%	11,259	193,221	6.1%	\$ 13,947	-15.5%	123.9%	267,194	16.9%	138.3%
OCT	10,922	239,486	3.7%	11,069	204,290	4.1%	\$ 13,042	19.4%	117.8%	280,237	17.0%	137.2%
NOV	15,868	255,354	5.4%	14,769	219,059	5.4%	\$ 13,308	-16.1%	90.1%	293,545	15.0%	134.0%
DEC	\$ 37,964	\$ 293,318	12.9%	\$ 43,693	262,752	15.1%	\$ 46,234	21.8%	105.8%	\$ 339,779	15.8%	129.3%

2010 Monthly Aff. Housing Sales Tax Collections



2010 Y.T.D. Aff. Housing Sales Tax Collections





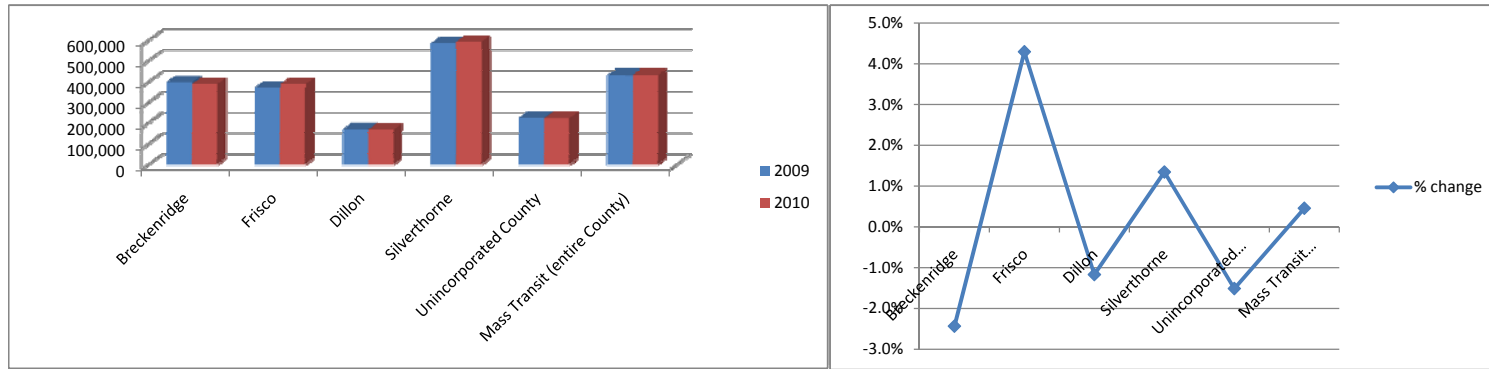
# Local Tax Collections by Period

## by Jurisdiction

**Period: Nov-10**

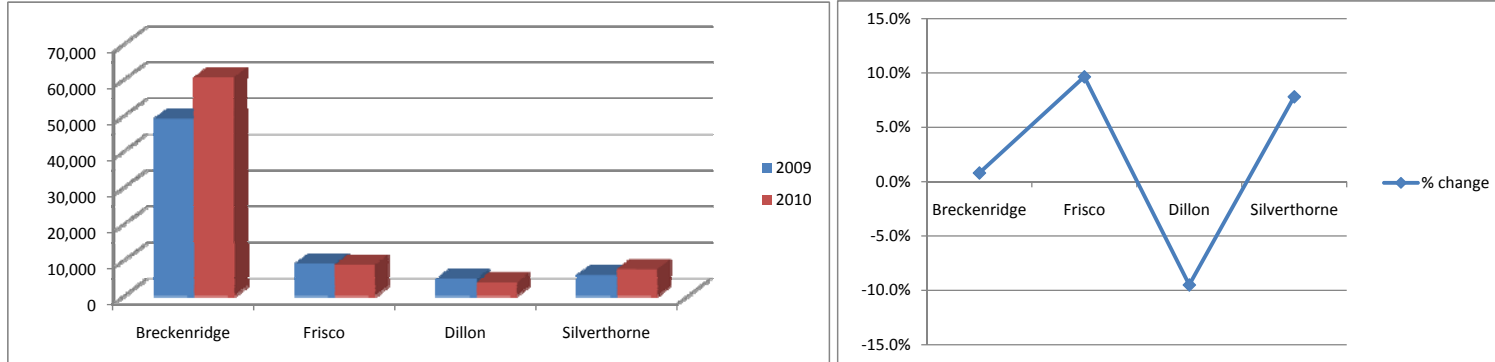
### Sales Tax

	2009 YTD		2010 % change YTD		% change	
Breckenridge	397,930	6,746,851	388,240	-2.4%	6,645,962	-1.5%
Frisco	370,290	4,614,969	386,187	4.3%	4,615,490	0.0%
Dillon	167,340	2,023,503	165,383	-1.2%	2,042,464	0.9%
Silverthorne	582,957	6,590,620	590,795	1.3%	6,628,791	0.6%
Unincorporated County	222,373	3,446,119	219,009	-1.5%	3,190,530	-7.4%
Mass Transit (entire County)	430,384	5,851,545	432,350	0.5%	5,899,126	0.8%



### Lodging Tax

	2009 YTD		2010 % change YTD		% change	
Breckenridge	49,081	1,232,442	60,502	23.3%	1,237,593	0.4%
Frisco	9,007	214,595	8,755	-2.8%	204,501	-4.7%
Dillon	4,634	96,185	3,697	-20.2%	84,176	-12.5%
Silverthorne	5,708	98,850	7,399	29.6%	104,946	6.2%



## Memorandum

**TO:** Town Council  
**FROM:** Tom Daugherty, Town Engineer  
**DATE:** 2/17/2011  
**RE:** Town Hall/Old CMC Building

---

Since the Town has purchased the old CMC building we have conducted a study that evaluated the existing Town Hall and the old CMC building for use as the Town Hall function. I have attached the memo from that presentation in June of 2009.

Previously Council expressed a desire to have public input on how the old CMC building was to be used. Since then the Council has said that they would like to discuss the potential options before determining if any public input is needed.

We currently have a commitment to the CMC to provide space for their ceramics, dance and photo labs. Housing in the CMC building has been previously eliminated as a use for the property. The potential uses that have been raised to date for the old CMC are:

1. Town Hall
2. Non profit office space
3. Continue theater
4. Library
5. Partnership with the County

Regardless of the use on the CMC property a remodel is needed to accommodate the new use.

The potential uses for the existing Town Hall include:

1. Use as connection to Ski Area development on the Gondola Lots.
2. Commercial rental or sale.
3. Non profit office space.

Both buildings require continued maintenance and will be reflected in the annual budgets.

Our goal for the work session is to get an understanding about how Council would like to move forward with the planning of these two buildings.

# Memorandum

**TO:** Town Council

**FROM:** Tom Daugherty, Town Engineer

**DATE:** February 17, 2011

**RE:** Facilities Master Plan Update for Town Hall

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The Town conducted a study in 2002 to assess the facilities owned by the Town and to determine the Town's space needs into the future. This study was conducted by Daniel C. Smith and Associates. The study identified areas where the Town could need additional space. As an example, the Police Facility was a result of a need identified in this study. The study assumed that the service levels, at the time, would be maintained as the community grew. Now that service levels have been reduced the study needs to be revisited to reflect the new reality. This memo is intended to provide information to the Town Council as they look to make decisions relative to the Harris Street building (old CMC) and Town Hall buildings.

The Smith Study projected that the staffing level for the Town Hall functions would increase beyond the space available in the current Town Hall. In 2008 the Town hired McMenamin Design Associates to perform a fitting exercise in the existing Town Hall and the Harris Street Building. This exercise used the Smith Study staffing projections to evaluate each building. The conclusion was that the existing Town Hall would need an addition of approximately 4,400 square feet to fit the projected staffing and the Harris Street building could accommodate the projected staffing without an addition and only modifications to the interior.

The service levels have now decreased and the staffing will decrease as well. Below is a table showing the 2008 staffing, the Smith Study staffing and the new service level staffing.

Town Hall Facilities Update  
Number of Employees

Functional Group	Department	2008 Staffing		Build Out Daniel Smith Study 2020		New Service Level	
		Full Time	Seasn/PT	Full Time	Seasn/PT	Full Time	Seasn/PT
Town Hall	Administration	3		4		3	
	Comm Dev	16	4	21		14	4
	Engineering	4		4		4	
	Finance	11		15		10	
	IT	4		5		4	
	Human Resources	5		7		5	
	<b>Total</b>	<b>43</b>	<b>4</b>	<b>56</b>	<b>0</b>	<b>40</b>	<b>4</b>

### **Current Town Hall - 18,169 s.f.**

The Smith study showed that the existing Town Hall was lacking storage and conference space and the efficiency was below normal levels for a municipal Town Hall. The lack of conference space has, at times, impacted staffs ability to conduct business.

Typical municipal buildings have efficiencies of 0.75 and the existing Town Hall has an efficiency of 0.65. The incremental expansion and remodels have compromised functionality. An example of that is the finance and clerk offices are located on two different floors. The fact that we have multiple public counters duplicates services and creates the need for multiple staff members to interact with the public.

As you can see in the above table, the net loss of two employees will not cause the need for an expansion of the existing Town Hall. Because some departments will lose employees and others will gain employees some remodel would be necessary to make the space functional for the effected departments. It would be very difficult to increase conference and storage space in the existing facility due to the existing layout. The need for storage and conference space would likely need to be addressed with an addition.

The current Town Hall sits on a lot that is already crowded and any addition would create potential impacts on the site and parking.

### **Harris Street Building – 27,770 s.f.**

The 2008 McMenamin Design Associates study showed that this building could accommodate the needs established in the Smith study as well as additional uses such as ceramics studio and dance studio. The Town Hall function would occupy approximately 21,000 square feet. Needless to say the reduced staffing shown in the above table can be easily accommodated as well. The appropriate conference and storage space can be accommodated in this building in either scenario and the functionality can be addressed during the design of the interior.

The existing layout of the building is meant for classroom type uses and is likely that a remodel will be required for any use of the building in the future.

As an additional item, staff has considered moving the Recreation Center administration staff to Town Hall. Currently Recreation administration consists of 4 employees which would equate to approximately 1,000 square feet of office space. This is based on a standard of 250 square feet of net usable square feet per person. The current offices at the Recreation Center are crowded and undersized which restricts functionality. Moving the administration for the Recreation Department would free up needed space in the Recreation Center for use by Recreation Center Staff.

### **Summary**

The current Town Hall is essentially at capacity and any growth in staffing levels would require an addition to the building or relocate to another location such as the Harris Street building. The existing Town Hall building does not meet current storage and conference space needs and is unlikely to be met without an addition or extensive remodeling. The functionality of the building impacts efficiencies and is not likely to be remedied without a remodel or addition.

The Harris Street building has enough space and flexibility that it can accommodate most future scenarios. The Harris Street building will require an interior remodel for most future uses of the building.

# Memorandum

**To:** Town Council  
**From:** Tom Daugherty  
**Date:** 6/3/2009  
**Re:** Town Hall/CMC study

## Background

During the negotiations with the CMC for the Airport Block 11 property the Town entered into an MOU in which we have agreed to purchase the CMC building on Harris Street for \$2.25M. In that agreement the Town agreed to jointly maintain the use of the photo lab, dance studio, art gallery and the ceramics studio either in the CMC building or in the Arts District. The Council has also indicated a desire to keep the Speakeasy Theatre if possible.

At the time, the Town was considering the CMC building for use as Town Hall. As a result of that discussion money was set aside in the CIP to evaluate the CMC building and the existing Town Hall for future use as Town Hall.

McMenamin Design Associates (MDA) evaluated each building to see what would be needed to meet the needs at build out conditions. The Facilities Master Plan was used for determining build out needs. MDA used sub consultants such as structural, mechanical and electrical engineers to evaluate the building and determine what needed to be done in each building. The evaluation included a cost to remodel or add to each building.

## Building Information

	Total Square Feet	Public Spaces	Employee Spaces	Town Vehicle Spaces	Total Parking Spaces
Town Hall	18,169	15	26	9	50
CMC	27,770	TBD	TBD	TBD	90

## Space Needs

MDA reviewed the Facilities Master Plan and interviewed each department within Town Hall to understand their needs. These needs were then used to evaluate each building.

Even though the Police moved out of Town Hall the existing Town Hall is currently crowded with limited meeting space. An addition would be required to meet build out needs. The area around the building is limited and does not allow many options for an addition. MDA determined that an addition could be put on the building over the north parking lot but staging the construction would be difficult.

The CMC building on Harris Street could be remodeled to meet the Town's needs without an addition. The existing uses stated in the MOU could also be maintained and meet the future need although meeting spaces would be tight.

### **Parking Space**

The existing parking lots at Town Hall do not meet the need for the current number of employees. The guest parking is lacking, as can be seen on Council days or Municipal Court days. The staff currently uses approximately 25 parking spaces in the ski area parking lot for parking employees that are unable to find a spot in the Town's employee parking. The ski area will be developing that property and it can be expected that the Town will no longer have free use of that land for parking once that is developed. If the Town wished to provide parking for all of Town Hall employees the Town would need an estimated additional 30 spaces based on the Facilities Master Plan.

The location of the current Town Hall also puts pressure on parking in the area because currently 25 employees are competing for parking. Taking Town Hall parking out of the area will ease the parking pressure on the area.

The parking at the CMC site is more than adequate for Town Hall needs. There are currently approximately 90 spaces which would allow for employee parking along with Council and Municipal Court uses. The CMC parking lot can also be used as public parking which would expand the number of spots near the core of Town.

### **Building Systems**

The existing Town Hall systems are adequate. The building has had one addition and several small remodels that have caused the HVAC system to be rerouted and changed so that it does not work optimally. Any additions to this building should have a major rework of the heating and cooling to optimize its efficiency. The structure and electrical systems will have to be altered to fit any addition that occurs.

The CMC building can meet the Town's needs within the existing walls. Without performing selective demolition the condition of the structure cannot be evaluated in depth. There are not signs of any structural problems from inspecting the exterior and ceiling. Cooling and circulation systems will have to be installed during a remodel for a use of this type. The heating system was recently upgraded by the CMC and will provide adequate heating. The CMC also removed and abated the asbestos that was present in the building some years ago.

### **Disruption of Service**

Expanding the existing Town Hall would be done while occupied or other accommodations would have to be made during construction. Either option would disrupt the Town Hall business. The staging that would be required would displace parking, and would make doing business at Town Hall difficult and add costs to the construction.

The CMC building could be remodeled while unoccupied and the move could happen once completed. That would have a comparatively small impact on Town Hall business. Maintaining the uses for CMC outlined in the MOU and the Theatre would have to be considered during construction but that would be the only phasing issue to deal with.

**Costs**

We used an estimator to provide some preliminary estimates to compare what each building would cost to meet the build out need. The architect provided a basic floor plan for each building. The current Town Hall showed an expansion of 5,400 square feet while the CMC building can accommodate the future need within the existing structure. In order to do an “apples to apples” comparison we are assuming that adequate parking will be provided for all employees.

Town Hall		
Construction Costs (5,400 sq ft addition)		\$2,500,000
Parking expansion	30 spaces @ \$22,000 =	\$660,000
Total		\$3,160,000
CMC		
Remodel Costs		\$2,000,000

**Conclusion**

Using the assumptions of the Facilities Master Plan noted earlier, and taking into account the above issues, indications are that remodeling the CMC would provide more benefits than adding onto the existing Town Hall.

Remodeling CMC would be more cost effective, provide more opportunities to expand parking in the core of Town, provide adequate parking for the Town Hall needs, cause less disruption of Town business and be an appropriate adaptive reuse of a historic Breckenridge building.

The CMC building is not immediately required for Town Hall which could be an advantage as the building could be remodeled over time as funds are available. The CMC building also has the possible opportunity to lease space to other governmental and/or non-profit organizations in the short term as there will be excess space unoccupied by the Town until build out which has been a need expressed in the past.



**TO:** BRECKENRIDGE TOWN COUNCIL  
**FROM:** BRIAN WALDES, FINANCIAL SERVICES MANAGER  
**SUBJECT:** POWER PURCHASE AGREEMENT UPDATE  
**DATE:**  
**CC:** TIM GAGEN, KATE BONIFACE

---

The purpose of this memo is to update Council on the status of the Town's power purchase agreement (PPA) with Renewable Social Benefits Fund (RSBF).

### **Project Redesign**

The early snowfall combined with a revision to the solar array designs caused us to miss the potential installation of any arrays before 2011. The main reason for the revision of the designs was additional consideration of the local weather conditions. RSBF felt the initial plans would not bear the extreme weather conditions we experience in Breckenridge. The redesign was accomplished through extensive consultation with a local renewable energy company, Innovative Energy. Their recommendations include measures to counter the extreme snowfall and wind conditions.

A result of these measures is that the predicted power generation from most sites has been reduced. This is because as arrays are tilted and elevated, there must be additional space in between the racks to avoid shading. This reduces the number of panels that can be installed in any given area. The project will still be of substantial size, an estimated 600 kWh of arrays (down from 900 kWh).

To reach the new 600 kWh size, two new sites have been recommended for the project. They are the Golf Clubhouse and River Walk Center (RWC). RSBF has designed arrays that can offset a substantial portion of the energy consumed at these facilities. These locations will have high visibility.

A common element in the revised designs is the use of top of pole mounts (TPMs). TPMs allow the arrays to be both elevated and tilted to manage the local weather conditions while keeping construction and maintenance costs at a minimum.

### **Golf Clubhouse**

Exhibit I attached hereto illustrates an aerial view of the Golf Clubhouse design. Location 'A' is a small roof mount that will have minimal visual impact. Sites 'B' and 'E' are ground mounted rack systems. Site 'C' was to be covered parking structures, but they will be dropped from the plan for operational reasons. Sites labeled 'D' will utilize the TPM structures. The 'D' site to the west of the main parking lot will be the most visible from the neighboring houses at Stonehaven. Exhibit II shows the approximate height of a TPM seen from the road at Stonehaven. The top of the array would be roughly at the top of the bucket seen in the exhibit.

### **River Walk Center**

Exhibit III shows the aerial view of the RWC design. There will also be a small array on the RWC roof, which is not shown in this design. The arrays to the west and south of the dredge lot will be 3 kWh TPM arrays. The arrays on the median of the parking lot will be smaller (2 kWh). There are several operation concerns with the median arrays that may preclude their inclusion. Exhibit IV shows the estimated height of the 3 kWh arrays. Please keep in mind the arrays will be set farther off the road than the bucket in the picture. Exhibit V shows the same 'array' from the south. Finally, exhibit VI shows a 3 kWh TPM array in place.

### **Conclusion**

The RWC and Golf Clubhouse arrays will have high visibility. Staff believes Council should be apprised of the redesign due to this increased level of visibility to the public. Staff's plans include ideas for instructional signage at these facilities, as well as landscaping around the new arrays. We believe the arrays' locations will be a positive in the long run, showing visitors and citizens alike that the Town of Breckenridge is doing what it takes to be as Green as possible. The operational, financial and environmental aspects of the project are extremely positive. The high visibility will draw attention to the project, but may not be viewed as a positive by all. The two new locations were reviewed by the Sustainability Task Force who were supportive of the locations but did request additional information on the height of the arrays that is included in the attached pictures and that they be brought forward to the rest of the Council for input.



INNOVATIVE ENERGY

## Breckenridge Solar Project – Aerial Views

Site 9: Golf Course Clubhouse – 104.94 kW

In My Backyard - National Renewable Energy Laboratory (NREL)



Image and renderings created using the National Renewable Energy Laboratory (NREL)'s "In My Backyard (IMBY)" tool at: <http://www.nrel.gov/eis/imby/>.





INNOVATIVE ENERGY

## Breckenridge Solar Project – Aerial Views

Site 11: Riverwalk Center – 77.88 kW



Image and renderings created using the National Renewable Energy Laboratory (NREL)'s "In My Backyard (IMBY)" tool at: <http://www.nrel.gov/eis/imby/>.











## Memorandum

To: Town Council  
From: Jennifer Cram, AICP and Matt Thompson, AICP  
Date: February 9, 2011  
Subject: Forest Health Update

### **Mountain Pine Beetle Program**

In April of 2010 the Mountain Pine Beetle (MPB) Ordinance was updated. The primary changes to the Ordinance are noted below.

- Require annual removal of dead and infested trees.
- Enforcement of Ordinance on a complaint basis.
- No Class D permit required for approved contractors to remove dead and infested trees.

Staff held three training sessions for tree removal contractors. All contractors that participated in the training sessions passed the test. As a result, an approved contractor list was generated with thirty contractors.

Many dead and infested trees were removed by approved contractors in 2010 with the streamlined process.

In addition, in 2010 there were eight Class D permits issued to non-approved contractors or private property owners to remove dead and infested trees.

In 2010, Staff received 58 complaints from property owners that reported that their neighbors had not removed required dead and infested trees by the July 15<sup>th</sup> deadline. Staff sent letters to all 58 property owners. All but one property owner complied with removing dead and infested trees shortly thereafter and the last property owner submitted a plan to remove dead and infested trees that was approved by the Community Development Director.

Staff believes that the current MPB program is working well. We plan to hold contractor training sessions again this spring to continue to educate tree removal contractors on the Town's current policies, programs and goals for forest health.

### **Defensible Space**

In June of 2009 the Town adopted a Mandatory Defensible Space Ordinance. In August of 2009 the Mandatory Ordinance was repealed and replaced with a Voluntary Defensible Space Ordinance to be administered by the Red, White and Blue Fire Protection District

(RWB). The Fire Wise Task Force, consisting of one Council member, Town Staff, and several Breckenridge citizens, was also created.

In 2009 RWB reported that 250 properties had requested voluntary inspections and subsequently completed creating defensible space around their homes. In 2010 the RWB reported that 29 additional properties had requested inspections and created defensible space.

In 2010 staff looked at the subdivisions in Town that should create voluntary defensible space based on their proximity to Forest Service land and large tracts of Open Space. Subdivisions within the Historic District, Wellington Neighborhood and Vista Point/Gibson Heights were not included in the evaluation. Vacant lots were also not included. Staff estimated that there are approximately 1,674 single family homes that should create defensible space within Town limits. According to information provided by RWB, 279 or 16% of the properties have created Voluntary Defensible Space.

We cannot be certain, but believe that the reduction in the number of property owners that are requesting voluntary defensible space inspections may be due to the number of trees that are already being removed as a result of the MPB program. With the tree canopy opening up, property owners may be leery of removing additional trees to complete defensible space plans. Because the MPB Ordinance allows approved contractors to remove dead and infested trees without permits, it is also a challenge to quantify how many trees are actually being removed.

Public Education is important. In 2009 the subject received significant attention. RWB and Staff continue to educate the public. The Town's website is updated regularly. As noted above, contractor training sessions have been conducted and will continue in the spring of 2011. RWB and staff also attended several HOA annual meetings in 2009 and 2010, and are planning to continue to do so in 2011.

### **Fuels Reduction and Fuel Breaks**

In January of 2010 the Town of Breckenridge and Summit County Open Space applied for the Colorado Forest Watershed Restoration Grant, established by the General Assembly through House Bill 1199, and was selected for a financial assistance matching grant. The Colorado State Forest Service offered the Town and County \$148,259 in state grant funds to support our project titled "Town of Breckenridge and Summit County Fuels Reduction and Watershed Protection Project."

The goal of the 2010 project was to implement fuels reduction and watershed protection actions on 96 acres of Town of Breckenridge (TOB) and Summit County (County) owned open space lands (40 acres of County land, 34 acres of TOB land, and 22 acres of jointly owned land), all located adjacent to vulnerable residential lots and public infrastructure. The area for this project includes multiple parcels prioritized in a 2008 Town-commissioned study that identified Town-owned open space parcels that were highly susceptible to mountain pine beetle (MPB) infestation and directly adjacent to residential areas. The project area is located in and around the TOB, Farmers Korner

subdivision, and the County Commons (County office buildings and hospital). The targeted parcels that the Town and County have been working on include F&D Placer, Discovery Hill Tract D, Highlands 3/Summit Estates, Woods Road/Pence Miller, Lomax Placer, Iowa Hill, Corkscrew, Barney Ford Woods, Moonstone, Blue Danube and the County Commons (please see attached map). This project involves the removal of all dead, infested and susceptible lodgepole pine trees in an effort to create fuel breaks between the more backcountry areas of the Golden Horseshoe and the residential subdivisions. Management actions include the removing and disposing of standing and downed timber in a fire break configuration, piling of some slash for future prescribed burning by the Red White and Blue Fire Protection District (RWB), and lopping and scattering where appropriate. Lodgepole pines were targeted for removal, while understory spruce, fir, and aspens were be retained.

In January of 2011 The Town of Breckenridge and Summit County applied for a Colorado Forest Restoration matching grant of \$150,000. The goal of this project is to implement fuels reduction, forest health improvements, fire breaks and watershed protection on approximately 101 acres of Town of Breckenridge and Summit County owned open space lands (3.2 acres of County land, 9.5 acres of TOB land, and 88.4 acres of jointly owned land), located adjacent to residential lots and public infrastructure. The project area is located in and around the TOB, Summit Cove, and the Golden Horseshoe. All projects are located upstream of Dillon Reservoir, Denver's primary water source, and Colorado River headwaters. The Grant funds will be spent to remove targeted trees from the following TOB and County owned parcels: Dry Gulch-37 acres, Fishhook-3.2 acres, Corkscrew Flats-7.1 acres, Trappers Glen-2.4 acres, Detroit Placer-29.6 acres, and Rac Jac Way-21.8 acres, for a total of approximately 101 acres (please see attached map).

In the future staff will be looking into noxious weed mitigation on the parcels where fuels reduction plans have taken place.

Staff and representatives from RWB will be present during the worksession on February 22nd to answer any questions.



**BRECKENRIDGE TOWN COUNCIL REGULAR MEETING**  
**Tuesday, February 22, 2011; 7:30 p.m.**  
**Town Hall Auditorium**

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\*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

- VIII REPORT OF TOWN MANAGER AND STAFF\***
- IX REPORT OF MAYOR AND COUNCILMEMBERS\***
  - A. CAST/MMC (Mayor Warner)
  - B. Breckenridge Open Space Advisory Commission (Ms. McAtamney)
  - C. BRC (Mr. Dudick)
  - D. Marketing Committee (Mr. Dudick)
  - E. Summit Combined Housing Authority (Mr. Joyce)
  - F. Breckenridge Heritage Alliance (Mr. Burke)
  - G. Sustainability Committee (Mr. Bergeron, Mr. Joyce, Mayor Warner)
  - H. Joint Upper Blue Master Plan Update Committee (Mr. Bergeron, Mr. Mamula)
- X OTHER MATTERS**
- XI SCHEDULED MEETINGS**
- 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, FEBRUARY 8, 2011  
PAGE 1**

**CALL TO ORDER and ROLL CALL**

Mayor Warner called the February 8, 2011 Town Council Meeting to order at 7:30 p.m. The following members answered roll call: Ms. McAtamney, Mr. Bergeron, Mr. Mamula, Mr. Joyce, and Mayor Warner. Mr. Burke and Mr. Dudick were not present.

**APPROVAL OF MINUTES – January 25, 2011**

Mayor Warner had one correction page 99, 2<sup>nd</sup> paragraph talking about phone call with Holly Raabe regarding unofficial High School reunions, Mr. Burke thought it was a great idea and, Mayor Warner thought Mr. Dudick said he would talk to the Breckenridge Resort Chamber about it. Mr. Joyce had a correction on page 98 under F sustainability, last part of the paragraph such as shutting off the lights shows a 25% cost savings but should say a potential costs savings. With no other changes or corrections to the meeting minutes of January 25, 2011, Mayor Warner declared the minutes were approved as corrected.

**APPROVAL OF AGENDA**

Tim Gagen added two items under the New Business Section A, First Readings, following Council Bill #7 should be Council Bill #8 regarding the B&D Limited Partnership, added Council Bill #9 involving the Temporary Moratorium to Operate Temporary or Transient Vendor Carts, and also added a new version of Council Bill #5 with corrections from the work session.

**COMMUNICATIONS TO COUNCIL**

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

Doug Adams introduced himself as the New Executive Director of the National Reperatory Orchestra. He stated he walked over from his home that he has owned for six years. He mentioned he is in his second week as Executive Director, and it did not take long to see how important the National Reparatory Orchestra is to the Town of Breckenridge, and is delighted to be here.

Mr. Frank Torrealba, from Medicine Man (Medical Marijuana Dispensary) appeared to appeal the decision on the moratorium on relocating dispensaries within Downtown Breckenridge. He stated he is willing to work with the Town of Breckenridge, by having not having his entrance or sign on Main Street, offered to use the side door with minimal signage, and be out of the public eye. He brought a letter from the potential landlord. The Council discussed the business would be the only unit on the top floor, and American Disabilities Act (ADA) compliance. Mr. John Turk Montepare spoke on behalf of Mr. Torrealba stating that he was a good tenant. The Council decided to close the discussion during the communications to Council and re-open the discussion after the Citizen's comments has closed. Mr. Gagen said it would take a majority of the Council to initiate an ordinance change, and direct Mr. Berry to prepare something formally. Mr. Bergeron asked if there is a time issue. Mr. Montepare stated that Mr. Torrealba's lease had ended last Tuesday, and would be willing to let him stay temporarily until he had a new location. Mayor Warner ended the discussion asking Mr. Torrealba to have a seat until Communications to Council concluded. Mr. Montepare added that the lease ending was not an issue of Mr. Torrealba's character and that he always paid his rent ahead of time. He stated he recommends the new location, and that time is of the essence.

**B. BRC Director Report**

John McMahon spoke on behalf of the Breckenridge Resort Chamber. He mentioned they would soon be announcing their outside sales representative and new coordinator; there will be an announcement in March regarding Breckenridge as the Best Meeting and Event Destination outside of Denver; the International Snow Sculpture competition went well, with 25 live feeds from Breckenridge; the new LEDs and enhancements including the Fire pits were positive; the event reduced the Carbon Footprint by 7700 pounds; mentioned the Town Staff did a great job moving snow; will have a post analysis regarding traffic; the February Mixer is February 16 at the Gold Pan; Central Reservations is up, and is highest with online bookings, and are hoping to improve online and with GoBreck.com; mentioned the General Manager meeting at Beaver Run the next day to discuss April, and retooling Spring, and reaching out to AEG for events. The Town Council discussed the implications of traffic with the Snow Sculpture event, to discuss turning off the LED lights earlier, during the debriefing, and the implications of the Quiznos Pro Challenge Bike Tour, including traffic, a good race route through town for camera impact, and the possibility of the race returning to Breckenridge the following year.

Mayor Warner closed the communications to Council.

Mayor Warner opened the discussion for Mr. Torrealba's request. The Council discussed with Mr. Torrealba and Mr. Montepare the make-up of the new location with the dispensary as the only business on the top floor, the off Main Street location, and the location of signs; Mr. Torrealba's willingness to put whatever money necessary into the new location to contain any odor; the issues with the inability to improve on the old location's structure to contain the odor; the former tenants neighbor's issues with the occasional pervasive odor; the medicine room would be enclosed, and no grow operations, which usually cause the smell would take place at the location; and the implications of making a one-time exception to the ordinance. Mayor Warner stated the three no votes from last time are now at least 5-0. Mr. Berry stated he understands he is directed to make an ordinance for the next meeting.

**CONTINUED BUSINESS**

**A. SECOND READING OF COUNCIL BILLS, SERIES 2011 - PUBLIC HEARINGS**

**1. Council Bill No. 4, Series 2011-An Ordinance Making Miscellaneous Amendments To The Breckenridge Town Code To Allow For The Publication Of Town Notices To Be Made By Posting On The Town's Official Website, Instead Of Requiring Publication In A Newspaper**

Mr. Berry stated this ordinance implements the last part of the puzzle for implementing the charter amendment approved last April allowing Town Notices to be published on the Town's website, and revises the sections of the Town Code requiring certain Town Notices to be published in a newspaper.

Mayor Warner opened the public hearing. Seeing no comments from the public the hearing was closed.

Mr. Bergeron moved to approve Council Bill No. 4, Series 2011. Mr. Joyce seconded the motion. The motion passed 5-0.

**2. Council Bill No. 5, Series 2011- An Ordinance Adopting Chapter 13 Of Title 9 Of The Breckenridge Town Code Concerning The Residential Growing Of Medical Marijuana**

Mr. Berry stated this ordinance if adopted would impose restrictions and limitations on the growing of Medical Marijuana in residential areas by limiting the number of plants per square footage and the odor of Medical Marijuana. He made the directed changes on pages two and three which deal with the code compliance issues and the possibility of fire, and mentioned the subsection on page three would help lower the public nuisances in town. Mr. Berry called up Police Chief,

Rick Holman and Chief Building Official, Glen Morgan to speak on the issue. Mr. Berry passed around a series of pictures of grow operations at four different residences. The pictures demonstrated obvious building code violations and fire hazards present. The pictures were submitted as part of the legislative record. Mr. Joyce asked if Chief Holman's officers visited these sites that are not in compliance. Mr. Berry stated he believes they are now in compliance but would visit them as a courtesy to advise them of the new ordinance. Mr. Morgan spoke about the building code violations including alterations to the property, venting that caused the nuisance level of odor, blocking of fire escape routes, illegal plumbing and electrical work. He stated that he had made several visits during the course of the year to help get the residences into compliance. Chief Holman addressed the extent of the grow operations stating they are not the typical windowsill herb gardens, and the two complaints of odor which were perceptible from outside the boundaries of the property, the landlord who discovered the grow operation of his renters when he visited the property for another reason, and the last grow operation where the police staff had visited the property on a secondary stolen property case, which also involved a possible shipping operation for the Marijuana involving FedEx boxes, and vacuum-sealed bags. He stated the pictures show the extent of the problem and why it is necessary to regulate this as a health and safety issue. He stated that there were valid complaints from neighbors, and with quality of life issues along with the code violations, this would be a tool to fix that. He mentioned that the number of plants along with the humidity may cause the Fungus Aspergillus, which can be an issue with amateur growers, and to law enforcement where the standard is to wear a breath mask. Mr. Joyce asked if there is a danger from the chemical usage. Chief Holman stated the ether used to extract the THC has been outlawed, and the other containers in the pictures held fertilizers and growth enhancers. Mr. Morgan again addressed the many code violations present at the grow facilities including multiple runs of electric cords, plastic everywhere covering emergency windows, doors that are indefinable, the necessity to wear sunglasses inside, and not knowing where you are, water systems running through electrical systems, padlocked doors where there should be escape routes, and blocked stairwells. He stated if you limit the space and number, you can get the electrical and water to run well, but if not there are industrial operations running on house systems which can be a problem. Mayor Warner stated if the grow operations are run properly there would be less risk and the operations would be safer. Mr. Morgan stated odor is definitely an issue, and that he told the operations that he is only there on code issues, and they have been generally cooperative. He mentioned that three of the operations have been closed down. Mayor Warner thanked Chief Holman for his help with this ordinance.

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

Mr. Bergeron moved to approve Council Bill No. 5, Series 2011. Mr. Mamula seconded the motion. The motion passed 5-0.

#### **NEW BUSINESS**

##### **A. FIRST READING OF COUNCIL BILLS, SERIES 2011**

1. **Council Bill No. 6** - An Ordinance Making Miscellaneous Amendments to Title 12 Of The Breckenridge Town Code, Known As The "Town of Breckenridge Water Ordinance"

Mr. Berry stated this ordinance would make a series of amendments to the ordinance, which was outlined in the memo on pages 121 and 122 of the agenda packet.

Mr. Mamula moved to approve Council Bill No. 6, Series 2011. Ms. McAtamney seconded the motion. The motion passed 5-0.

2. **Council Bill No.7** - An Ordinance Amending Chapter 1 of Title 9 Of The Breckenridge Town Code, Known As The "Breckenridge Development Code", By Adopting Procedures To Be Followed To Amend The Town of Breckenridge "Land Use Guidelines"

Mr. Berry stated the Land Use District Guidelines when originally adopted in 1987 did not include a procedure to amend. This would make the procedure easier to locate within the Town Code book, and eliminate the large font print requirement for publishing in the newspaper. He mentioned the proposed ordinance also contains several other minor revisions to update the amendment procedures in Section F and Section 2 on the third page of the ordinance.

Mr. Bergeron moved to approve Council Bill No. 7, Series 2011. Mr. Mamula seconded the motion. The motion passed 5-0.

3. **Council Bill No. 8, Series 2011**- An Ordinance Approving an Amendment to Development Agreement with B&D Limited Partnership (Redevelopment of Old BBC Site)

Mr. Berry stated that the original submitted master plan as originally approved contemplated a single family residence, and this plan would no longer work. This ordinance if adopted will approve the amended agreement relocating the proposed residence site on the property.

Mr. Mamula moved to approve Council Bill No. 8, Series 2011. Mr. Joyce seconded the motion. The motion passed 5-0.

4. **Council Bill No. 9, Series 2011**- An Ordinance Imposing a Temporary Moratorium on the Submission, Acceptance, Processing, And Approval of New Applications for Development Permits to Operate Temporary Vendor Carts or Transient Vendor Carts.

Mr. Berry stated this ordinance was prepared by the direction of Council and involves a moratorium for one year, to allow the town time to write the Absolute Policy 36 in the Development Code which are the current land use and regulations for temporary vendor carts, and has indicated the changes will involve a fair amount of work by staff and the Council. He mentioned that if the Absolute Policy 36 can be adopted earlier than a year, this moratorium would go away. Mayor Warner voiced concerns that to be fair during the moratorium there would be an outreach to people who come into Community Development who would like to set up a vendor cart. Mr. Gagen said there will be opportunities for the interested parties to discuss this. Mr. Berry said lines 32 and 33 of the ordinance included anticipated work involved to rewrite this policy, which would involve interested citizens.

Mr. Joyce moved to approve Council Bill No. 8, Series 2011. Mr. Mamula seconded the motion. The motion passed 5-0.

##### **B. RESOLUTIONS, SERIES 2011**

1. A Resolution Making Supplemental Appropriations to the 2010 Town Budget – PUBLIC HEARING

Mr. Gagen said this is a housekeeping measure recognizing revenues that were not part of appropriations and expenses, including grants, a legal settlement, and audits on tax; includes where this money should ultimately be spent; and puts the money into the capital fund so that that money could be spent appropriately. Mayor Warner noted the police settlement and the sales tax from the state are the unprecedented large amounts.

Mayor Warner opened the public hearing. There were no comments from the public, and the hearing was closed.

Mr. Bergeron moved to approve A Resolution Making Supplemental Appropriates to the 2010 Town Budget. Mr. Mamula seconded the motion. The motion passed 5-0.

**2. A Resolution Making Supplemental Appropriations To The 2011 Budget Including Projects Not Completed In Budget Year 2010 – PUBLIC HEARING**

Mr. Gagen stated this resolution addresses rollovers from the previous year's budget and grants the authority to spend those funds, including a variable message sign and contributions to the arts district.

Mayor Warner opened the public hearing. There were no comments from the public, and the hearing was closed.

Mr. Joyce moved to approve A Resolution Making Supplement Appropriations To The 2001 Budget Including Projects not Completed In Budget Year 2010. Mr. Mamula seconded the motion. The motion passed 5-0.

**C. OTHER**

**PLANNING MATTERS**

**A. Planning Commission Decisions of February 1, 2011**

There were no Planning Commission decisions.

**B. Town Council Representative Report (Mr. Burke) – no report**

**REPORT OF TOWN MANAGER AND STAFF**

Items were covered during the work session.

**REPORT OF MAYOR AND COUNCILMEMBERS**

**A. CAST/MMC (Mayor Warner)-Reported during the work session.**

**B. Breckenridge Open Space Advisory Commission (Ms. McAtamney)-Next meeting is on the 28<sup>th</sup>.**

**C. BRC (Mr. Dudick)-No report.**

**D. Marketing Committee (Mr. Dudick)-Meeting next week. Mayor Warner mentioned that looking at the financials month by month, September and October are down this year. He cited the Festival of Film was moved to a different part of the year, and that there should be some accountability of events that receive marketing funds. He said he would bring it up to Mike Dudick.**

**E. Summit Combined Housing Authority (Mr. Joyce) Mr. Joyce mentioned the Summit Housing Development Corp. meeting regarding Valley Brook, and senior housing keeps sneaking into the discussion even though the development is for work force housing. He reported the County is pretty clear it will receive 20% less because of Referendum 1A. Mr. Gagen and Mr. Joyce will be attending a better boarding workshop on the 16<sup>th</sup> of February, which is a board retreat of the Housing Authority, to build better relations and Jennifer Kermode attended some seminars and wants to share her information. Mayor Warner stated there is a movement for seniors. Mr. Gagen stated that there is a movement and Summit County has the lowest percentage of seniors.**

**F. Breckenridge Heritage Alliance (Mr. Burke)-no report. Tim Gagen mentioned a Preservations Workshop Wendy Wolf attended.**

**G. Sustainability Committee (Mr. Bergeron, Mr. Joyce, Mayor Warner)-Meets this Friday.**

**H. Joint Upper Blue Master Plan Update Committee (Mr. Bergeron, Mr. Mamula)-Mr. Bergeron reported the County wants to take out the 25% goal, and mentioned the Town of Breckenridge would like to have it in there. The Committee discussed the goal of 900 affordable housing units, and concerns of whether the valley could sustain that number of units and maintain the quality of life.**

**OTHER MATTERS**

Mr. Mamula reported that he is moving forward with AEG live, and is looking at Brett Fabreezy, Lyle Lovett, and John Hiatt as possibilities. He mentioned concerns with FedEx and the postal service, and their inability to deliver parcels in Town when the carrier will not ship to post office boxes. Ms. McAtamney remarked that the postal service should be able to maintain a database of box holders and their physical addresses. Mr. Mamula cited Verizon as a company that will not deliver to a post office box. Mr. Mamula asked if the building department ever warns people about snow load on their buildings, mentioning that there are many historic buildings we are trying protect, and asked if that is a public service we can provide by sending out a mailing. Mr. Gagen stated the Town checks the town buildings.

Mr. Bergeron mentioned the Town Council should get iPads or similar tablets and go paperless. Mr. Gagen said he would move forward and have Sherilyn Gourley talk to everyone about getting iPads. The Council discussed the benefits of the tablets including being able to see the audience over them, and the new software that allows the user to make notes directly onto the tablet. Mr. Bergeron mentioned his concern with vehicles idling around town, and mentioned the biggest offenders are the town vehicles, and cited vehicles he has seen in front of the recreation center with no workers in them. Mr. Gagen stated they are not following Town Policy. Mr. Joyce mentioned that construction workers are in the same situation when they are working on colder days and do not have anywhere else to warm up, and the workers jump in the truck for a few minutes to warm up.

Mayor Warner mentioned they should be more selective about how much paperwork is accepted by outside entities for the agenda packets until the Council goes paperless with tablets.

Mr. Joyce reported someone asked him about a letter that they believed they wrote to Town Council through the Town website regarding a parking pass for a Breckenridge Outdoor Education Center (BOEC) employee. He asked if when a letter is addressed to Council, how it gets to the Council. Mr. Gagen stated the letters get filtered and if are purely administrative Sherilyn Gourley takes care of them, and that if it is something Council should respond to it is copied and put in the Council packet, and if it is specific to a Council member the letter is forwarded on to that person.

Mayor Warner mentioned the National Institute of Health had lowered the fluorination recommendations and mentioned that Aspen's water plant administrator is choosing not to lower the level to the new recommended level, while Aspen's Town Council wants to lower the level. Mayor Warner mentioned he has talked to Gary Roberts about it. Mayor Warner and Mr. Gagen agreed the Breckenridge's fluorination level is already pretty low. Mayor Warner mentioned a restaurant owner's request to advertise within the Gondola cabins like they do in the buses. Mr. Gagen mentioned there is nothing in the current code that prevents advertising in the gondolas, and now are researching the findings and the conditions when they approved to gondola to see if there are any restrictions placed on advertising. The Council discussed that there are now signs on the chair lifts advertising the EpicMix and the ski grill, and asked if they are within forest service rules and permits, the gondolas already have information about passing through a wetlands area, the Breckenridge Resort Chamber develops and passes out flyers in the parking lots, and the ski area would probably charge for the advertising.



**TOWN OF BRECKENRIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, FEBRUARY 8, 2011  
PAGE 4**

Mr. Bergeron mentioned that Breckenridge Ski Resort has changed many ratings on runs from Blue-Black intermediate, to Black expert on Peaks 9 and 10, including American, Dukes and Peerless.

Mr. Gagen mentioned the Forest Service exchange where Western Land Group is exploring potential exchange opportunities and they have found a couple parcels in La Plata County which are the Mitchell Lakes Parcel and the Flattop Mountain Parcel. There should be something in the next meeting firming up the offer to go into the exchange since the values match up well with the Claimjumper and Wedge properties.

***SCHEDULED MEETINGS***

***ADJOURNMENT***

With no further business to discuss, the meeting adjourned at 9:10 p.m.

Submitted by Cathy Boland, Municipal Court Clerk.

ATTEST:

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Mary Jean Loufek, CMC, Town Clerk

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John Warner, Mayor

**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 2 (First Bank Enclave Annexation Ordinance)

DATE: February 16, 2011 (for February 22<sup>nd</sup> meeting)

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The second reading of the ordinance annexing into the Town the “First Bank Enclave” located at 112 Beavers Drive (formerly, the Contino property) is scheduled for your meeting on February 22nd.

There are a couple of minor changes to the ordinance from first reading. The changes correct the acreage of the annexation parcel in the title of the ordinance; correct one call in the legal description of the second parcel; and add the individual acreages of the two parcels that together comprise the annexation parcel.

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

1 **FOR WORKSESSION/SECOND READING – FEB. 22**

2  
3 Additions To The Ordinance As Approved on First Reading Are  
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5  
6 COUNCIL BILL NO. 2

7  
8 Series 2011

9  
10 AN ORDINANCE FINDING AND DETERMINING THAT CERTAIN REAL  
11 PROPERTY LOCATED IN AN UNINCORPORATED AREA OF SUMMIT  
12 COUNTY IS AN ENCLAVE UNDER APPLICABLE LAW; MAKING  
13 CERTAIN OTHER FINDINGS IN ACCORDANCE WITH THE “MUNICIPAL  
14 ANNEXATION ACT OF 1965”;AND ANNEXING SUCH REAL PROPERTY  
15 TO THE TOWN OF BRECKENRIDGE  
16 (~~0.459~~ 0.488 ACRES, MORE OR LESS)

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

20  
21 Section 1. The Town Council of the Town of Breckenridge, Colorado hereby finds and  
22 determines as follows:

23  
24 A. The real property described in Section 2 of this ordinance is currently located in an  
25 unincorporated area of Summit County, Colorado.

26  
27 B. The real property described in Section 2 of this ordinance is an “enclave” as  
28 defined by Colorado law, in that it is entirely contained within the outer boundaries of the  
29 Town of Breckenridge.

30  
31 C. Section 31-12-106(1), C.R.S. (which is part of the Municipal Annexation Act of  
32 1965), provides that a municipality may annex an enclave by ordinance in accordance with  
33 Section 30(1)(c) of Article II of the Colorado Constitution without complying with Sections 31-  
34 12-104, 31-12-105, 31-12-108 and 31-12-109, C.R.S., if said area has been so surrounded for a  
35 period of not less than three (3) years.

36  
37 D. The enclave described in Section 2 of this ordinance has been surrounded by (i.e.,  
38 entirely contained within) the boundaries of the Town of Breckenridge for not less than three  
39 (3) years.

40  
41 E. Notice of the proposed annexation of the hereafter described real property has been  
42 published as required by Sections 31-12-106(1) and 31-12-108(2), C.R.S.

43  
44 F. Article II, Section 30 of the Colorado Constitution establishes additional  
45 requirements which must be met before real property may be annexed to a municipality.  
46

1 G. Article II, Section 30 of the Colorado Constitution provides that an area which is  
2 “entirely surrounded” by an annexing municipality may be annexed by such municipality.  
3

4 H. The real property described in Section 2 of this ordinance is entirely surrounded by  
5 the Town of Breckenridge within the meaning of Article II, Section 30 of the Colorado  
6 Constitution.  
7

8 I. No part of the municipal boundary or territory surrounding the real property  
9 described in Section 2 of this ordinance consists of public rights-of-way, including streets and  
10 alleys, that are not immediately adjacent to the municipality on the side of the right-of-way  
11 opposite the enclave.  
12

13 J. No part of the territory surrounding the enclave was annexed to the Town of  
14 Breckenridge since December 19, 1980 without compliance with Article II, Section 30 of the  
15 Colorado Constitution.  
16

17 K. The enclave annexed to the Town by this ordinance does not: (i) have a population  
18 of that exceeds one hundred persons; and (ii) contain more than fifty acres.  
19

20 Section 2. The following described real property is hereby annexed to and made a part of  
21 the Town of Breckenridge, Colorado, to wit:  
22

23 A tract of land located in Section 36, Township 6 South Range 78 West of the 6<sup>th</sup>  
24 Principle Meridian, County of Summit, State of Colorado, being more particularly  
25 described as follows:  
26

27 A portion of the Sawmill Patch Placer, United States Mineral Survey 2533, beginning at  
28 corner no. 4 of said survey No. 2533;  
29 Thence North 6 degrees 42 minutes 00 seconds East 500 feet;  
30 Thence North 84 degrees 58 minutes 00 seconds West a distance of 759.6 feet to the  
31 point of beginning of the tract hereby described and designated as corner No. 1 of said  
32 tract;  
33 Thence South 5 degrees 00 minutes 00 seconds West 100 feet to corner No. 2;  
34 Thence North 84 degrees 58 minutes 00 seconds West 200 feet to corner No. 3;  
35 Thence North 5 degrees 00 minutes 00 seconds East 100 feet to corner No. 4;  
36 Thence South 84 degrees 58 minutes 00 seconds East 200 feet to corner No. 1, the Point  
37 of Beginning, County of Summit, State of Colorado  
38

39 Containing 20,000 square feet or 0.459 acres, more or less.  
40

41 Also  
42

43 A portion of the Sawmill Patch Placer United States Mineral Survey No. 2533 located in  
44 Section 36, Township 6 South, Range 78 West of the 6<sup>th</sup> Principle Meridian, County of  
45 Summit, State of Colorado being more particularly described as follows:  
46

1 Commencing at corner 4 of the Sawmill Patch Placer;  
2 Thence North 6 degrees 42 minutes 00 seconds East 500.00 feet along the 4-3 corner line  
3 of the Sawmill Patch Placer;  
4 Thence North 84 degrees ~~52~~58 minutes 00 seconds West 759.6 feet to the Northeast  
5 corner of that tract of land described in that deed recorded under Reception No. 91956 in  
6 the Summit County Records and being the point of beginning;  
7 Thence continuing North 84 degrees 58 minutes 00 seconds West 200.00 feet along the  
8 northerly line of said tract described under Reception No. 91956 to the northwest corner  
9 of said tract described under Reception No. 91956;  
10 Thence South 05 degrees 00 minutes 00 seconds West along the westerly line of said  
11 tract described under Reception No. 91956 to the southwest corner of said tract described  
12 under Reception No. 91956;  
13 Thence North 84 degrees 58 minutes 00 seconds west 3.46 feet to a point on the easterly  
14 line of Tract D as depicted on the Amended Plat of the Pines at Four O'Clock according  
15 to the Plat filed March 1, 1995 under Reception No. 487101;  
16 Thence North 05 degrees 01 minutes 59 seconds east along the easterly line of said Tract  
17 D to the Northeast corner of said Tract D, said corner being also a point on the southerly  
18 line of Tract C of Park Forest Estates as depicted on the Amended Perimeter Plat of Park  
19 Forest Estates filed December 19, 1994 under Reception No. 482695 in the Summit  
20 County Records;  
21 Thence South 85 degrees 01 minutes 26 seconds West 8.91 feet along the southerly line  
22 of said Tract C to the southeast corner of said Tract C, common with the southwest  
23 corner of that tract of land described in Deed filed January 6, 1981 under Reception No.  
24 217948 in the Summit County Records;  
25 Thence continuing South 85 degrees 01 minutes 26 seconds West, 194.49 feet along the  
26 southerly line of said tract recorded under Reception No. 217948 in the Summit County  
27 Records;  
28 Thence South 5 degrees 00 minutes 00 seconds west 4.51 feet to the point of beginning,  
29 County of Summit, State of Colorado  
30

31 Containing 1241 square feet or 0.029 acre, more or less.

32  
33 Section 3. Within thirty (30) days after the effective date of this ordinance, the Town  
34 Clerk is hereby authorized and directed to:

35  
36 A. File one copy of the annexation map with the original of the annexation ordinance  
37 in the office of the Town Clerk of the Town of Breckenridge, Colorado; and

38  
39 B. File for recording three certified copies of the annexation ordinance and map of  
40 the area annexed containing a legal description of such area with the Summit County Clerk and  
41 Recorder.

42  
43 Section 4. This ordinance shall be published and become effective as provided by  
44 Section 5.9 of the Breckenridge Town Charter.  
45

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED  
2 PUBLISHED IN FULL this 11<sup>th</sup> day of January, 2011. A Public Hearing on the ordinance shall  
3 be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado, on  
4 the 11th day of January, 2011 at 7:30 p.m. or as soon thereafter as possible in the Municipal  
5 Building of the Town.

6  
7 TOWN OF BRECKENRIDGE  
8

9  
10 ATTEST:

11  
12 By \_\_\_\_\_  
13 John G. Warner, Mayor

14 \_\_\_\_\_  
15 Mary Jean Loufek, CMC  
16 Town Clerk

**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 3 (Xcel Energy Enclave Annexation Ordinance)

DATE: February 16, 2011 (for February 22<sup>nd</sup> meeting)

---

The second reading of the ordinance annexing into the Town the “Xcel Energy Enclave” on Wellington Road is scheduled for your meeting on February 22nd.

There are several changes to the ordinance from first reading. The changes correct the acreage of the annexation parcel; correct several calls in the legal description of the annexation parcel; correct the reference in the legal description to Wellington Road; and add a 1.2317 acre parcel that was inadvertently omitted from the legal description of the annexation parcel at first reading.

At the time of first reading on January 11, 2011 I told you I would investigate what effect the annexation of this parcel would have on the property’s real property taxes. I have spoken to both the Summit County Assessor and the Summit County Treasurer, and determined that real property owned by public utility companies is subject to general property tax. The determination of the property’s value is done by the state (instead of by the county assessor), but once the property is assessed by the state it is subject to local property taxes. As a result, if this property is annexed into the Town it will become subject to the Town’s general property tax levy beginning in 2012 (taxes paid in 2013).

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

1 **FOR WORKSESSION/SECOND READING – FEB. 22**

2  
3 Additions To The Ordinance As Approved on First Reading Are  
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5  
6 COUNCIL BILL NO. 3

7  
8 Series 2011

9  
10 AN ORDINANCE FINDING AND DETERMINING THAT CERTAIN REAL  
11 PROPERTY LOCATED IN AN UNINCORPORATED AREA OF SUMMIT  
12 COUNTY IS AN ENCLAVE UNDER APPLICABLE LAW; MAKING  
13 CERTAIN OTHER FINDINGS IN ACCORDANCE WITH THE “MUNICIPAL  
14 ANNEXATION ACT OF 1965”; AND ANNEXING SUCH REAL PROPERTY  
15 TO THE TOWN OF BRECKENRIDGE  
16 (~~5.93~~5.8468 ACRES, MORE OR LESS)

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

20  
21 Section 1. The Town Council of the Town of Breckenridge, Colorado hereby finds and  
22 determines as follows:

23  
24 A. The real property described in Section 2 of this ordinance is currently located in an  
25 unincorporated area of Summit County, Colorado.

26  
27 B. The real property described in Section 2 of this ordinance is an “enclave” as  
28 defined by Colorado law, in that it is entirely contained within the outer boundaries of the  
29 Town of Breckenridge.

30  
31 C. Section 31-12-106(1), C.R.S. (which is part of the Municipal Annexation Act of  
32 1965), provides that a municipality may annex an enclave by ordinance in accordance with  
33 Section 30(1)(c) of Article II of the Colorado Constitution without complying with Sections 31-  
34 12-104, 31-12-105, 31-12-108 and 31-12-109, C.R.S., if said area has been so surrounded for a  
35 period of not less than three (3) years.

36  
37 D. The enclave described in Section 2 of this ordinance has been surrounded by (i.e.,  
38 entirely contained within) the boundaries of the Town of Breckenridge for not less than three  
39 (3) years.

40  
41 E. Notice of the proposed annexation of the hereafter described real property has been  
42 published as required by Sections 31-12-106(1) and 31-12-108(2), C.R.S.

43  
44 F. Article II, Section 30 of the Colorado Constitution establishes additional  
45 requirements which must be met before real property may be annexed to a municipality.



1  
2 G. Article II, Section 30 of the Colorado Constitution provides that an area which is  
3 “entirely surrounded” by an annexing municipality may be annexed by such municipality.  
4

5 H. The real property described in Section 2 of this ordinance is entirely surrounded by  
6 the Town of Breckenridge within the meaning of Article II, Section 30 of the Colorado  
7 Constitution.  
8

9 I. No part of the municipal boundary or territory surrounding the real property  
10 described in Section 2 of this ordinance consists of public rights-of-way, including streets and  
11 alleys, that are not immediately adjacent to the municipality on the side of the right-of-way  
12 opposite the enclave.  
13

14 J. No part of the territory surrounding the enclave was annexed to the Town of  
15 Breckenridge since December 19, 1980 without compliance with Article II, Section 30 of the  
16 Colorado Constitution.  
17

18 K. The enclave annexed to the Town by this ordinance does not: (i) have a population  
19 of that exceeds one hundred persons; and (ii) contain more than fifty acres.  
20

21 Section 2. The following described real property is hereby annexed to and made a part of  
22 the Town of Breckenridge, Colorado, to wit:  
23

24 A parcel of land lying wholly within the Blue River Placer, M.S. 816. The Blue River Lode No.  
25 1, M.S. 816, and the Blue River Lode No. 2, M.S. 816, Section 31, Township 6 South, Range 77  
26 West of the 6<sup>th</sup> Principal Meridian, situate in the County of Summit, State of Colorado and more  
27 particularly described as follows:  
28

29 Beginning at Corner No. 1 of said Blue River Placer, common with Corner No. 1 of the French  
30 Gulch Placer, M.S. 2589, and Corner No. 1 of the Stillson Patch Placer, M.S. 1466, and running  
31 S. 15°01'00" W. 14.56 feet to the center line of a 60 foot ~~county road~~ public street, known as  
32 Wellington Road, which point is, in fact, the True Point of Beginning; thence S. 15°01'00" W.  
33 752.44 feet to corner No. 12 of said Blue River Placer; thence N. 75°18'29" W. 208.43 feet along  
34 line 12-11 of said Blue River Placer; thence N. 00°59'22" W. 632.88 feet to the center line of  
35 said ~~county road~~ public street; thence S. 85°37'59" E. 96.93 feet along said center line; thence  
36 Northeasterly 198.12 feet along the arc of a 589.88 feet radius curve to the left whose long chord  
37 bears N. 84°44'43" E. 197.19 feet along said center line; thence N. 75°07'25" E. ~~118.47~~ 118.47  
38 feet along said center line to the True Point of Beginning.  
39

40 Contains: 4.6151 acres, more or less.  
41

42 Together with a parcel of land as recorded at Reception No. 174333 in the office of the  
43 Clerk and Recorder for Summit County, Colorado. Said parcel lying wholly within the  
44 Stillson Patch Placer, U.S.M.S. No. 1466, and being more particularly described as follows:  
45

1 Beginning at Corner No. 1 of said Stillson Patch Placer, said corner being the true point of  
2 beginning.

3  
4 Thence: S15°01'00"W, along the 1-2 line of said Stillson Patch Placer, a distance of 14.56  
5 feet.

6  
7 Thence: Continuing S15°01'00"W, along said 1-2 line, a distance of 752.44' to Corner No. 2  
8 of said Stillson Patch Placer, also being Corner No. 12 of the Blue River Placer, U.S.M.S.  
9 816.

10  
11 Thence: S75°18'29"E a distance of 70.00 feet.

12  
13 Thence: N15°01'00"E, parallel to the easterly line of said Public Service Company parcel a  
14 distance of 765.99' to a point on the 1-16 line of said Stillson Patch Placer.

15  
16 Thence: N74°29'00"W along said 1-16 line a distance of 70.00 feet to the point of beginning.

17  
18 Contains: 1.2317 acres, more or less.

19  
20 Section 3. Within thirty (30) days after the effective date of this ordinance, the Town  
21 Clerk is hereby authorized and directed to:

22  
23 A. File one copy of the annexation map with the original of the annexation ordinance  
24 in the office of the Town Clerk of the Town of Breckenridge, Colorado; and

25  
26 B. File for recording three certified copies of the annexation ordinance and map of  
27 the area annexed containing a legal description of such area with the Summit County Clerk and  
28 Recorder.

29  
30 Section 4. This ordinance shall be published and become effective as provided by  
31 Section 5.9 of the Breckenridge Town Charter.

32  
33 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
34 PUBLISHED IN FULL this 11<sup>th</sup> day of January, 2011. A Public Hearing on the ordinance shall  
35 be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado, on  
36 the 11th day of January, 2011 at 7:30 p.m. or as soon thereafter as possible in the Municipal  
37 Building of the Town.

TOWN OF BRECKENRIDGE

ATTEST:

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

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

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**MEMO**

TO: Town Council  
FROM: Town Attorney  
RE: Council Bill No. 6 (Water Ordinance Amendments)  
DATE: February 10, 2011 (for February 22<sup>nd</sup> meeting)

---

The second reading of the ordinance making miscellaneous amendments to the Water Ordinance is scheduled for your meeting on February 22nd. There are no changes proposed to ordinance from first reading.

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

1 ***FOR WORKSESSION/SECOND READING – FEB. 22***

2  
3 ***NO CHANGE FROM FIRST READING***

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

7  
8 COUNCIL BILL NO. 6

9  
10 Series 2011

11  
12 AN ORDINANCE MAKING MISCELLANEOUS AMENDMENTS TO TITLE 12 OF THE  
13 BRECKENRIDGE TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE WATER  
14 ORDINANCE”

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

18  
19 Section 1. Section 12-1-6 of the Breckenridge Town Code is hereby amended by the  
20 addition of a new definition of “Town Water Easement (or easement)”, which shall read in its  
21 entirety as follows:

**TOWN WATER EASEMENT (OR  
EASEMENT):**

**An easement created in accordance with  
Colorado law that authorizes the Town to  
locate, operate, and maintain its  
underground water utility transmission  
lines and appurtenances, over, under, upon,  
across, in and through certain specified real  
property.**

22  
23 Section 2. Section 12-1-13 of the Breckenridge Town Code is amended by the addition  
24 of a new subsection C, which shall read in its entirety as follows:

25 **C. If necessary for the Director or any Public Works employee to perform a**  
26 **lawful function described in the first sentence of this section, the Director or**  
27 **Public Works employee may temporarily use so much of the water using**  
28 **property as is required in order to perform the required act; provided,**  
29 **however, the Director or Public Works employee shall, at Town expense,**  
30 **clean up and restore any area outside of a Town water easement to its prior**  
31 **condition immediately following the use of such area, and provided, further,**  
32 **the Director or Public Works employee shall not use any portion of the water**  
33 **using property that is more than ten feet outside the boundaries of the Town**  
34 **water easement.**  
35

1 Section 3. Chapter 1 of Title 12 of the Breckenridge Town Code is hereby amended by  
2 the addition of a new Section 12-1-16, to be entitled “Resale of Water Prohibited”, which shall  
3 read in its entirety as follows:  
4

5 **12-1-16: RESALE OF WATER PROHIBITED: No person shall resell water**  
6 **received from the water system. No water from the water system may be**  
7 **used on or at any premises other than the water using property specified in**  
8 **the application for water service submitted to the Town. This section does**  
9 **not apply to bulk water sold by the Town as authorized by this Chapter.**  
10

11 Section 4. Section 12-2-7 of the Breckenridge Town Code is hereby amended so as to  
12 read in its entirety as follows:

13 12-2-7: INSTALLATION AND MAINTENANCE OF CERTAIN WATER  
14 FACILITIES BY OWNER:  
15

16 **A.** In addition to the provisions of Section 12-2-9 with respect to frozen water  
17 lines, it shall be the responsibility of the owner of a water using property to install  
18 and maintain the owner’s individual service line and other related water facilities  
19 which extend from the stop-and-waste valve to the water using property. The  
20 stop-and-waste valve or sub-main loop valve shall be installed at or near the  
21 property line in an easement or right of way dedicated to the Town.  
22

23 **B. The Director has the authority to require the owner of a water using**  
24 **property to repair any leak in the owner’s individual service line and other**  
25 **related water facilities within such reasonable period of time as may be**  
26 **established by the Director. In establishing a reasonable period of time for**  
27 **the repair of a leak, the Director shall take into consideration: (i) the location**  
28 **of the leak; (ii) the amount of water that is escaping from the leak; (iii) any**  
29 **threat to nearby buildings and structures posed by the leak; (iv) any threat to**  
30 **the Town’s water system posed by the leak; (v) the time of year when the**  
31 **leak occurs; (vi) any practical construction difficulties the owner is likely to**  
32 **incur in repairing the leak; and (vii) all other relevant factors.**  
33

34 Section 5. Chapter 1 of Title 12 of the Breckenridge Town Code is hereby amended by  
35 the addition of a new Section 12-2-14-1 to be entitled “Use of Town Water Easement For  
36 Landscaping, Paving, and Other Uses; Town’s Nonliability for Damage to Landscaping, Paving,  
37 or Other Property Placed With Town Water Easement”, which shall read in its entirety as  
38 follows:

39 **12-2-14-1: USE OF TOWN WATER EASEMENT FOR LANDSCAPING,**  
40 **PAVING, AND OTHER USES; TOWN’S NONLIABILITY FOR DAMAGE TO**  
41 **LANDSCAPING, PAVING, OR OTHER PROPERTY PLACED WITHIN TOWN**  
42 **WATER EASEMENT:**

43 **A. The owner of real property abutting a Town water easement may place:**  
44 **(i) grass, trees, shrubs, and similar landscaping items, and (ii) asphalt and**

1 other surface paving materials, within the easement without prior  
2 authorization from the Town. The Town Manager may also authorize the  
3 owner of real property abutting a Town water easement to place other items  
4 of personal property within the Town's easement if the Town Manager  
5 determines that the placement of such personal property within the easement  
6 will not interfere with the Town's lawful exercise of it rights under the  
7 easement.

8  
9 **B. Any person who places any landscaping, asphalt or other surface paving**  
10 **material, or any other personal property, within a Town water easement**  
11 **does so at such person's own risk. If any landscaping, asphalt or other**  
12 **surface paving material, or other personal property located within a Town**  
13 **water easement, is removed, damaged, or destroyed by the Town, or its**  
14 **contractors, in the lawful exercise of the Town's rights under the Town's**  
15 **water easement, the Town is not liable for such damage or destruction under**  
16 **any legal theory, and the owner of such property shall bear all costs**  
17 **associated with the replacement or repair of such landscaping, asphalt or**  
18 **other surface paving material, or personal property.**

19  
20 Section 6. Section 12-2-23 of the Breckenridge Town Code is amended so as to read in  
21 its entirety as follows:

22 12-2-23: WATER METER MAINTENANCE AND TESTING:

23  
24 All water meters and remote readouts shall be maintained by the Town, ~~and~~  
25 **Subject to the fee provided in Section 12-4-22, all water meters and remote**  
26 **readouts shall be** tested and repaired **by the Town** as necessary. All meter pits,  
27 vaults, covers, and meter risers located in a Town right of way or a Town  
28 easement shall be maintained by the Town.

29  
30 Section 7. Section 12-4-14 of the Breckenridge Town Code is amended so as to read in  
31 its entirety as follows:

32  
33 12-4-14: BULK WATER: The rate for each one thousand (1,000) gallons of bulk  
34 water sold by the Town, or fraction thereof, shall be calculated at the same rate as  
35 the residential excess use charge set forth in Section 12-4-11B of this Chapter in  
36 effect at the time bulk water is sold. In addition, a base charge of twenty five  
37 dollars (\$25.00) will be charged to each bulk water user for meter setting,  
38 inspection, and service turnoff by the Town. **The rate for each one thousand**  
39 **(1,000) gallons of bulk water sold by the Town shall be shall be \$20.00. In**  
40 **addition, a connection fee of \$100, and a \$1,000 deposit shall be collected at**  
41 **the time of each bulk water sale. The damage deposit, less any amount**  
42 **necessary to reimburse the Town for damage to the Town's water meter and**  
43 **hydrant arising from the sale and delivery of the bulk water, shall be**  
44 **returned to the purchaser of the bulk water within thirty (30) days after the**  
45 **sale.**





**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 7 (Codifying Land Use Guidelines in Town Code)

DATE: February 14, 2011 (for February 22<sup>nd</sup> meeting)

---

The second reading of the ordinance moving the established procedures for amending the Town's Land Use Guidelines into the Town Code book is scheduled for your meeting on February 22nd. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – FEB. 22**

2  
3 **NO CHANGE FROM FIRST READING**

4  
5 Additions To The Current Uncodified LUG Amendment Procedures Ordinance Are  
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7  
8 COUNCIL BILL NO. 7

9  
10 Series 2011

11  
12 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE  
13 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY  
14 ADOPTING PROCEDURES TO BE FOLLOWED TO AMEND THE TOWN OF  
15 BRECKENRIDGE “LAND USE GUIDELINES”

16  
17 WHEREAS, by Ordinance No. 18, Series 1997, the Town Council adopted procedures to  
18 amend the Breckenridge “Land Use Guidelines”; and

19  
20 WHEREAS, by Ordinance No. 12, Series 2001, the Town Council amended the  
21 procedures to amend the Land Use Guidelines; and

22  
23 WHEREAS, neither Ordinance No. 18, Series 1997, nor Ordinance No. 12, Series 2001,  
24 were codified in the Breckenridge Town Code; and

25  
26 WHEREAS, the Town Council finds and determines that including the substantive  
27 provisions of Ordinance No. 18, Series 1997, and Ordinance No. 12, Series 2001, in the  
28 Breckenridge Town Code will make the code easier to work with and more useful; and

29  
30 WHEREAS, the Town Council find and determines that the minor changes made by this  
31 ordinance to the procedures adopted by Ordinance No. 18, Series 1997, and Ordinance No. 12,  
32 Series 2001 are appropriate.

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

36  
37 Section 1. The Breckenridge Town Code is amended by the inclusion of a new Section 9-  
38 1-15-1, to be entitled “Amendments to Land Use Guidelines”, which shall read in its entirety as  
39 follows:

40  
41 9-1-15-1: AMENDMENTS TO LAND USE GUIDELINES:  
42

- 1 A. Authority. From time to time the Town Council may by ordinance amend the  
2 number, shape, boundaries, or area of any Land Use District, or any regulation of or  
3 within such Land Use District, or any other provision of the Land Use Guidelines.  
4
- 5 B. Legislative Amendment. In connection with any amendment to the Land Use Guidelines  
6 that is determined by the Town Council to be legislative or quasi-legislative in nature, the  
7 procedures set forth in Section 5.10 of the Breckenridge Town Charter for the adoption of  
8 Town ordinances shall be followed; provided, however, that no ordinance involving a  
9 legislative or quasi-legislative amendment to the Land Use Guidelines shall be adopted as an  
10 emergency ordinance. In addition to any other notice of public hearing that may be required  
11 by the Breckenridge Town Charter, notice of a public hearing to consider the proposed  
12 adoption of a legislative or quasi-legislative amendment to the Land Use Guidelines shall be  
13 published twice in a newspaper of general circulation in the Town, the first publication  
14 occurring at least twelve (12) days prior to the hearing and the second publication occurring  
15 at least four (4) days prior to the hearing. Such newspaper notice shall ~~be not less than five  
16 and one-half inches in height by four inches in width when published, and shall~~ contain the  
17 date and time of the public hearing on the proposed amendment; the location of the hearing  
18 on the proposed amendment; and a brief description of nature of the proposed amendment to  
19 the Land Use Guidelines. Such newspaper notice is reasonably calculated to afford affected  
20 persons the realistic opportunity to protect their interests.  
21
- 22 C. Quasi-judicial Amendment. In connection with any amendment to the Land Use Guidelines  
23 that is determined by the Town Council to be quasi-judicial in nature, the procedures set  
24 forth in Section 5.10 of the Breckenridge Town Charter for the adoption of Town  
25 ordinances shall be followed; provided, however, that no ordinance involving a quasi-  
26 judicial amendment to the Land Use Guidelines shall be adopted as an emergency  
27 ordinance. In addition to any other notice of public hearing that may be required by the  
28 Breckenridge Town Charter, notice of a public hearing to consider the proposed adoption of  
29 a quasi-judicial amendment to the Land Use Guidelines shall be published twice in a  
30 newspaper of general circulation in the Town, the first publication occurring at least twelve  
31 (12) days prior to the hearing and the second publication occurring at least four (4) days  
32 prior to the hearing. Such newspaper notice shall ~~be not less than five and one-half inches in  
33 height by four inches in width when published, and shall~~ contain the date and time and of  
34 the public hearing on the proposed amendment; the location of the hearing on the proposed  
35 amendment; and a brief description of nature of the proposed amendment to the Land Use  
36 Guidelines. Such newspaper notice is reasonably calculated to afford affected persons the  
37 realistic opportunity to protect their interests. In addition to the newspaper notice, not less  
38 than twelve (12) days prior to the date of the public hearing the Director shall mail a copy of  
39 the text of the newspaper notice by first class mail to all owners of real property located  
40 within the Land Use District(s) that would be affected by the proposed Land Use Guidelines  
41 amendment as shown by the records of the Summit County Clerk and Recorder; provided,  
42 however, that the failure of the Director to mail such notice, or the failure of a person to  
43 receive such mailed notice, shall not impair the validity of the public hearing or any  
44 amendment made by the Town Council to the Land Use Guidelines following such hearing.  
45

1 D. Public Hearing. The public hearing required to be held in connection with the adoption of an  
2 ordinance amending the Land Use District Guidelines shall be the same public hearing as is  
3 required by Section 5.10 of the Breckenridge Town Charter in connection with the second  
4 reading of a Town ordinance.

5  
6 E. Application of Land Use Guidelines to Specific Lot, Tract or Parcel. Any change in the  
7 manner in which the Land Use Guidelines are to be applied to a specific lot, tract or  
8 parcel of land, including, without limitation, the recommended density for such lot, tract  
9 or parcel, shall be accomplished either by written agreement with the owner(s) of the  
10 subject lot, tract or parcel (such as an Annexation Agreement), a Master Plan or by  
11 ordinance adopted by the Town Council using the procedures for a quasi-judicial  
12 amendment to the Land Use Guidelines as set forth in Subsection C, above. Following  
13 the introduction of an ordinance as described in the preceding sentence, the Director shall  
14 not accept an application to develop or subdivide the real property that is the subject of  
15 the ordinance until such time as the ordinance has either been finally approved or rejected  
16 by the Town Council, and any applicable referendum period has expired.

17  
18 F. Legal Standards for Land Use Guideline Amendments. In considering a proposed  
19 amendment to the Land Use Guidelines, the Town Council shall apply the following  
20 standards:

21  
22 1. If the proposed change is found by the Town Council to be consistent with or  
23 in compliance with the Town's ~~Master~~ Comprehensive Plan, and all parts  
24 thereof, the proposed change need only bear a reasonable relationship to the  
25 welfare of the community.

26  
27 2. If the proposed change is found by the Town Council to be in conflict with or  
28 inconsistent the Town Master Plan, or any part thereof, the applicant seeking the  
29 change must show either: (1) that a manifest error was made in establishing the  
30 current Land Use Guidelines or its application to a specific lot, tract or parcel, or  
31 (2) that the proposed change bears a reasonable relationship to the welfare of the  
32 community and there has been a change in the conditions of the neighborhood  
33 that supports the requested change.

34  
35 Section 2. Subsection C of Section 9-1-15 of the Breckenridge Town Code is amended  
36 so as to read in its entirety as follows:

37  
38 C. If, in accordance with Section 9-1-15-1 ~~the provisions of this Chapter or the~~  
39 ~~Land Use District Guidelines~~, changes are made in land use district boundaries or  
40 other matters portrayed on the Official Land Use District Map, such changes shall  
41 be entered on the map. No amendment to the Official Land Use District Map shall  
42 become effective until entry of such change has been made on said map.

43  
44 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the  
45 various secondary codes adopted by reference therein, shall continue in full force and effect.  
46

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

9            Section 5. The Town Council hereby finds, determines and declares that it has the power  
10 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article  
11 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.  
12

13           Section 6. This ordinance shall be published and become effective as provided by  
14 Section 5.9 of the Breckenridge Town Charter.  
15

16            INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
17 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2011. A Public Hearing shall be held at the  
18 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_ day of  
19 \_\_\_\_\_, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
20 Town.  
21

22    TOWN OF BRECKENRIDGE, a Colorado  
23    municipal corporation  
24  
25  
26

27    By \_\_\_\_\_  
28    John G. Warner, Mayor  
29

30    ATTEST:  
31  
32  
33

34    \_\_\_\_\_  
35    Mary Jean Loufek, CMC,  
36    Town Clerk  
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**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 8 (Amended Development Agreement For Old BBC Site)

DATE: February 10, 2011 (for February 22<sup>nd</sup> meeting)

---

The second reading of the ordinance approving the Amended Development Agreement with B & D Limited Partnership concerning the “Old BBC” site is scheduled for your meeting on February 22<sup>nd</sup>. There are no changes proposed to either the ordinance or the Amended Development Agreement.

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

1                   **FOR WORKSESSION/SECOND READING – FEB. 22**

2  
3                   **NO CHANGE FROM FIRST READING**

4  
5                   COUNCIL BILL NO. 8

6  
7                   Series 2011

8  
9                   AN ORDINANCE APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT  
10                   WITH B & D LIMITED PARTNERSHIP  
11                   (Redevelopment of Old BBC Site)

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

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

18                   A.       The Town and B & D Limited Partnership, an Illinois limited partnership  
19 authorized to do business in Colorado (“*Developer*”) entered into a Development Agreement  
20 dated as of February 10, 2010 and recorded in the real estate records of Summit County,  
21 Colorado on March 3, 2010 at Reception No. 934877 (“*Development Agreement*”).

22                   B.       After extensive review by the Town’s Planning Commission, it has been  
23 recommended that the Development Agreement be amended to eliminate the relocation of the  
24 SFE of density for a single family residence from existing Lot 1, Corkscrew Subdivision Filing  
25 No. 1 to the northerly portion of the Developer’s property.

26                   C.       The Town’s Development Agreement Ordinance (Chapter 9 of Title 9 of the  
27 Breckenridge Town Code) does not provide a procedure to be followed to amend a development  
28 agreement.

29                   D.       There would be no public purpose served by requiring the Developer to go back  
30 through the process set forth in Chapter 9 of Title 9 of the Breckenridge Town Code in order to  
31 obtain approval of the proposed amendment to the Development Agreement.

32                   E.       A proposed Amendment To Development Agreement between the Town and the  
33 Developer has been prepared, a copy of which is marked Exhibit “A”, attached hereto and  
34 incorporated herein by reference.

35                   F.       The Town Council has reviewed and considered the proposed Amendment to  
36 Development Agreement, and finds and determines that the approval of such document would be  
37 in the best interests of the Town and its residents.

38  
39                   Section 2. Approval of Amendment to Development Agreement. The proposed  
40 Amendment to Development Agreement between the Town and B & D Limited Partnership, an

1 Illinois limited partnership authorized to do business in Colorado, (Exhibit “A” hereto) is  
2 approved, and the Town Manager is hereby authorized, empowered, and directed to execute such  
3 agreement for and on behalf of the Town of Breckenridge.  
4

5 Section 3. Effect of Amendment. Except as specifically amended by the Amendment to  
6 Development Agreement (Exhibit “A” hereto), the original Development Agreement between  
7 the Town of Breckenridge and B & D Limited Partnership, an Illinois limited partnership  
8 authorized to do business in Colorado, and all rights associated therewith, shall continue in full  
9 force and effect.  
10

11 Section 4. Police Power Finding. The Town Council hereby finds, determines and  
12 declares that this ordinance is necessary and proper to provide for the safety, preserve the health,  
13 promote the prosperity, and improve the order, comfort and convenience of the Town of  
14 Breckenridge and the inhabitants thereof.  
15

16 Section 5. Authority. The Town Council hereby finds, determines and declares that it has  
17 the power to adopt this ordinance pursuant to the authority granted to home rule municipalities  
18 by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town  
19 Charter.  
20

21 Section 6. Effective Date. This Ordinance shall be published and become effective as  
22 provided by Section 5.9 of the Breckenridge Town Charter.  
23

24 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
25 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2011. A Public Hearing shall be held at the  
26 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
27 \_\_\_\_\_, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
28 Town.  
29

30 TOWN OF BRECKENRIDGE

31  
32  
33 By \_\_\_\_\_  
34 John G. Warner, Mayor  
35

36 ATTEST:  
37  
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41 \_\_\_\_\_  
42 Mary Jean Loufek, CMC, Town Clerk  
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**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 9 (Temporary Vendor Carts Moratorium Ordinance)

DATE: February 14, 2011 (for February 22<sup>nd</sup> meeting)

---

The second reading of the Temporary Vendor Cart Moratorium Ordinance is scheduled for your meeting on February 22<sup>nd</sup>

Staff pointed out that the ordinance as approved on first reading imposed a moratorium on “transient vendor carts.” These kinds of carts are used for special events (such as Independence Day, the Quizno’s Pro Challenge bike race, and Oktoberfest, and are not the kind of carts that staff believes should be subject to the moratorium. Accordingly, the version of the ordinance that is proposed for second reading eliminates transient vendor carts from the moratorium ordinance.

There are no other changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – FEB. 22**

2  
3 Additions To The Ordinance As Approved on First Reading Are  
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5  
6 COUNCIL BILL NO. 9

7  
8 Series 2011

9  
10 AN ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE SUBMISSION,  
11 ACCEPTANCE, PROCESSING, AND APPROVAL OF NEW APPLICATIONS FOR  
12 DEVELOPMENT PERMITS TO OPERATE TEMPORARY VENDOR CARTS ~~OR TRANSIENT~~  
13 ~~VENDOR CARTS~~

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

17  
18 Section 1. Findings and Intent. The Town Council of the Town of Breckenridge, Colorado  
19 finds, determines, and declares as follows:

20  
21 1. Policy 36 (Absolute) of Section 9-1-19 of the Breckenridge Town Code (part of the  
22 Town’s “Development Code”) (“**Policy 36 (Absolute)**”) includes the Town’s current rules and  
23 regulations governing the land use aspects of temporary vendor carts ~~and transient vendor carts~~  
24 (~~collectively~~, “**temporary vendor carts**”).

25  
26 2. It has recently come to the attention of the Town Council that new business models and  
27 industry practices have changed how temporary vendor carts are being operated, or proposed to be  
28 operated, within the Town. As a result, it is necessary for Policy 36 (Absolute) to be revised to  
29 address the new business models, industry practices, and other relevant land use issues relating to  
30 temporary vendor carts.

31  
32 3. The necessary revisions to Policy 36 (Absolute) will entail, at a minimum: (i) updating the  
33 Town’s research of how other municipalities are currently regulating temporary vendor carts; (ii)  
34 investigating the new business models and industry practices pertaining to temporary vendor carts;  
35 (iii) analyzing the legal issues associated with the regulation of temporary vendor carts; (iv)  
36 conducting meetings with interested members of the public; (v) drafting proposed revisions to Policy  
37 36 (Absolute); and (vi) adopting the proposed revisions to Policy 36 (Absolute).

38  
39 4. The imposition of a one (1) year moratorium on the submission, acceptance, processing,  
40 and approval of new applications for development permits to operate temporary vendor carts will  
41 allow the Town staff and the Town Council to take the various actions described in Finding No. 3 of  
42 this Section 1.

43  
44 5. The Town will suffer irreparable harm if a short, temporary moratorium on the  
45 submission, acceptance, processing, and approval of new applications for development permits to  
46 operate temporary vendor carts is not imposed.  
47

1           6. The duration of the moratorium imposed by this ordinance is reasonable in length, and is  
2 no longer than is required for the Town to properly investigate, develop, and adopt the necessary  
3 revisions to Policy 36 (Absolute).  
4

5           7. Proprietors desiring to operate temporary vendor carts within the Town will not be  
6 unfairly prejudiced by the imposition of the short, temporary moratorium imposed by this ordinance.  
7

8           Section 2. Imposition of Temporary Moratorium. A moratorium is imposed upon the  
9 submission, acceptance, processing, and approval of all new applications for development permits to  
10 operate temporary vendor carts submitted under the Town’s “Development Code” (Chapter 1 of Title  
11 9 of the Breckenridge Town Code). The Town staff and the Town of Breckenridge Planning  
12 Commission are directed to refuse to accept for filing, and not to process or review, any such  
13 application during the moratorium period.  
14

15           Section 3. Exceptions. The moratorium imposed by Section 2 of this ordinance does not  
16 apply to a new application for a development permit to operate: (i) a temporary structure; (ii) a  
17 temporary construction trailer; or (iii) a seasonal greenhouse. The adopted moratorium also does not  
18 apply to any complete application for a development permit to operate a temporary vendor cart filed  
19 with the Town’s Department of Community Development on or before February 8, 2011.  
20

21           Section 4. Effective Dates of Moratorium. The moratorium imposed by this ordinance shall  
22 commence on the effective date of this ordinance, and shall expire one (1) year thereafter, unless  
23 sooner repealed.  
24

25           Section 5. Staff To Investigate and Prepare Proposed Regulations. Before the expiration of  
26 the moratorium imposed by this ordinance the Town staff, working with the Town Attorney, shall  
27 review and analyze potential new Town regulations of temporary vendor carts. Such investigations  
28 shall be completed promptly and with due diligence, and submitted to the Town Council for  
29 consideration. The Town Council declares that it will give due and timely consideration to the  
30 adoption of any proposed revisions to Policy 36 (Absolute).  
31

32           Section 6. Police Power Finding. The Town Council hereby finds, determines, and declares  
33 that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the  
34 prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the  
35 inhabitants thereof.  
36

37           Section 7. Authority. The Town Council hereby finds, determines and declares that it has the  
38 power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,  
39 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal land  
40 use powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-  
41 15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to home rule  
42 municipalities by Article XX of the Colorado Constitution; and (vi) the powers contained in the  
43 Breckenridge Town Charter.  
44

45           Section 8. This ordinance shall be published and become effective as provided by Section  
46 5.9 of the Breckenridge Town Charter.  
47

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED  
2 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2011. A Public Hearing shall be held at the  
3 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
4 \_\_\_\_\_, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
5 Town.

6  
7 TOWN OF BRECKENRIDGE, a Colorado  
8 municipal corporation  
9

10  
11  
12 By \_\_\_\_\_  
13 John G. Warner, Mayor  
14

15 ATTEST:

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19 \_\_\_\_\_  
20 Mary Jean Loufek, CMC,  
21 Town Clerk  
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**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Pedicab Traffic Rules Ordinance

DATE: February 15, 2011 (for February 22<sup>nd</sup> meeting)

---

You will recall that last month the Council reviewed a draft ordinance establishing traffic rules for pedicabs. The ordinance seemed to be generally acceptable, but before the ordinance was ready for formal consideration certain revisions were necessary to address the operation of pedicabs on Highway 9. In addition, it was necessary to obtain CDOT's approval of the ordinance since the ordinance affects the operation of vehicles on a state highway.

Enclosed is the revised ordinance. It has been blacklined against the version of the ordinance that you reviewed on January 11.

The changes deal with the operation of pedicabs on Highway 9, and begin at the bottom of the first page of the ordinance. As you will see, this section has been revised to prohibit pedicab operations on Highway 9 south of the intersection of Park Avenue and South Main Street, and north of the intersection of Highway 9 and Village Road. Under the revised ordinance pedicabs may lawfully be operated on the short segment of Highway 9 between the Park Avenue/South Main Street intersection and the intersection of Highway 9 and Village Road. You will recall that this is the part of Highway 9 where the current pedicab operators said he wants to be allowed to operate.

In addition, language has been inserted into the ordinance to address the problem raised by the current pedicab operator relating to travel to and from the pedicab garage near County Road 450. The ordinance now provides that it will not be a violation if a pedicab is operated anywhere on Colorado Highway 9 so long as the pedicab is operated without passengers in a direct route to and from the pedicab's garage facility.

This version of the ordinance has been reviewed and approved by CDOT.

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

1 FOR WORKSESSION/FIRST READING – FEB. 22

2  
3 Additions To The Ordinance As Reviewed On January 11, 2011 Are  
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5  
6 COUNCIL BILL NO. 10

7  
8 Series 2011

9  
10 AN ORDINANCE CONCERNING THE OPERATION OF PEDICABS WITHIN THE TOWN  
11 OF BRECKENRIDGE

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

15  
16 Section 1. Section 6-3H-5(A) of the Breckenridge Town Code is amended by the  
17 addition of the following definition:

18  
19 PEDICAB: As defined in the Town’s Traffic Code adopted  
20 by reference in Title 7, Chapter 1 of this Code.

21  
22 Section 2. Section 6-3H-5 of the Breckenridge Town Code, entitled “Riverwalk  
23 Restrictions”, is amended by the addition of a new subsection F.5, which shall read in its entirety  
24 as follows:

25 F.5 Pedicabs may lawfully be operated on the Riverwalk only from November 1  
26 through the end of the ski season at the Breckenridge Ski Area. It is unlawful to  
27 operate a pedicab on the Riverwalk at any other time.

28  
29 Section 3. Section 7-1-2 of the Breckenridge Town Code is amended by the addition of a  
30 new subsection T.5, which shall read in its entirety as follows:

31 T.5 The adopted code is amended by the addition of a new Section 1417, to be  
32 entitled “Operation of Pedicabs”, which shall read in its entirety as follows:

33  
34 1417. Operation of Pedicabs. (1) Every person operating a pedicab shall have all  
35 of the rights and duties applicable to the driver of any other vehicle under this  
36 Code, except as to special regulations in this Code and except as to those  
37 provisions which by their nature can have no application. Said operators shall  
38 comply with the rules set forth in this section when using the streets and highways  
39 within the Town.

40  
41 (2) No pedicab shall be operated on Colorado Highway 9 (Park Avenue) south of  
42 ~~Boreas Pass Road~~ **the intersection of Colorado Highway 9 (Park Avenue) and**  
43 **South Main Street**, and north of the intersection of Colorado Highway 9 (Park  
44 Avenue) and **North Main Street Village Road** within the Town. Pedicabs may

1 lawfully be operated on ~~the remaining portions of~~ **Colorado Highway 9 (Park**  
2 **Avenue) between the intersection of Colorado Highway 9 (Park Avenue) and**  
3 **South Main Street and the intersection of Colorado Highway 9 (Park**  
4 **Avenue) and Village Road** within the Town, subject to the other rules described  
5 in this section. **It shall not be a violation of this section if a pedicab is operated**  
6 **on Colorado Highway 9 in a direct route to and from the pedicab's garage**  
7 **facility if no passengers are carried when the pedicab is traveling on such**  
8 **route and if the pedicab is otherwise operated to the other rules described in**  
9 **this section.**

10  
11 (3) No pedicab shall be used to carry more persons at one time than the number  
12 for which it is designed or equipped.

13  
14 (4) No person operating upon any pedicab shall attach the same or himself or  
15 herself to any motor vehicle upon a roadway.

16  
17 (5)(a) Any person operating a pedicab upon a roadway at less than the normal  
18 speed of traffic shall ride in the right-hand lane, subject to the following  
19 conditions:

20  
21 (I) If the right-hand lane then available for traffic is wide enough to be safely  
22 shared with overtaking vehicles, a pedicab operator shall ride far enough to the  
23 right as judged safe by the pedicab operator to facilitate the movement of such  
24 overtaking vehicles unless other conditions make it unsafe to do so.

25  
26 (II) A pedicab operator may use a lane other than the right-hand lane when:

27  
28 (A) Preparing for a left turn at an intersection or into a private roadway or  
29 driveway;

30  
31 (B) Overtaking a slower vehicle; or

32  
33 (C) Taking reasonably necessary precautions to avoid hazards or road conditions.

34  
35 (III) Upon approaching an intersection where right turns are permitted and there is  
36 a dedicated right-turn lane, a pedicab operator may ride on the left-hand portion of  
37 the dedicated right-turn lane even if the pedicab operator does not intend to turn  
38 right.

39  
40 (b) A pedicab operator shall not be expected or required to:

41  
42 (I) Ride over or through hazards at the edge of a roadway, including but not  
43 limited to fixed or moving objects, parked or moving vehicles, bicycles, other  
44 pedicabs, pedestrians, animals, surface hazards, or narrow lanes; or

1 (II) Ride without a reasonable safety margin on the right-hand side of the  
2 roadway.

3  
4 (c) A person operating a pedicab upon a one-way roadway with two or more  
5 marked traffic lanes may ride as near to the left-hand curb or edge of such  
6 roadway as judged safe by the pedicab operator, subject to the following  
7 conditions:

8  
9 (I) If the left-hand lane then available for traffic is wide enough to be safely  
10 shared with overtaking vehicles, a pedicab operator shall ride far enough to the  
11 left as judged safe by the pedicab operator to facilitate the movement of such  
12 overtaking vehicles unless other conditions make it unsafe to do so.

13  
14 (II) A pedicab operator shall not be expected or required to:

15  
16 (A) Ride over or through hazards at the edge of a roadway, including but not  
17 limited to fixed or moving objects, parked or moving vehicles, bicycles, other  
18 pedicabs, pedestrians, animals, surface hazards, or narrow lanes; or

19  
20 (B) Ride without a reasonable safety margin on the left-hand side of the roadway.

21  
22 (6)(a) A person operating a pedicab upon a roadway shall ride in a single file.

23  
24 (b) A person operating a pedicab shall not impede the normal and reasonable  
25 movement of traffic and, on a laned roadway, shall ride within a single lane.

26  
27 (7) A person operating a pedicab shall keep at least one hand on the handlebars at  
28 all times.

29  
30 (8)(a) A person operating a pedicab intending to turn left shall follow a course  
31 described in sections 901(1), 903, and 1007 or may make a left turn in the manner  
32 prescribed in paragraph (b) of this subsection (8).

33  
34 (b) A person operating a pedicab intending to turn left shall approach the turn as  
35 closely as practicable to the right-hand curb or edge of the roadway. After  
36 proceeding across the intersecting roadway to the far corner of the curb or  
37 intersection of the roadway edges, the pedicab operator shall stop, as much as  
38 practicable, out of the way of traffic. After stopping, the pedicab operator shall  
39 yield to any traffic proceeding in either direction along the roadway that the  
40 pedicab operator had been using. After yielding and complying with any official  
41 traffic control device or police officer regulating traffic on the highway along  
42 which the pedicab operator intends to proceed, the pedicab operator may proceed  
43 in the new direction.  
44



1 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection  
2 (8), the police chief may cause official traffic control devices to be placed on  
3 roadways and thereby require and direct that a specific course be traveled.  
4

5 (9)(a) Except as otherwise provided in this subsection (9), every person operating  
6 a pedicab shall signal the intention to turn or stop in accordance with section 903;  
7 except that a person operating a pedicab may signal a right turn with the right arm  
8 extended horizontally.  
9

10 (b) A signal of intention to turn right or left when required shall be given  
11 continuously during not less than the last one hundred feet traveled by the pedicab  
12 before turning and shall be given while the pedicab is stopped waiting to turn. A  
13 signal by hand and arm need not be given continuously if the hand is needed in  
14 the control or operation of the pedicab.  
15

16 (10) A person shall not operate a pedicab on a sidewalk, except when necessary to  
17 cross a street or highway.  
18

19 (11)(a) A person may not park a pedicab on a sidewalk.  
20

21 (b) Pedicabs parked anywhere on a street shall conform to the provisions of part  
22 12 of this Code regulating the parking of vehicles.  
23

24 (12) Any person who violates any provision of this section commits a  
25 misdemeanor traffic offense; except that section 42-2-127, C.R.S., shall not apply.  
26

27 (13) Upon request, the law enforcement agency having jurisdiction shall complete  
28 a report concerning an injury or death incident that involves a pedicab anywhere  
29 within the Town, even if such accident does not involve a motor vehicle.  
30

31 Section 4. Section 7-1-2(Y) of the Breckenridge Town Code is amended by the addition  
32 of the following additional definition:  
33

34 (69.5) "Pedicab" means a three-wheeled vehicle for hire that regularly transports  
35 passengers for a fee using only human power.  
36

37 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the  
38 various secondary codes adopted by reference therein, shall continue in full force and effect.  
39

40 Section 6. The Town Council hereby finds, determines and declares that this ordinance is  
41 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and  
42 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants  
43 thereof.  
44

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

4 Section 8. This ordinance shall be published as provided by Section 5.9 of the  
5 Breckenridge Town Charter, and shall become effective upon the last to occur of: (i) approval of  
6 this ordinance by the Colorado Department of Transportation pursuant to Sections 42-4-  
7 110(1)(e) and 43-2-135(1)(g), C.R.S.; and (ii) the effective dated provided by Section 5.9 of the  
8 Breckenridge Town Charter.

9  
10 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
11 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2011. A Public Hearing shall be held at the  
12 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of  
13 \_\_\_\_\_, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
14 Town.

15  
16 TOWN OF BRECKENRIDGE, a Colorado  
17 municipal corporation  
18

19  
20  
21 By \_\_\_\_\_  
22 John G. Warner, Mayor  
23

24 ATTEST:  
25

26  
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28 \_\_\_\_\_  
29 Mary Jean Loufek, CMC,  
30 Town Clerk  
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**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Amendment To Medical Marijuana Dispensary Moratorium Ordinance

DATE: February 14, 2011 (for February 22<sup>nd</sup> meeting)

---

At the meeting of February 8<sup>th</sup> those members of the Council who were present unanimously agreed to allow the Medicine Man medical marijuana dispensary to relocate to the SCI Building at 105 North Main Street under certain specific conditions.

To formally implement the Council's decision it is necessary to adopt an ordinance amending the current Medical Marijuana Dispensary Ordinance to state under what terms and conditions an existing medical marijuana dispensary will be permitted to relocate within the Downtown Overlay District. The current Moratorium Ordinance does not allow the Town Manager to waive the prohibition against a current dispensary relocating within the Downtown Overlay District on a case-by-case basis. I do not think it would proper to amend the current Moratorium Ordinance to specifically refer to the proposed relocation of the Medicine Man dispensary; such approach would unfairly discriminate in favor of Mountain Man and against other existing dispensaries.

Instead, I think the Moratorium Ordinance should be amended to state the specific terms under which any existing dispensary would be allowed to relocate within the Downtown Overlay District. The new rules would have to be uniformly applied to all existing dispensaries, even though there may not be dispensaries other than Medicine Man would might be able to take advantage of the new rules. The new rules would stay in effect only until the new Medical Marijuana Licensing Ordinance is adopted and becomes effective.

Enclosed is a proposed ordinance allowing the Town Manager to approve the relocation of an existing medical marijuana dispensary to a location within the Downtown Overlay District only if the applicant voluntarily agrees, by appropriate documentation approved by the Town Attorney, that: (i) no signage for the dispensary will be visible from Main Street; (ii) the dispensary will not be located on the street level or garden level of the building in which the dispensary is located; (iii) no entryway into the dispensary will front onto Main Street, or be any closer than 50 feet from Main Street; and (iv) no marijuana plants may be grown within the dispensary. It is my understanding that these four conditions were the ones the Council wanted to see incorporated into the current Moratorium Ordinance.

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

1 ***FOR WORKSESSION/FIRST READING – FEB. 22***

2  
3 Additions To The Current Medical Marijuana Dispensary Moratorium Ordinance Are  
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5  
6 COUNCIL BILL NO. 11

7  
8 Series 2011

9  
10 AN ORDINANCE AMENDING ORDINANCE NO. 16, SERIES 2010 AND ORDINANCE  
11 NO. 38, SERIES 2010 ,TO ALLOW FOR THE CHANGE OF LOCATION OF TOWN OF  
12 BRECKENRIDGE MEDICAL MARIJUANA DISPENSARY PERMITS; AND SETTING  
13 FORTH THE TERMS AND CONDITIONS UNDER WHICH SUCH CHANGE OF  
14 LOCATION MAY BE APPROVED

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

18  
19 Section 1. Section 2 of Ordinance No. 16, Series 2010 is amended so as to read in its  
20 entirety as follows:

21 Section 2. Imposition of Temporary Moratorium on Applications For New Permits  
22 Under The Town’s Medical Marijuana Dispensary Ordinance; Exception For  
23 Change of Location of Existing Permits; Continuation of Existing Permits Until  
24 July 1, 2011.

25  
26 A. Upon the adoption of this ordinance a moratorium is imposed upon the  
27 submission, acceptance, processing, and approval of all applications for new permits  
28 to operate medical marijuana dispensaries under the Town’s Medical Marijuana  
29 Dispensary Ordinance. During the moratorium period, except as provided in Section  
30 2(B) of this ordinance the Town Manager and Town staff shall not: (i) accept for  
31 filing any application for a new permit to operate a medical marijuana dispensary  
32 under the Town’s Medical Marijuana Dispensary Ordinance; or (ii) process, review,  
33 grant, deny or take any action with respect to any application for a new permit to  
34 operate a medical marijuana dispensary under the Town’s Medical Marijuana  
35 Dispensary Ordinance.

36  
37 B. Notwithstanding Section 2(A) of this ordinance, during the moratorium  
38 imposed by this ordinance the Town Manager may accept, process, and approve  
39 an application for a new medical marijuana dispensary permit for the sole purpose  
40 of changing the location of an existing medical marijuana dispensary if: (i) the  
41 new permit is issued to the same person who holds a current permit issued by the  
42 Town pursuant to Chapter 14 of Title 4 of the Breckenridge Town Code (the  
43 “Town of Breckenridge Medical Marijuana Dispensary Ordinance”); (ii)  
44 contemporaneously with the issuance of the new permit the permittee’s existing  
45 permit is surrendered and cancelled by the Town Manager; and (iii) the new  
46 permit meets all of the qualifications and requirements established of the Town of

1 Breckenridge Medical Marijuana Dispensary Ordinance; provided, however, that  
2 notwithstanding Section 4-14-23 of the Town of Breckenridge Medical Marijuana  
3 Ordinance, no new permit may be issued by the Town Manager pursuant to this  
4 ordinance for any location within the Downtown Overlay District unless the  
5 applicant voluntarily agrees, by appropriate documentation approved by the  
6 Town Attorney, that: (i) no signage for the dispensary will be visible from  
7 Main Street; (ii) the dispensary will not be located on the street level or  
8 garden level of the building in which the dispensary is located; (iii) no  
9 entryway into the dispensary will front onto Main Street, or be any closer  
10 than 50 feet from Main Street; and (iv) no marijuana plants may be grown  
11 within the dispensary.

12  
13 C. All currently valid permits issued under the Town of Breckenridge Medical  
14 Marijuana Ordinance shall remain in full force and effect until July 1, 2011,  
15 notwithstanding the date of issuance. Commencing 45 days prior to July 1, 2011,  
16 all permits issued under the Town of Breckenridge Medical Marijuana Ordinance  
17 may be renewed in accordance with then-applicable law.

18  
19 D. All terms used in this ordinance that are defined in the Town of Breckenridge  
20 Medical Marijuana Ordinance shall have the meanings provided in such  
21 ordinance.

22  
23 Section 2. Except as specifically amended, Ordinance No. 16, Series 2010, as amended  
24 by Ordinance No. 38, Series 2010, shall continue in full force and effect.

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

29 Section 4. The Town Council hereby finds, determines and declares that it has the power  
30 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,  
31 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal  
32 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)  
33 Section 31-15-401, C.R.S. (concerning municipal police powers); (v) Section 31-15-501  
34 (concerning municipal power to regulate businesses); (vi) Section 12-43.3-202(b)(II), C.R.S.;  
35 (vii) the authority granted to home rule municipalities by Article XX of the Colorado  
36 Constitution; and (viii) the powers contained in the Breckenridge Town Charter.

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

39  
40 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
41 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2011. A Public Hearing shall be held at the  
42 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
43 \_\_\_\_\_, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
44 Town.

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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

ATTEST:

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

APPROVED IN FORM

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



## MEMORANDUM

**To:** Town Council  
**From:** Tim Gagen, Town Manager  
**Date:** February 16, 2011  
**Subject:** BOEC Option Contract

---

### **Background**

The Breckenridge Outdoor Education Center (BOEC) currently leases the property at 524 Wellington Road, referred to as the "Old Sanitation District" property.

The BOEC has presented a proposal to the Town Council to purchase the property. This proposal is subject to the Town retaining control of an out-building at the location which houses the Town's technology/data center.

The Council directed the Town Manager and the Town Attorney to proceed with developing an option agreement to effect the sale of the property. Attached for Council consideration is a final version of the "Option Contract". The Council reviewed a draft of the contract at last worksession and the only changes since that meeting is the expansion of Section 3 dealing with the the lease that the Town currently has with Comcast. This section was revised to accomodate potential issues that may arise in the Town's upcoming franchise renewal discussion with Comcast.

The BOEC has reviewed this final version of the contract and approved it.

We believe the contract is now ready for formal Council consideration and approval.

1                   ***FOR WORKSESSION/FIRST READING – FEB. 22***

2  
3                   COUNCIL BILL NO. 12

4  
5                   Series 2011

6  
7                   AN ORDINANCE APPROVING AN OPTION AGREEMENT WITH THE BRECKENRIDGE  
8                   OUTDOOR EDUCATION CENTER, A COLORADO NONPROFIT CORPORATION;  
9                   AUTHORIZING THE SALE OF CERTAIN TOWN-OWNED REAL PROPERTY PURSUANT  
10                   THERE TO; AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH  
11                   (524 Wellington Road)

12  
13                   WHEREAS, the Town of Breckenridge owns the real property and improvements located  
14                   at 524 Wellington Road in Breckenridge, Summit County, Colorado (“***Property***”); and

15  
16                   WHEREAS, the Breckenridge Outdoor Education Center (“***BOEC***”) is a Colorado  
17                   nonprofit corporation; and

18  
19                   WHEREAS, the BOEC was formed in 1976, and has been in continuous operation within  
20                   the Town since that date; and

21  
22                   WHEREAS, the BOEC provide numerous valuable nonprofit activities, and is an  
23                   important part of the fabric of the community; and

24  
25                   WHEREAS, the Town has previously leased the Property to the BOEC pursuant to that  
26                   Lease dated July 10, 2001 and recorded November 9, 2001 at Reception No. 667684 of the  
27                   records of the Clerk and Recorder of Summit County, Colorado (“***Lease***”); and

28  
29                   WHEREAS, the Lease was amended by that Amendment to Lease dated August 28,  
30                   2001 and recorded November 9, 2001 at Reception No. 667685 of the records of the Clerk and  
31                   Recorder of Summit County, Colorado; and

32  
33                   WHEREAS, the BOEC has continuously occupied the Property pursuant to the Lease  
34                   since 2001, and has made portions of the Property available for use by other nonprofit entities  
35                   that serve the Town, its residents, and its many visitors; and

36  
37                   WHEREAS, the BOEC has demonstrated that substantial public benefits arise from its  
38                   presence on the Property, and its use of the Property to fulfill its nonprofit mission and the  
39                   nonprofit missions of the other users of the Property; and

40  
41                   WHEREAS, the Town has agreed to grant to the BOEC, and the BOEC wants to  
42                   purchase and acquire from Town, an exclusive option to buy the Property, all in accordance with,  
43                   and subject to, the terms, conditions and provisions of the proposed “Option Contract” between  
44                   the Town and the BOEC, a copy of which is marked Exhibit “A”, attached hereto and  
45                   incorporated herein by reference (“***Option Agreement***”); and



1 WHEREAS, even though the purchase price for the Property provided in the Option  
2 Agreement is somewhat below the current appraised value of the Property, the Town Council finds  
3 and determines that there will be substantial public benefits accruing to the Town if the Property is  
4 sold to the BOEC pursuant to the Option Agreement; that there will be a public purpose associated  
5 with the sale of the Property to the BOEC pursuant to the Option Agreement; and that the Town  
6 will receive adequate consideration in return for the sale of the Property to the BOEC pursuant to  
7 the Option Agreement; and  
8

9 WHEREAS, the Town Council has reviewed the proposed Option Agreement, and finds  
10 and determines that it would be in the best interest of the Town and its residents for the Town to  
11 enter into the Option Agreement; and  
12

13 WHEREAS, if the BOEC exercises the option granted to it by the Option Agreement the  
14 Town will be obligated to convey the Property to it, subject, however, to the terms and conditions of  
15 the Option Agreement; and  
16

17 WHEREAS, Section 15.3 of the Breckenridge Town Charter provides that the Town  
18 Council may lawfully authorize the sale of Town-owned real property by ordinance.  
19

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

23 Section 1. The Town Council finds, determines, and declares that approval of the Option  
24 Agreement, and the sale of the Property to the BOEC pursuant thereto, would serve the public  
25 purpose of providing a permanent location for the BOEC to conduct its many valuable nonprofit  
26 activities. In addition, because of the commitment of the BOEC to continue to make a portion of  
27 the Property available for the location and operation of other nonprofit entities, the public will  
28 benefit from the sale of the Property to the BOEC pursuant to the Option Agreement through the  
29 continued presence on the Property of other important nonprofit entities.  
30

31 Section 2. For the reasons set forth in Section 1 of this ordinance, the Town Council  
32 finds, determines, and declares that the approval of the proposed Option Agreement with the  
33 BOEC (Exhibit "A" hereto), and the sale of the Property to the BOEC pursuant thereto, will  
34 provide a public benefit and further a public purpose within the meaning of Article 11, Section 2  
35 of the Colorado Constitution. The Town Council further finds, determines, and declares that the  
36 Town of Breckenridge will receive adequate consideration in return for the sale of the Property  
37 to the BOEC pursuant to the Option Agreement.  
38

39 Section 3. The Option Agreement between the Town and the BOEC, in substantially the  
40 form attached hereto as Exhibit "A", is approved; and the Town Manager is hereby authorized,  
41 empowered, and directed to execute such Option Agreement for and on behalf of the Town of  
42 Breckenridge. Minor changes to or amendments of the approved agreement may be made by the  
43 Town Manager if the Town Attorney certifies in writing that the proposed changes or  
44 amendments do not substantially affect the consideration to be received or paid by the Town  
45 pursuant to the approved agreement, or the essential elements of the approved agreement.  
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Section 4. If the BOEC timely exercises the option to purchase the Property granted to it by the Option Agreement the Town Manager, without the need for further authorization, is hereby empowered and directed to take all necessary and appropriate action to close the sale of the Property to the BOEC as contemplated by the Option Agreement. In connection therewith, the Town Manager shall have full power and authority to do and perform all matters and things necessary to the sale of the Property pursuant to the Option Agreement, including, but not limited to, the following:

- 1. The making, execution and acknowledgement of settlement statements, closing agreements, and other usual and customary closing documents;
- 2. The execution, acknowledgement and delivery to the BOEC of the deed of conveyance for the Property; and
- 3. The performance of all other things necessary to the sale of the Property by the Town pursuant to the Option Agreement.

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2011. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of \_\_\_\_\_, 2011, 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  
600-127\BOEC Option Ordinance (02-15-11)

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OPTION CONTRACT

This Option Contract (this "**Contract**") is dated \_\_\_\_\_, 2011 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the "**Seller**") and BRECKENRIDGE OUTDOOR EDUCATION CENTER, a Colorado nonprofit corporation (the "**Buyer**"). The Buyer and the Seller are collectively referred to in this Contract as the "**Parties**."

**Background**

Seller owns the real property and improvements located at 524 Wellington Road in Breckenridge, Summit County, Colorado ("**Property**"). The Property consists of 1.08 acres, more or less, and is more particularly described on **Exhibit "A"**. Seller has previously leased the Property to Buyer pursuant to that Lease dated July 10, 2001 and recorded November 9, 2001 at Reception No. 667684 of the records of the Clerk and Recorder of Summit County, Colorado. The Lease was amended by that Amendment to Lease dated August 28, 2001 and recorded November 9, 2001 at Reception No. 667685 of the records of the Clerk and Recorder of Summit County, Colorado (the Lease the amendment, and any extensions thereof are together referred to as the "**Lease**"). Except as specifically provided for herein, nothing contained in this Option Contract is intended to modify or replace the terms of the Lease. Seller has agreed to grant to Buyer, and Buyer wants to purchase and acquire from Seller, an exclusive option to buy the Property, all in accordance with, and subject to, the terms, conditions and provisions of this Contract.

**Agreement**

NOW, THEREFORE, the Parties agree as follows:

**ARTICLE 1  
THE OPTION**

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32  
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34

1.1 **Grant of Option.** Seller grants to Buyer the exclusive, irrevocable right and option to purchase the Property, together with: (i) all minerals and mineral rights, if any, that are appurtenant to the Property; and (ii) all rights-of-way and easements, if any, that are appurtenant to the Property (the "**Option**"). The Option is subject to the terms, conditions and requirements of this Contract.

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1.2 **Water Rights Excluded.** There are no water or water rights, ditch or ditch rights, well permits or water storage rights appurtenant to the Property, and no water and water rights, ditch and ditch rights, well permits, or storage rights will be conveyed by Seller to Buyer in the event the Buyer exercises the Option.

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42

1.3 **Consideration for Option.** The consideration paid by Buyer to Seller for the Option is Ten Dollars (\$10.00) (the "**Option Money**"), the receipt and sufficiency of which are acknowledged by Seller. The Option Money will not be applied against the Purchase Price (as later defined in this Contract), and is non-refundable.

1  
2 1.4 Term and Exercise of Option.  
3

4 (a) Unless sooner exercised or extended by mutual agreement of the  
5 Parties, the Buyer's right to exercise the Option expires at 11:59 P.M., local time, on  
6 \_\_\_\_\_, 2020 (the "**Option Deadline**").

7 (b) Buyer may exercise the Option at any time prior to the Option  
8 Deadline. To exercise the Option, Buyer must deliver written notice to Seller in accordance  
9 with Section 9.6; provided, however, that Buyer may not exercise the Option if, at the time of  
10 attempted exercise of the Option, Buyer is in default under this Contract or the Lease. Buyer  
11 may give notice of the exercise of the Option only once.

12 1.5 If Timely Notice of Exercise of The Option Is Given. Upon the timely giving of  
13 notice of the exercise of the Option, the remaining provisions of this Contract will govern the  
14 closing of the sale and purchase of the Property. Such sale and purchase is hereafter referred to  
15 as the "**Closing**."

16 1.6 If Timely Notice of The Exercise of The Option Is Not Given. Time is of the  
17 essence of this Contract. Accordingly, it is agreed that if Buyer fails, for any reason, to give  
18 timely notice of the exercise of the Option by the Option Deadline Seller may, in Seller's sole  
19 and absolute discretion, elect to terminate this Contract. Buyer's failure give timely notice of the  
20 exercise of any the Option is not a "default" under this Contract, and Seller is not required to  
21 give notice of default with respect to such failure to give timely notice. Further, Buyer has no  
22 right of cure with respect to Buyer's failure give timely notice of the exercise of the Option. If  
23 the Seller determines to terminate this Contract as a result of Buyer's failure to give timely notice  
24 of the exercise of the Option, Seller will give Buyer written notice in accordance with Section  
25 9.6. If Seller gives notice of termination as provided in this Section 1.6, this Contract will  
26 terminate, and each party will be released from any further obligations under this Contract.  
27

28 **ARTICLE 2**  
29 **PURCHASE OF THE PROPERTY**  
30

31 2.1 Purchase and Sale of the Property. On the Closing Date (as later defined in this  
32 Contract) Buyer will purchase the Property from Seller, and Seller will sell and convey the  
33 Property to Buyer. Purchase and conveyance of the Property will be in accordance with the terms  
34 and conditions contained in this Article, and the applicable provisions of the remainder of this  
35 Contract.

36 2.2 Purchase Price. The purchase price to be paid by Buyer to Seller for the Property  
37 (the "**Purchase Price**") will be determined based upon the date that Seller gives Buyer notice of  
38 the exercise of the Option in accordance with the requirements of this Contract. The Purchase  
39 Price will be determined as follows:  
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Calendar Year in Which Seller Gives Notice of Exercise of Option	Purchase Price
2011	\$500,000
2012	\$510,000
2013	\$520,200
2014	\$530,604
2015	\$541,216
2016	\$552,040
2017	\$563,081
2018	\$574,342
2019	\$585,829
2020	\$597,546

2.3 Payment of Purchase Price. The Purchase Price will be paid to Seller by Buyer at Closing as follows:

(a) A sum equal to sixty percent (60%) of the Purchase Price will be paid in the form of the execution of and delivery of Buyer's Promissory Note to Seller (the "**Promissory Note**"). The Promissory Note will be secured by a Deed of Trust (the "**Deed of Trust**") encumbering the Property.

(b) The balance of the Purchase Price will be paid in good funds as defined by Colorado law.

2.4 The Note and Deed of Trust.

(a) The Promissory Note and Deed of Trust will contain the provisions described below, and will otherwise be in a form reasonably satisfactory to Seller and Buyer:

(i) The unpaid principal balance of the Promissory Note will bear interest at the rate of four percent (4%) per annum. The Promissory Note will be paid in equal amortized quarterly payments based on a fifteen (15) year amortization with the first payment due three (3) months after the Closing Date (as later defined in this Contract); provided, however, the entire unpaid balance of the Promissory Note, both principal and interest, will be due and payable without demand in ONE BALLOON PAYMENT seven (7) years after the Closing Date. Seller is under no obligation to refinance or extend the balloon payment. The default interest rate on the Promissory Note will be twelve percent (12%) per annum.

(ii) The Promissory Note may be prepaid in whole or part at any time without penalty. Any partial prepayment of principal will be credited against the next maturing installment or installments due under the Promissory Note.

1 (iii) The Deed of Trust will be a first and prior lien on the Property, subject  
2 only to: (i) the lien of the general property taxes for the year of Closing; and (ii) the  
3 Permitted Exceptions (as later defined in this Contract). Seller will never be obligated to  
4 subordinate the Deed of Trust to any lien or encumbrance.

5 (iv) Buyer will not be in default under the Promissory Note and Deed of Trust  
6 until thirty (30) days after written notice of default has been given to Buyer specifically  
7 setting forth the claimed default, and such default remains uncured at the expiration of  
8 such thirty (30) day period.

9 (v) The Deed of Trust will contain a "due on sale clause" pursuant to which  
10 the entire unpaid balance of the Promissory Note will immediately become due and  
11 payable if the Property is sold or transferred by Buyer without the Promissory Note  
12 having been paid in full.

13 2.5 Closing Date. The transaction contemplated by this Contract will be closed at the  
14 offices of Land Title Guarantee Company – Breckenridge office ("**Title Company**"), 200 North  
15 Ridge Street, Breckenridge, Colorado, on or before the expiration of sixty (60) days after the  
16 timely exercise of the Option by the Buyer as set forth in Section 1.4 (the "**Closing Date**"). The  
17 Parties will mutually agree on the Closing Date and time of Closing, but if the Parties are unable  
18 to agree, the Closing Date and time of Closing will be established by the Title Company. The  
19 Closing Date may be extended by mutual agreement of the Parties.

20 2.6 Closing Costs. At Closing, Buyer will pay the cost of recording the deed  
21 conveying the Property to it. Seller will pay the cost of the title insurance premium, and tax  
22 certificate. Each party will pay one-half of the reasonable cost of closing services charged by the  
23 Title Company. Otherwise, each party will pay the usual and customary closing costs.

24 2.7 No Tax Apportionment. The Property has been tax-exempt while owned by  
25 Seller. Accordingly, no apportionment of real property taxes will be done at Closing. Buyer will  
26 pay at Closing any taxes lawfully levied against its use of the Property based upon the Lease (if  
27 the Lease is determined by the Summit County Assessor to be a taxable possessory interest under  
28 state law.)  
29

30 **ARTICLE 3**  
31 **TITLE MATTERS; CONVEYANCE OF THE PROPERTY**  
32

33 3.1 Title Insurance.

34 (a) Within thirty (30) days from the date of the execution of this Contract  
35 the Seller will obtain and deliver to Buyer, at Seller's expense, a certificate of taxes due on the  
36 Property and a current title insurance commitment ("**Commitment**") issued by the Title  
37 Company. The Commitment will include legible copies of all instruments referred to in the  
38 Commitment. The Commitment will not provide for the deletion of all standard printed  
39 exceptions of Schedule B-2 thereof.

1 (b) All items on the Commitment will be permitted title exceptions  
2 (“**Permitted Exceptions**”) unless Buyer notifies Seller within twenty (20) days of receipt of  
3 the Commitment of any particular item(s) to which Buyer objects. If Buyer gives Seller  
4 timely notice of a title objection then Seller will have twenty (20) days within which to  
5 remove such exceptions or to notify Buyer that it is unable to remove such exceptions, in  
6 which case Buyer may elect to terminate this Contract within twenty (20) days of receipt of  
7 Seller's notice by giving written notice to Seller, or to accept such exceptions (which Buyer  
8 will be deemed to do if Buyer does not timely elect to terminate this Contract).

9 (c) On or before five (5) days prior to the Closing Date, Seller will obtain  
10 and deliver to Buyer, at Seller's sole expense, an endorsement to the Commitment with a  
11 current effective date, showing no new title exceptions therein.

12 (d) After Closing, Seller will obtain and deliver to Buyer, at Seller's sole  
13 expense, a title insurance policy for the Property in the amount of the Purchase Price showing  
14 fee simple absolute title being vested in Buyer, subject only to the Permitted Exceptions.

15 3.2 Conveyance of the Property. On the Closing Date, Seller will convey to Buyer  
16 marketable fee simple absolute title to the Property, subject only to the Permitted Exceptions.  
17 Such conveyance will be by special warranty deed. The deed will convey the Property to Buyer  
18 free and clear of any and all taxes, assessments, liens, encumbrances and other matters which  
19 could affect title, except the Permitted Exception. Personal property shall be conveyed by bill of  
20 sale.

21 3.3 Comcast Lease.

22 (a) General; Intent. The Parties acknowledge that as of the date of this  
23 Contract a portion of the Property (consisting of approximately 0.51 acres, more or less, and  
24 described and depicted on the attached **Exhibit “B”**)(the “Head-End Property”) is subject to  
25 that Lease between the Seller and Universal Cable Communications Inc. d/b/a Classic Cable  
26 (now “Comcast” dated September 7, 1999 (the “Existing Comcast Lease”). The term of the  
27 Existing Comcast Lease will expire during the term of this Contract, and it is anticipated by  
28 the parties that a new lease agreement for the Head-End Property will be negotiated as part of  
29 the Seller’s renewal of the Comcast cable television franchise (the “New Comcast Lease”).  
30 Regardless of whether Buyer has exercised the Option and acquired the Property before the  
31 New Comcast Lease is negotiated, the Buyer acknowledges that it is important to Seller that  
32 Seller has both the right to negotiate and control the terms under which the Head-End  
33 Property is leased to Comcast, and the right to receive any rental from the New Comcast  
34 Lease that is over and above the monthly rental collected from the Existing Comcast Lease.

35 Accordingly, in order to clarify the parties’ rights and responsibilities under both the Existing  
36 Comcast Lease and the potential New Comcast Lease, the parties agree as follows

37 (b) Rent Collected Under Existing Comcast Lease. The following  
38 provisions apply to rent collected under the Existing Comcast Lease:

1 (i) Rent collected under the Existing Comcast Lease prior to the conveyance  
2 of the Property to Buyer will be the sole property of Seller.

3 (ii) Rent collected under the Existing Comcast Lease after the conveyance of  
4 the Property to Buyer will be the sole property of Buyer.

5 (c) Terms and Conditions of New Comcast Lease. The following  
6 provisions apply to the terms and conditions of the New Comcast Lease:

7 (i) If the New Comcast Lease is negotiated while the Seller owns the  
8 Property, Seller will consult with Buyer before entering into the New Comcast Lease;  
9 however, Seller will have the sole right and authority to negotiate the terms and  
10 conditions of the New Comcast Lease, including, but not limited to, the amount of rent to  
11 be paid by Comcast under the New Comcast Lease. Notwithstanding the preceding  
12 sentence, however, Seller will use its best efforts to attempt to negotiate a monthly rent  
13 under the New Comcast Lease that will not be less than the monthly rent payable under  
14 the Existing Comcast Lease.

15 (ii) If the New Comcast Lease is negotiated after the Buyer acquires the  
16 Property pursuant to this Contract, Buyer will not enter into the New Comcast Lease  
17 without the prior, written consent of the Seller. The requirements of the preceding  
18 sentence are specifically enforceable. It is the intent of this Subsection (c)(i) that  
19 notwithstanding the conveyance of the Property to the Buyer pursuant to this Contract,  
20 Seller will have the sole right and authority to negotiate the terms and conditions of the  
21 New Comcast Lease, including, but not limited to, the amount of rent to be paid by  
22 Comcast under the New Comcast Lease. Notwithstanding the preceding sentence,  
23 however, the Parties will use their best efforts to attempt to negotiate a monthly rent  
24 under the New Comcast Lease that will not be less than the monthly rent payable under  
25 the Existing Comcast Lease.

26 (d) Rent Collected Under New Comcast Lease. The following provisions  
27 apply to rent collected under the New Comcast Lease. If the New Comcast Lease is not  
28 successfully negotiated, the provisions of this Subsection (d) will be null, void and of no  
29 effect:

30 (i) During the time that the Seller owns the Property, all of the rent collected  
31 under the New Comcast Lease will be the property of the Seller.

32 (ii) If during the term of the New Comcast Lease Buyer acquires title to the  
33 Property pursuant to this Contract, any monthly rent collected during the term of the New  
34 Comcast Lease, not to exceed the sum of \$1,500.00 each month, will be the property of  
35 the Buyer. The remainder of the monthly rent (if any) will be the property of the Seller.  
36 Buyer will remit to Seller any amount of monthly rent collected under the New Comcast  
37 Lease that is in excess of \$1,500.00.

38 (e) Acceptance of Title Subject to Lease.



1 (i) If the Existing Comcast Lease is in effect when Buyer acquires title to the  
2 Property pursuant to this Contract, Buyer will accept title to the Property subject to the  
3 Existing Comcast Lease.

4 (ii) If the New Comcast Lease is in effect when Buyer acquires title to the  
5 Property pursuant to this Contract, Buyer will accept title to the Property subject to the  
6 New Comcast Lease.

7 (f) Resubdivision and Exclusion. If Buyer gives timely notice of the  
8 exercise of the Option, Seller, at its sole option and election, may resubdivide the Property  
9 prior to Closing so that the Head-End Property is a separate legal parcel. Seller will pay all  
10 costs associated with such resubdivision. If the Property is resubdivided as provided in this  
11 Subsection (f): (i) the Head-End Property will be excluded from the Option; (ii) the Head-End  
12 Property will not be conveyed to Buyer pursuant to this Contract; and (iii) there will be no  
13 adjustment to the Purchase Price. Provided, however, that if the Head-End Property is  
14 resubdivided and excluded from the Option any monthly rent collected by Seller during the  
15 term of the New Comcast Lease, not to exceed the sum of \$1,500.00 each month, will be the  
16 property of the Buyer and when collected will be paid by Seller to Buyer. The remainder of  
17 the monthly rent (if any) will be the property of the Seller.

18 (g) Survival; Restrictive Covenant. The obligations of this Section 3.3 will  
19 survive the Closing and will continue to be fully enforceable thereafter. At the option of either  
20 the Seller or the Buyer, a restrictive covenant describing the terms and conditions of this  
21 Section 3.3 will be executed by the parties and recorded with the Summit County Clerk and  
22 Recorder prior to Closing. The form of the restrictive covenant will be subject to the  
23 reasonable approval of counsel for both the Seller and the Buyer.

24 (h) Meaning of "New Comcast Lease". The term "New Comcast Lease" as  
25 used in this Section 3.3 means only the first lease entered into between the then-owner of the  
26 Head End Property and the holder of a valid cable television franchise agreement with Seller  
27 (acting in its governmental capacity) after the expiration of the Current Comcast Lease,  
28 together with any renewal or extension of such lease. Upon the termination of the New  
29 Comcast Lease for any reason, this Section 3.3 will no longer apply.

30 **ARTICLE 4**  
31 **SELLER'S DISCLAIMERS**

32 4.1 Seller's General Disclaimer. Buyer acknowledges that the Property will be  
33 conveyed and transferred "AS IS", "WHERE IS", and "WITH ALL FAULTS", and that  
34 Seller does not warrant or make any representations, express or implied, relating to the  
35 **MERCHANTABILITY**, quality, condition, suitability, or **FITNESS FOR ANY PURPOSE**  
36 **WHATSOEVER** of the Property. Seller has no liability to undertake any repairs, alterations,  
37 removal, remedial actions, or other work of any kind with respect to any portion of the Property.  
38 Buyer also acknowledges and agrees that by virtue of its possession of the Property pursuant to  
39 the Lease, Buyer is able to make Buyer's own determination concerning the merchantability,  
40 quality, condition, and suitability, or fitness for any purpose of the Property.

1           4.2    Environmental Condition of the Property.

2                   (a)    Seller's Environmental Disclaimer. Seller makes no warranty or  
3 representation concerning the environmental condition of the Property (including, without  
4 limitation, land, surface water, ground water, air, and any improvements). Without limiting  
5 the generality of the preceding sentence, Seller specifically disclaims any and all warranties or  
6 representations with respect to the location or presence on the Property of: (i) any "hazardous  
7 water", "underground storage tanks", "petroleum", "regulated substance", or "used oil" as  
8 defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.),  
9 as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" as  
10 defined by the Comprehensive Environmental Response, Compensation and Liability Act of  
11 1980 (42 U.S.C. §§9601, et seq.), as amended, or by any regulations promulgated thereunder  
12 (including, but not limited to, asbestos and radon); (iii) any "petroleum" and "fuel products",  
13 as defined by Section 25-15-101 et seq., C.R.S., as amended, or by any regulations  
14 promulgated thereunder; (iv) any "hazardous waste" as defined by the Colorado Hazardous  
15 Waste Act, Section 25-15-101, et seq., C.R.S., or by any regulations promulgated thereunder;  
16 (v) any substance the presence of which on, in or under the Property is prohibited or regulated  
17 by any law similar to those set forth above; and (vi) any other substance which by law,  
18 regulation or ordinance requires special handling in its collection, storage, treatment or  
19 disposal.

20                   (b)    Buyer's Right to Inspect Environmental Condition of the Property.  
21 Prior to July 1, 2011 Buyer may conduct such non-destructive soil tests, environmental  
22 assessments, or other investigations as Buyer will determine to be necessary or appropriate (in  
23 Buyer's sole discretion) for the purpose of determining the environmental condition of the  
24 Property. Within a reasonable time after such actions Buyer will, to the extent practicable,  
25 restore the Property to its prior condition. Buyer will indemnify and save Seller harmless from  
26 all claims arising by reason of such entries, tests and assessments. This indemnity obligation  
27 will survive the termination of the Contract and continue to be fully enforceable thereafter.  
28 Buyer also acknowledges and agrees that Buyer's possession of the Property pursuant to the  
29 Lease is adequate to enable Buyer to make Buyer's own determination with respect to the  
30 environmental condition of the Property.

31                   (c)    Buyer's Contingency For The Environmental Condition of the  
32 Property; Waiver. If Buyer determines that the environmental condition of the Property is not  
33 acceptable, Buyer may terminate this Contract by giving Seller written notice of termination  
34 not later than July 15, 2011. If Buyer elects to terminate this Contract pursuant to this Section,  
35 this Contract will become null and void, and each party will be released from any further  
36 obligation under this Contract. If Buyer does not give timely notice of termination of this  
37 Contract by July 1, 2011, Buyer will have irrevocably waived its right to terminate this  
38 Contract because of the environmental condition of the Property.

39                   (d)    Buyer's Waiver of Environmental Claims Against Seller. If Buyer  
40 waives its right to terminate this Contract because of to the environmental condition of the  
41 Property as provided in Section 4.2(c), at Closing Buyer will execute and deliver to Seller a

1 written waiver of any claims which Buyer may have or in the future acquire against Seller  
2 with respect to the known or unknown environmental condition of the Property, including,  
3 without limitation, claims arising under federal and state statutory law, and claims under the  
4 common law, including, without limitation, claims for fraud or misrepresentation with respect  
5 to the environmental condition of the Property. The form of such waiver will be subject to the  
6 reasonable approval of Seller's counsel. The execution and delivery of such documentation  
7 will be a condition precedent to Seller's obligations to convey the Property to Buyer.

8 **ARTICLE 5**  
9 **RIGHT OF FIRST OFFER**

10 5.1 Right of First Offer. The following provisions will be included in the Seller's  
11 deed conveying the Property to the Buyer:

12 (a) Definitions. As used in this Section the following words will have the  
13 following meanings:

14 "Offer" means an offer to sell the Property made pursuant to and in accordance  
15 with this Section.

16  
17 "Property" means all of the Property, or so much thereof as may be the subject of  
18 an Offer.

19  
20 (b) Right of First Offer. Buyer will not sell the Property without first  
21 offering the Property to the Seller as provided in this Section. This Section creates a  
22 specifically enforceable right of first offer to repurchase the Property in favor of the Seller  
23 according to the terms of this Section.

24 (c) Procedure to Comply With Right of First Offer. The right of first offer  
25 created by this Article 5 will be honored by the Buyer and exercised by the Seller in the  
26 following manner:

27 (i) If the Buyer desires to sell the Property, the Buyer will first send a written  
28 Offer to the Seller by certified mail, return receipt requested, addressed to P.O. Box 168,  
29 Breckenridge, Colorado 80424, or at any other mailing address for the Seller then shown  
30 on the Town of Breckenridge website (<http://www.townofbreckenridge.com>).  
31 Alternatively, the Offer may be personally delivered to the Town Manager of the Town  
32 of Breckenridge. The Offer will have been properly served on the Seller in accordance  
33 with this Section when the Offer is delivered to the Town Manager, or upon the Seller's  
34 receipt of the Offer if the Offer is served by mail, whichever is applicable.

35 (ii) An Offer will describe the portion of the Property proposed to be sold, and  
36 will state a specified price and all principal terms and conditions of the proposed sale.  
37 The Offer will also set forth the Buyer's then-current mailing address to which any notice  
38 of acceptance of the Offer may be delivered.

1 (iii) If the Seller desires to accept the Offer, the Seller must notify the Buyer in  
2 writing of such acceptance within thirty (30) days of the date of service of the Offer upon  
3 the Seller. Notice of Seller's acceptance of the Offer must either be personally delivered  
4 to the Buyer, or sent by certified mail, return receipt requested, to the Buyer at the  
5 mailing address set forth in the Offer. A notice of acceptance is valid and effective when  
6 personally delivered to the Buyer, or when mailed to the Buyer at the mailing address set  
7 forth in the Offer, whichever is applicable.

8 (iv) If the Seller fails give timely written notice of acceptance of the Offer  
9 within the thirty (30) day period, the Buyer may, within one hundred eighty (180) days  
10 after the expiration of the thirty (30) day period described above, sell the Property upon  
11 terms and conditions that are substantially similar to those in the Offer, but not for a price  
12 that is less than 100 percent (100%) of the sale price described in the Offer. Such sale  
13 may be made free and clear of the right of first offer provided for in this Section;  
14 provided, however, that the contract between the Seller and the purchaser shall include  
15 language mutually agreeable to both Buyer herein and Seller limiting the use of the  
16 Property to uses that are compatible with the adjoining neighborhood's primary  
17 residential character. In this regard, the parties agree to work together in good faith so as  
18 to serve Seller's valid planning interests without impairing Buyer's ability to realize  
19 financial gain commensurate with the then-prevailing market conditions. If the Property  
20 not sold within such one hundred eighty (180) day period, any subsequent sale of the  
21 Property is subject to the requirement that a new Offer be given to the Seller in  
22 accordance with this Section

23 (v) If the Seller accepts the Offer, then the Buyer and the Seller will negotiate  
24 in good faith and attempt to reach a commercially reasonable contract for the purchase  
25 and sale of the Property. If the Seller and the Buyer sign a contract for the purchase and  
26 sale of the Property, the rights and responsibilities of such Parties will be as set forth in  
27 the contract. If the Seller and the Buyer have not signed a bona fide contract for the sale  
28 and purchase of the Property within thirty (30) days after the giving of timely notice of  
29 acceptance of the Offer by the Seller, the Buyer may sell the Property to any party upon  
30 terms and conditions that are substantially similar to those in the Offer, but not for a price  
31 that is less than 100 percent (100%) of the Offer. Such sale may be made free and clear of  
32 the right of first offer provided for in this Section.

33 (vi) The deed will provide that provisions of this Article 5 are specifically  
34 enforceable by the Seller.

35 **ARTICLE 6**  
36 **NO EFFECT ON EXISTING LEASE**

37 6.1 No Effect on Existing Lease. The execution of this Contract does not affect the  
38 existing Lease for the Property. Each Party will continue to be bound by and will perform its  
39 duties and obligations set forth in the Lease unless and until the Lease is terminated as provided  
40 in Section 6.2.

1           6.2    Termination of Existing Lease. At Closing, the Parties will execute a document in  
2 recordable form sufficient to terminate the existing Lease for the Property.

3  
4                                 **ARTICLE 7**  
5                                 **SPECIAL RESTRICTIVE COVENANTS TO BE CONTAINED IN DEED FOR**  
6                                 **PROPERTY**

7  
8           7.1    The Seller’s deed conveying the Property to the Buyer will contain the special  
9 restrictive covenants contained in this Article 7. Each restrictive covenant will run with the land,  
10 and will be specifically enforceable. The form of each of the covenants will be subject to the  
11 reasonable approval of the Seller and the Buyer.

12                                 (a)    Throughout its ownership of the Property Buyer will continue to use its  
13 best efforts to identify other non-profit entities whose anticipated space needs and the use of  
14 the Property would be compatible with those of Contract, and to considering leasing portions  
15 of the Property to such entities. .

16                                 (b)    At Seller’s option and election, Seller may continue to occupy and use  
17 its existing “Computer Technology Facilities” located on the Property as shown on Exhibit  
18 “B” pursuant to a written lease to be executed by Buyer and Seller which provides that Seller  
19 may continue to use the Computer Technology Facilities without payment of rent or other  
20 cost.

21                                 (c)    If requested by Buyer at anytime after Closing, Seller will authorize the  
22 transfer to the Property of a maximum of 3,000 square feet of the unused density from the  
23 property known as the “Breckenridge Nordic Center Site” located on Ski Hill Road in  
24 Breckenridge, Colorado (the “*Density*”). Seller is not obligated to authorize such transfer  
25 unless Buyer requests the transfer of such Density before Closing. Buyer may not request that  
26 Seller transfer the Density to the Property at any time when Buyer is in default under the  
27 Promissory Note or Deed of Trust. If the Buyer does not request transfer of the Density, or if  
28 the Parties agree that all of the Density need not be transferred to the Property, there will be  
29 no adjustment to the Purchase Price (or the Promissory Note). So long as Buyer owns the  
30 Property, the Density can only be used on the Property in connection with Buyer’s non-profit  
31 operations, and may not be transferred from the Property , or used for a purpose unrelated to  
32 Buyer’s non-profit operations, without Seller’s prior written permission, which permission  
33 may be granted, withheld or conditionally approved in Seller’s sole and absolute discretion.

34                                 **ARTICLE 8**  
35                                 **DEFAULT; REMEDIES; TERMINATION**

36           8.1    Default. Time is of the essence hereof, and if any payment or any other condition  
37 hereof is not made, tendered, or performed, as herein provided, there will be the following  
38 remedies:

39                                 (a)    Buyer's Default. If Buyer fails to perform any covenant or agreement  
40 required of it by this Contract, the Seller’s sole remedy is to terminate this Contract by notice

1 to Buyer in accordance with Section 9.6, and to retain the Option Money as liquidated  
2 damages. Upon such termination each party will be released from any further obligations  
3 under this Contract. Seller waives the right to an action for specific performance; provided,  
4 however, that the special restrictive covenants described in Article 5 and article 7 will be  
5 specifically enforceable.

6 (b) Seller's Default. If Seller fails to perform any covenant or agreement  
7 required of it by this Contract, the Buyer may, at Buyer's election, treat this Contract as  
8 terminated, in which case the Option Money will be returned to Buyer by Seller, or Buyer  
9 may, at its election, treat this Contract as being in full force and effect with the right to an  
10 action for specific performance and/or damages.

## 11 8.2 Resolution Of Disputes.

12 (a) The parties will attempt in good faith to resolve any dispute arising out  
13 of or relating to this Agreement promptly by negotiations between persons who have authority  
14 to settle the controversy ("*Executives*"). Any party may give the other party written notice of  
15 any dispute not resolved in the normal course of business. Within five (5) days after receipt  
16 of the notice, Executives of the parties to the dispute will meet at a mutually acceptable time  
17 and place, and thereafter as often as they reasonably deem necessary, to exchange relevant  
18 information and to attempt to resolve the dispute. If the matter has not been resolved within  
19 ten (10) days of the notice of dispute, or if the parties fail to meet within five (5) days, any  
20 party to the dispute may initiate mediation of the controversy as provided below.

21 (b) If the dispute has not been resolved by negotiation as provided above,  
22 the parties will endeavor to settle the dispute by mediation with a neutral third party. If the  
23 parties encounter difficulty in agreeing on a neutral third party, they may each appoint a  
24 neutral third party, such third parties to appoint a neutral third party to mediate. Each party  
25 will pay their own attorneys' fees incurred in connection with a mediation.

26 (c) Any dispute arising out of or relating to this Agreement or the breach,  
27 termination or validity hereof, which has not been resolved by the methods set forth above  
28 within thirty (30) days of the initiation of mediation, may be finally resolved by appropriate  
29 judicial action commenced in a court of competent jurisdiction. The parties agree to venue in  
30 the courts of Summit County, Colorado with respect to any dispute arising out of or relating to  
31 this Agreement.

32 (d) If any action is brought in a court of law by either party to this  
33 Agreement concerning the enforcement, interpretation or construction of this Agreement, the  
34 prevailing party, either at trial or upon appeal, will be entitled to reasonable attorneys' fees, as  
35 well as costs, including expert witness' fees, incurred in the prosecution or defense of such  
36 action.

37  
38 8.3 Survival of Indemnity Obligations. Notwithstanding anything contained in the  
39 Contract to the contrary, in the event of the termination of this Contract for any reason the various

1 indemnity obligations described in this Contract will continue to be fully enforceable after  
2 termination.

3 **ARTICLE 9**  
4 **PROVISIONS OF GENERAL APPLICATION**  
5

6 9.1 Incorporation of Exhibit. The attached Exhibit "A" and Exhibit "B" are  
7 incorporated into this Contract by reference.

8 9.2 "Day" Defined. As used in this Contract the term "day" means a calendar day, not  
9 a business or working day. However, if any date or deadline set forth herein falls on a weekend  
10 or holiday, it automatically shall be extended to the next regular business day.

11 9.3 "Will" Defined. As used in this Contract, the term "will" means a mandatory  
12 obligation to act, or to refrain from acting, as indicated in the context of the sentence in which  
13 such term is used.

14 9.4 Recording. This Contract will **NOT** be recorded in the real property records of  
15 the Clerk and Recorder of Summit County, Colorado. However, Buyer may record a  
16 memorandum of this Contract. Such memorandum will be subject to the reasonable approval of  
17 Seller and its counsel. If this Contract is terminated by Seller because of the failure of the Buyer  
18 to exercise the Option and/or close on the Property, Buyer will, upon demand from Seller,  
19 promptly execute and deliver to Seller, in a form reasonably acceptable to Seller and its counsel,  
20 a document in recordable form disclaiming any further rights to the Property except as provided  
21 in the Lease. This obligation will survive the termination of this Contract, and will be  
22 specifically enforceable against Buyer thereafter.

23 9.5 Commissions. Seller and Buyer agree to defend, indemnify, and save the other  
24 harmless from any commission or fee which may be payable to any broker, agent or finder with  
25 whom the indemnifying party has dealt in connection with this Contract.

26 9.6 Notices. Any notices required or permitted under this Contract will be sufficient  
27 if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

28	If To Seller:	Town of Breckenridge
29		P.O. Box 168
30		Breckenridge, CO 80424
31		Attn.: Timothy J. Gagen, Town Manager
32		
33	With A Copy (Which Will	
34	Not Constitute Notice) To:	Timothy H. Berry, Esq.
35		Timothy H. Berry, P.C.
36		P. O. Box 2
37		Leadville, CO 80461
38		

1 If To Buyer: Breckenridge Outdoor Education Center  
2 P.O. Box 697  
3 Breckenridge, CO 80424  
4

5 With A Copy (Which Will  
6 Not Constitute Notice) To: Raule G. Nemer, Esq.  
7 Toussaint, Nemer & Coaty, P.C.  
8 32065 Castle Court, Suite 150  
9 Evergreen, CO 80439  
10

11 Notices mailed in accordance with the provisions of this Section will be deemed to have been  
12 given on the third day following mailing. Notices personally delivered will be deemed to have  
13 been given upon delivery. Nothing herein will prohibit the giving of notice in the manner  
14 provided for in the Colorado Rules of Civil Procedure for service of civil process. E-mail is not a  
15 valid means of delivering a notice under this Contract.  
16

17 9.7 Waiver. The failure of either party to exercise any of their rights under this  
18 Contract will not be a waiver of those rights. A party waives only those rights specified in  
19 writing and signed by the party waiving such rights.

20 9.8 Applicable Law. This Contract will be interpreted in all respects in accordance  
21 with the laws of the State of Colorado.

22 9.9 Additional Instruments. The Parties will deliver or caused to be delivered upon  
23 request such additional documents and instruments as may be required to accomplish the intent  
24 of this Contract.

25 9.10 Entire Agreement. This Contract constitutes the entire agreement and  
26 understanding between the Parties concerning the purchase and sale of the Property, and  
27 supersedes any prior agreement or understanding relating to the subject matter of this Contract.

28 9.11 Modification. This Contract may be modified or amended only by a duly  
29 authorized written instrument executed by the Parties. Oral amendments are not permitted.

30 9.12 Section Headings. Section headings are inserted for convenience only and in no  
31 way limit or define the interpretation to be placed upon this Contract.

32 9.13 Attorney's Advisement. Buyer has been advised to seek legal counsel as to this  
33 Contract. The law firm of Timothy H. Berry, P.C. **represents only the Seller** in connection with  
34 this Contract.

35 9.14 No Adverse Construction. Both Parties acknowledge having had the opportunity  
36 to participate in the drafting of this Contract. This Contract will not be construed against either  
37 party based upon authorship.



1           9.15 Assignment. Neither party will have the right to assign this Contract, or any  
2 interest therein, without the express written consent of the other party.

3           9.16 Binding Effect. This Contract will be binding upon, and will inure to the benefit  
4 of, the Parties, and their respective heirs, successors, assigns, legal representatives, and personal  
5 representatives.

6           **9.17 Warning Concerning Special Taxing Districts. SPECIAL TAXING**  
7 **DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS**  
8 **THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE**  
9 **TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH**  
10 **DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX**  
11 **TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE**  
12 **RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH**  
13 **INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS**  
14 **SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE**  
15 **PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY**  
16 **REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY**  
17 **OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY**  
18 **COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY**  
19 **ASSESSOR.**

TOWN OF BRECKENRIDGE

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

ATTEST:

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

BRECKENRIDGE OUTDOOR EDUCATION  
CENTER, a Colorado nonprofit corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

OPTION CONTRACT

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STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, 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 SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_, as \_\_\_\_\_, of Breckenridge Outdoor Education Center, a Colorado nonprofit corporation.

WITNESS my hand and official seal

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

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

Exhibit "A"

To Option Contract Between the Town of Breckenridge, a Colorado municipal corporation, as Seller, and the Breckenridge Outdoor Education Center, a Colorado nonprofit corporation, as Buyer

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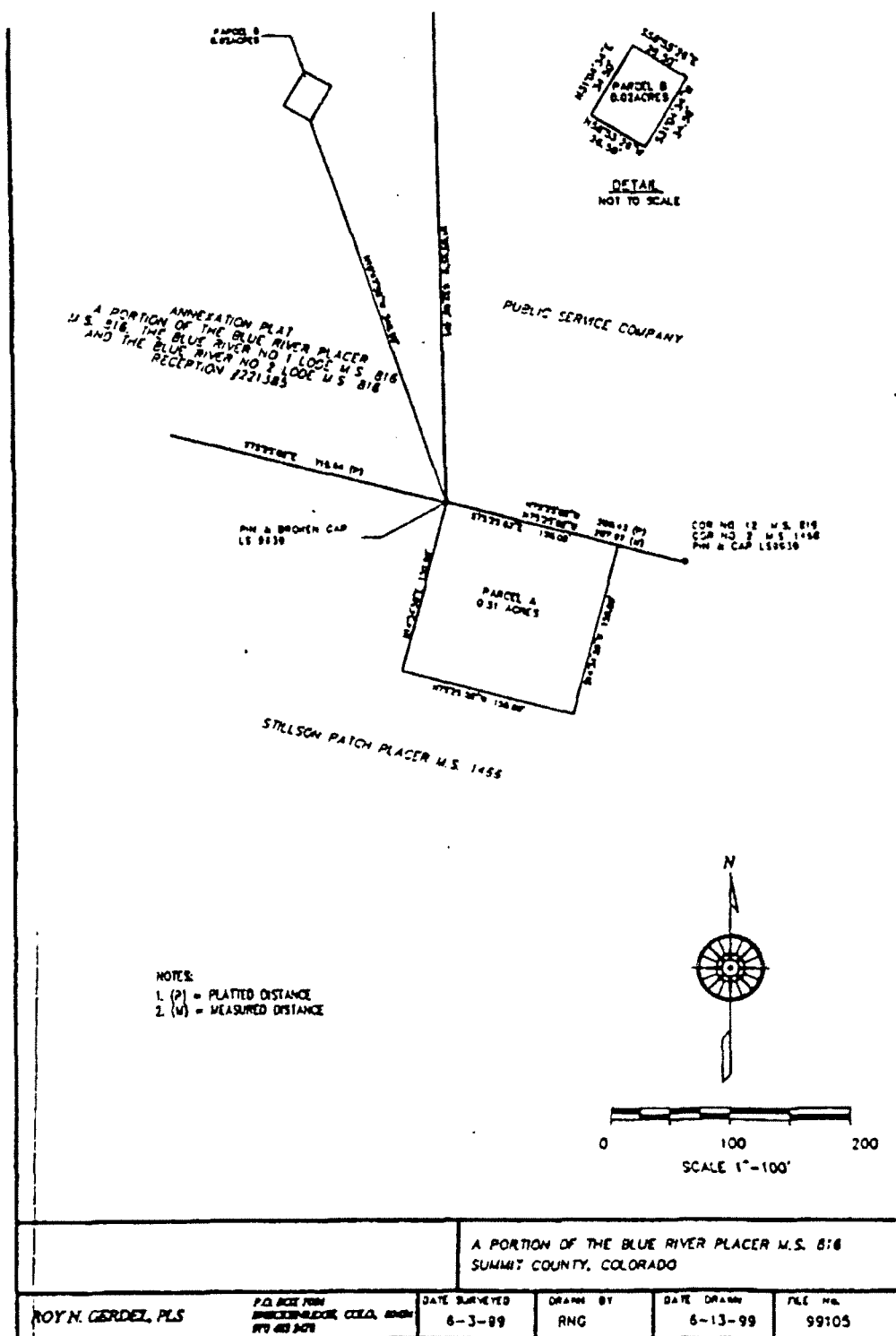
Legal Description

Tract B, Revett's Landing Subdivision, according to the plat thereof recorded August 13, 2001 under Reception No. 659673 of the records of the Clerk and Recorder of Summit County, Colorado

Exhibit "B"

To Option Contract Between the Town of Breckenridge, a Colorado municipal corporation, as Seller, and the Breckenridge Outdoor Education Center, a Colorado nonprofit corporation, as Buyer

Head-End Property



DESCRIPTION

A PARCEL OF LAND LOCATED IN A PORTION OF THE STILLSON PATCH PLACER M.S. 1466, SECTION 31, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, SUMMIT COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CORNER NO. 2 OF THE STILLSON PATCH PLACER AND ALSO BEING CORNER NO. 12 OF THE BLUE RIVER PLACER M.S. 816 AS SHOWN ON THE ANNEXATION PLAT OF A PORTION OF THE BLUE RIVER PLACER M.S. 816, RECEPTION NO. 221385, A 1/2" REBAR WITH A PLASTIC CAP STAMPED PLS 9939, THENCE N 75°25'02" W ALONG THE LINE BETWEEN SAID CORNER 12 AND THE SOUTHEAST CORNER OF SAID ANNEXATION PLAT A DISTANCE OF 207.97 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION AND BEING A 1/2" REBAR WITH A BROKEN CAP STAMPED PLS 9939.

THENCE S 75°25'02" E A DISTANCE OF 150.00 FEET TO A POINT  
S 14°34'58" W A DISTANCE OF 150.00 FEET TO A POINT  
N 75°25'02" W A DISTANCE OF 150.00 FEET TO A POINT  
N 14°34'58" E A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.51 ACRES MORE OR LESS.

## Memorandum

**TO:** Town Council  
**FROM:** Tom Daugherty, Town Engineer  
**DATE:** February 17, 2011  
**RE:** Valley Brook Local Preference Repeal

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The Council passed a resolution requiring the contractor to be locally based for the first phase of the Valley Brook Housing Project. Since then staff has developed a local preference that will be used instead of the original resolution.

Attached is a resolution that repeals the original resolution. This will allow staff to use the new policy to evaluate the bids for the next phase of Valley Brook which bids in March.

1 FOR WORKSESSION/ADOPTION – FEB. 22

2  
3 A RESOLUTION

4  
5 SERIES 2011

6  
7 A RESOLUTION REPEALING RESOLUTION NO. 8, SERIES 2010

8  
9 WHEREAS, the Town Council finds and determines that Resolution No. 8, Series 2010,  
10 entitled “A Resolution Establishing A Policy For the Awarding of Construction Contracts for the  
11 Valley Brook Housing Project”, should be repealed.

12  
13 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
14 BRECKENRIDGE, COLORADO, as follows:

15  
16 Section 1. Resolution No. 8, Series 2010, entitled “A Resolution Establishing A Policy  
17 For the Awarding of Construction Contracts for the Valley Brook Housing Project”, adopted  
18 May 11, 2010, is repealed.

19  
20 Section 2. This resolution shall become effective upon its adoption.

21  
22 RESOLUTION APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_, 2011.

23  
24 TOWN OF BRECKENRIDGE

25  
26  
27  
28 By \_\_\_\_\_  
29 John G. Warner, Mayor

30  
31 ATTEST:

32  
33  
34  
35 \_\_\_\_\_  
36 Mary Jean Loufek,  
37 CMC, Town Clerk

38  
39 APPROVED IN FORM

40  
41  
42  
43 \_\_\_\_\_  
44 Town Attorney Date



## MEMORANDUM

**To:** Town Council  
**From:** Tim Gagen, Town Manager  
**Date:** February 16, 2011  
**Subject:** Forest Service Exchange – Wedge & Claimjumper

---

This memorandum provides background information and requests authority to enter into agreements concerning a forest service exchange.

### **Issue**

At issue is consideration of an *Agreement to Initiate* and a *Purchase and Sale Agreement* regarding a proposed Forest Service Exchange for the Wedge and Claimjumper parcels.

### **Background**

The Town has identified the Forest Service owned parcel of the Wedge and Claimjumper as high priority exchange purchases with the Forest Service for open space and affordable housing. The Town previously participated in the Forest Service Snake River Exchange with the hope of acquiring these two parcels. However, the exchange values of the private sector parcel did not allow for the inclusion of the Wedge or the Claimjumper parcel.

Since then, the Town has been working with Western Land Group and the Forest Service to identify other potential exchange opportunities and has identified two parcels referred to as the Mitchell Lakes Parcel and the Flattop Mountain Parcel that seem to match up well in values with the Wedge and Claimjumper.

The Forest Service has indicated strong support for the potential exchange, including expediting the exchange process. To begin the exchange process, authorization to enter into two agreements, an *“Agreement to Initiate”* with the forest service and a *“Purchase and Sale Agreement”* with the owners of the Mitchell Lakes and Flattop Mountain parcels are needed.

The *“Agreement to Initiate”* kicks off the exchange process by the Forest Service. The *“Purchase and Sale Agreement”* formalize the Town’s intent to purchase the two exchange parcels assuming the appraised values are acceptable to the Town and the sellers. A proposed timeline and description of the exchange are included within the *“Agreement to Initiate”*.

### **Action Request**

Staff requests Council authority to have the Town Manager enter into the two agreements.



1 FOR WORKSESSION/ADOPTION – FEB. 22

2  
3 A RESOLUTION

4  
5 SERIES 2011

6  
7 A RESOLUTION APPROVING TWO AGREEMENTS IN CONNECTION WITH A  
8 PROPOSED LAND EXCHANGE  
9

10 WHEREAS, the Town of Breckenridge desires to participate in a proposed land  
11 exchange with the United States Department of Agriculture (Forest Service) and The Trust For  
12 Public Land, a California nonprofit public benefit corporation; and  
13

14 WHEREAS, a proposed “Agreement to Initiate” a land exchange between the Town and  
15 the United States Department of Agriculture (Forest Service) has been prepared, a copy of which  
16 is marked **Exhibit “A”**, attached hereto and incorporated herein by reference (“*ATI*”); and  
17

18 WHEREAS, a proposed “Purchase and Sale Agreement (For Equal Value Land  
19 Exchange)” between the Town and The Trust For Public Land, a California nonprofit public  
20 benefit corporation, has been prepared, a copy of which is marked **Exhibit “B”**, attached hereto  
21 and incorporated herein by reference (“*Purchase and Sale Agreement*”); and  
22

23 WHEREAS, the Town Council has reviewed the ATI and the Purchase and Sale  
24 Agreement, and finds and determines that it would be in the best interests of the Town and its  
25 residents for the Town to enter into the proposed agreements; and  
26

27 WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a  
28 resolution may be used to approve a contract.  
29

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

33 Section 1. The proposed “Agreement to Initiate” a land exchange between the Town and  
34 the United States Department of Agriculture (Forest Service) (Exhibit “A” hereto) is approved;  
35 and the Town Manager is authorized, empowered, and directed to execute such agreement for  
36 and on behalf of the Town of Breckenridge.  
37

38 Section 2. The proposed “Purchase and Sale Agreement (For Equal Value Land  
39 Exchange)” between the Town and The Trust For Public Land, a California nonprofit public  
40 benefit corporation (Exhibit “B” hereto) is approved; and the Town Manager is authorized,  
41 empowered, and directed to execute such agreement for and on behalf of the Town of  
42 Breckenridge.  
43

44 Section 3. The Town Manager is authorized, empowered, and directed to take all  
45 necessary and appropriate action concerning the two agreements approved by this resolution.  
46 The Town Council ratifies and confirms, in advance, any action taken or document executed by  
47 the Town Manager pursuant to the authority granted by this Section 3.  
48

49 Section 4. This resolution shall become effective upon its adoption.  
50

51 RESOLUTION APPROVED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.  
52

53 TOWN OF BRECKENRIDGE

54  
55 ATTEST:

56  
57 By \_\_\_\_\_  
58 John G. Warner, Mayor

59 \_\_\_\_\_  
60 Mary Jean Loufek, CMC,  
61 Town Clerk

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APPROVED IN FORM

\_\_\_\_\_ date

**AGREEMENT TO INITIATE**

U. S. DEPARTMENT OF AGRICULTURE    OMB No. 0596-0105  
Forest Service

5430 Exchanges  
White River National Forest  
Town of Breckenridge Land Exchange

*General Exchange Act of March 20, 1922  
(42 Stat. 465, as amended; 16 U.S.C. 485, 486);  
Federal Land Policy and Management Act of  
October 21, 1976 (43 U.S.C. 1716, 1717);  
Federal Land Exchange Facilitation Act of  
August 20, 1988 (102 Stat. 1086; 43 U.S.C. 1716).*

The TOWN OF BRECKENRIDGE, a political subdivision of the State of Colorado, whose address is P.O. Box 168, Breckenridge, Colorado 80424, hereinafter called the “Non-Federal Party,” and the FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, hereinafter called the “Forest Service,” acting through their authorized representatives intend to exchange real property of equal value described in attached Exhibits A and B under the terms and conditions described in the exhibits. It is understood that the basis for value of the exchange properties shall be appraisals which have been approved by the Forest Service. This Agreement to Initiate authorizes each party to enter on lands of the other for such purposes as preparing land value appraisals, land line surveys, wildlife and wetland inventories and other evaluations deemed necessary by the Forest Service to fully evaluate the affects and merits of the exchange proposal.

It is understood that upon approval of the exchange values, terms and conditions by the appropriate Forest Service official, the parties may enter into an exchange agreement that shall be binding to both parties. It is understood that prior to the exchange agreement, or issuance of a patent or deed by the United States if no exchange agreement is executed, no action taken shall create or establish any contractual or other obligations against the Non-Federal Party or the United States. Either the Non-Federal Party or the Forest Service may withdraw from the exchange at any time prior to execution of the exchange agreement, or conveyance from the United States.

Pursuant to Section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), a payment may be required by either party to equalize exchange values. The Non-Federal Party may reserve such rights as are acceptable to the Forest Service. Any reservations shall be subject to the rules and regulations of the Secretary of Agriculture, where applicable, and such other conditions as may be agreed upon. The reservations and exceptions of the non-Federal party are listed in Exhibit A attached.

If this offer is approved and title accepted by the United States, the Non-Federal Party agrees to accept, in exchange, that National Forest System land described in Exhibit B attached, subject to the reservations and exceptions shown in Exhibit B attached. Title will be conveyed by Patent issued by the USDI-Bureau of Land Management.

It will be the Non-Federal Party's responsibility to furnish a good and sufficient title to the property free from objectionable encumbrances. The Non-Federal Party will convey title by general warranty deed when notified to do so. A policy of title insurance satisfactory to the Office of General Counsel of the Department of Agriculture will be prepared at the expense of the Non-Federal Party.

The United States does not furnish title insurance for the property it conveys.

No authorization for compensation for costs assumed pursuant to the provision of 36 CFR 254.7 is provided.

The timeline for processing this proposal and the agreement on responsibility for costs on specific items (36 CFR 254.4(c)(6)) is provided for in Exhibit C (Implementation Schedule) and Exhibit D (Projected Costs and Allocation).

If the Non-Federal Party is assigned the responsibility of providing appraisals for the Federal and/or non-Federal properties in the Implementation Schedule, execution of this agreement requires the Non-Federal Party to instruct the Forest Service-approved fee appraiser to simultaneously submit all appraisals to the Forest Service and the Non-Federal Party. A copy of this Agreement to Initiate may be provided to the appraiser of record and serve as written authorization by the appraiser's client to provide a copy of all appraisals to the Forest Service.

Qualified tenants occupying the non-Federal lands affected by this proposal may be entitled to relocation benefits under 49 CFR 24.2. The Non-Federal Party agrees to formally notify the Forest Service of any tenants occupying the non-Federal land and provide the Forest Service documentation that the tenant has been notified of the proposed land exchange.

Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis. Therefore, this Agreement to Initiate serves as that notice and by signing the same, the owner-occupants agree that they are not entitled to relocation benefits.

Each party to this agreement is responsible to provide the other documentation of the existence or non-existence of storage of hazardous substances stored on their respective lands for 1 year or more or disposed of or released on said lands. If evidence of hazardous substances are found, either party may refuse, without liability, to complete the exchange.

No member of Congress, or Resident Commissioner, shall be admitted to any share or part of this proposal or to any benefit that may arise therefrom unless it is made with a corporation for its general benefit (18 U.S.C. 431, 433).

The undersigned is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof. The undersigned is also 21 years old or over and is the owner of the above described offered land or has a firm contract to acquire it.

Notification Statement: Public Availability of Property-Related Information. Any party who has signed below acknowledges receipt of this notification: All documents pertaining to both Federal and non-Federal lands necessary for the evaluation, processing and consummation of a land adjustment transaction, including but not limited to appraisals, timber cruises, specialist reports, geology/mineral reports, title and other property information, are subject to public availability pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

However, it is the general intent of all parties that land adjustment transaction documents will be considered "pre-decisional working papers" not subject to premature availability prior to the point which concludes evaluation of the proposal through the agency's established, required process and policy.

NON-FEDERAL PARTY:

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Timothy J. Gagen, Town Manager  
Town of Breckenridge

FOREST SERVICE:

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Scott Fitzwilliams, Forest Supervisor  
White River National Forest  
U.S. Department of Agriculture  
Forest Service

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0105. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

## EXHIBIT A

Property that the Non-Federal Party will consider exchanging:

### New Mexico Principal Meridian, La Plata County, Colorado

#### Parcel A (Mitchell Lakes Parcel)

T. 37 N., R. 9 W.

sec. 23: SE1/4NW1/4, SW1/4NE1/4, NE1/4SW1/4, NW1/4SE1/4

### New Mexico Principal Meridian, Dolores County, Colorado

#### Parcel B (Flattop Mountain Parcel)

T. 40 N., R. 10 W.

sec. 2: lot 3 (NE1/4NW1/4), E1/2SE1/4

T. 41 N., R. 10 W.

sec. 35: SE1/4NW1/4, E1/2SW1/4

All totaling 407.05 acres, more or less, together with all mineral rights held by the Non-Federal Party.

Land reservations of the Non-Federal Party and exceptions to title:

#### Reservations:

1. Reservations of any vested or accrued water rights, right of way for ditches and canals and right of proprietor to vein or lode and remove his ore should the same be found to penetrate or intersect the premises in United State Patent recorded October 26, 1908 in Book 17 at Page 44 in the Dolores County Clerk and Recorder's Office. (Affects Parcel B)
2. Reservations of any vested or accrued water rights, right of way for ditches and canals and right of proprietor to vein or lode and remove his ore should the same be found to penetrate or intersect the premises in United State Patent recorded November 8, 1909 in Book 17 at Page 495 in the Dolores County Clerk and Recorder's Office. (Affects Parcel B)

#### Outstanding Rights:

1. Terms, agreements, provisions, conditions, obligations and easement as contained in Easement, between United States of America, acting by and through the Forest Service, Department of Agriculture and William Ridgeway and Beverly Ridgeway, dated September 25, 1996, recorded July 5, 2000 as Reception No. 788988 in the La Plata County Clerk and Recorder's Office. (Affects Parcel A)

Other: None.

## EXHIBIT B

Property that the Forest Service will consider exchanging:

### Sixth Principal Meridian, Summit County, Colorado

#### Parcel 1 (Claimjumper Parcel)

T. 6 S., R. 77 W.  
sec. 30: Lots 46, 47 and 49  
sec. 31: Lot 27

T. 6 S., R. 78 W.  
sec. 25: Lots 8, 17, 18 and 19  
sec. 36: Lot 10

#### Parcel 2 (Cucumber Gulch Wedge Parcel)

T. 6 S., R. 78 W.  
sec. 36: Lots 36, 37 and 38

All totaling 53.29 acres, more or less, together with all mineral rights held by the Federal government.

Land reservations of the Forest Service, exceptions to title and uses to be recognized:

#### Reservations:

1. Reserving to the United States a right-of-way thereon for ditches or canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

#### Outstanding Rights:

The following special use authorizations are located on Parcel 2. These permits shall be terminated or amended, as appropriate, at or prior to closing. The Non-Federal Party will issue replacement easements or authorizations, as appropriate, at closing.

1. Private Road Easement issued to Robin Theobald on 6/19/92, DIL5448-02.
2. Private Road Easement issued to the Claimjumper Condominium Association on 12/14/98, DIL418-01.
3. Public Road Easement issued to the Town of Breckenridge on 12/14/98, DIL1024-03.
4. Special Use Permit for water lines issued to the Town of Breckenridge on 8/5/98, DIL1024-01.

5. Special Use Permit for sewer lines issued to the Breckenridge Sanitation District on 7/23/98, DIL1015-01.
6. Special Use Permit for buried utility lines issued to Robin Theobald on 7/7/86, DIL5448-01.
7. Special Use Permit for natural gas distribution line issued to Public Service Company of Colorado on 1/10/05, DIL462.
8. Special Use Permit for electric distribution line issued to Public Service Company of Colorado on 8/16/82, DIL4014-05.

Other:

Two active unpatented mining claims owned by Robin Theobald affect Parcel 1: Mr. Theobald has agreed to terminate these claims prior to closing.

1. CMC-251831, Alice Placer Claim.
2. CMC-251833, Robert W. Foote Lode Claim.



**EXHIBIT C**

**IMPLEMENTATION SCHEDULE**

**Land-for-Land Exchange**

Case Name: Town of Breckenridge Land Exchange Action Item Feasibility Analysis (Items 1-8)	Responsible for Preparation	Responsible for Costs	Target Date
1. Exchange Proposal	Non-Fed/FS	Non-Fed Party	2/11
2. Forest Plan Compliance Review/Public Benefits Summary	N/A	N/A	complete
3. Obtain Title Insurance Commitment	Non-Fed/FS	Non-Fed Party	2/11
4. Boundary Management Review (Flattops Parcel Only)	Forest Surveyor	FS	2/11
5. Federal Land Status Report	N/A	N/A	complete
6. *Water Rights Analysis	N/A	N/A	complete
7. Valuation Consultation	N/A	N/A	N/A
8. Identify Party Responsible for Costs	Non-Fed/FS	FS/Non-Fed	2/11
9. Draft ATI & Exhibits	FS	FS	2/11
10.**Oversight (FA and Draft ATI)	RO	FS	N/A
11. Execute Agreement To Initiate (ATI)	FS	FS	2/11
12. *Request BLM Serialization/ Segregation	FS	FS	2/11
13. Prepare Notice of Publication/Posting	FS	FS	2/11
14. Notify County Commissioners, State Clearinghouse, Congressional Delegations, Tribal Governments, and other Agencies	FS	FS	3/11
15.**Submit Notice of Publication for 30-day Appropriation Committee Review	FS	FS	3/11
16. *Notify Permittees	FS	FS	3/11
17. 4-Week Publication Period, Including Wetlands and Floodplains Information	FS	Non-Fed Party	3-4/11
18. Initiate Public Scoping	FS	FS	3/11
19. *Request Land Survey (BLM/Forest Service)	N/A	N/A	N/A
20. *Request Withdrawal Revocation(s)	NA	NA	NA
21. *Prepare Mineral Potential Report	N/A	N/A	Complete
22. Complete Certificate of Possession	FS	FS	6/11
23. Obtain SHPO Concurrence	N/A	N/A	Complete

Case Name: Town of Breckenridge Land Exchange Action Item	Responsible for Preparation	Responsible for Costs	Target Date
24. Prepare TES Report/Consultation (Update if necessary)	FS	FS	6/11
25. Prepare Wetlands/Floodplains Report (Statement of Consistency with Executive Orders)	FS	FS	6/11
26. Prepare Hazardous Substances Evaluation (AAI report for Flattops. Update as needed for other parcels)	FS	FS	6/11
27. Analyze Effects on Cost Share Agreements	NA	NA	NA
28. Request Appraisals	FS	FS	3/11
29. Finalize Appraisals	Fee Appraiser	Non-Fed Party	6/11
30. Conduct NEPA Analysis	FS	FS	4/ – 6/11
31.*Request BLM Concurrence on Minerals	N/A	N/A	complete
32. *NEPA Comment Period	FS	FS	4/11
33. Appraisal Reviews and Approvals	FS	FS	7/11
34. Certificate of Use and Consent	FS	FS	6/11
35. Agreement on Values	Non-Fed/FS		7/11
36. Finalize NEPA Document	FS	FS	7/11
37. Draft Decision Document	FS	FS	8/11
38. Draft Exchange Agreement	FS/Non-Fed	FS	8/11
39.**Oversight (NEPA document and supporting documents, draft decision, appraisals and reviews, draft exchange agreement, and initial file material)	RO		8/11
40. Issue Decision	FS	FS	8/11
41. Publish Decision	FS	Non-Fed Party	8/11
42. Appeal Period	N/A	N/A	NA
43.*** Certify Estate Consistency	FS	Non-Fed Party	9/11
44. Request Preliminary Title Opinion	FS	Non-Fed Party	9/11
45. Provide Preliminary Title Opinion	OGC	FS	9/11
46. Execute Exchange Agreement	Non-Fed/FS		8/11
47. Enter case into LADS	FS	FS	9/11
48. *Submit to WO for Congressional Oversight	N/A	N/A	N/A

Case Name: Town of Breckenridge Land Exchange Action Item	Responsible for Preparation	Responsible for Costs	Target Date
49. Record Exchange Agreement and Update Title Commitments (optional)	Non-Fed/FS	Non-Fed Party	8/11
50. *Prepare/Obtain Easements, Relinquishments for Special Use Permits	Non-Fed/FS	Non-Fed Party	8/11
51. Prepare Deed to Non-Federal Land; Patent Request/Exchange Deed to Federal Land	Non-Fed/FS	Non-Fed Party	9/11
52. Supplemental Certificate of Possession	FS	Non-Fed Party	9/11
53. *Execute Easements/Relinquishment	Non-Fed/FS	Non-Fed Party	9/11
54. Execute Deeds to Non-Federal Land	Non-Fed	Non-Fed Party	9/11
55. Deliver Deeds and/or Patent	FS	Non-Fed Party	9/11
56. Record Patent and All Deeds and/or Patent	Non-Fed/FS	Non-Fed Party	9/11
57. File Water Rights Transfer/Use Documents	NA	NA	NA
58. Return Deeds to Non-Federal Land with Title Insurance Policy	Non-Fed Party	Non-Fed Party	10/11
59. Final Certificate of Use and Consent	FS	FS	10/11
60. Return Copies of Recorded Patent or Deeds to RO	FS	FS	10/11
61. Submit Final Form FS-5400-10 (Digest) to WO	N/A	N/A	N/A
62. Request Final Title Opinion	FS	FS	11/11
63. Provide Final Title Opinion	OGC	FS	11/11
64. Post Status and Close Case	FS	FS	12/11

\* If applicable/if needed.

\*\* Regional oversight applies to all cases

\*\*\*Certify that the estate appraised is identical to the physical estate; estate noted in Decision Document, Exchange Agreement, and Deeds.

**EXHIBIT D**  
**PROJECTED COSTS AND ALLOCATION**

<b>TASK / PRODUCT</b>	<b>FS ROLE</b>	<b>FS EST. COST</b>	<b>THIRD PARTY ROLE</b>
Lead Contact	Coordination, Action Milestones; ID Team Leader		Provide WLG as Exchange Facilitator
Appraisal	Establish Appraisal Requirements; & Review of Appraisal		Contract for Appraisal of Properties
Wetlands / Floodplain, Wildlife, Aquatics, Biological Assessments & Evaluation; MIS Report; T&E Reviews, Minerals Report	Prepare & Complete Reports: Wildlife, Aquatics, Wetlands, Recreation, Minerals (Note: previously completed for Parcels 1, 2, and A)		N/A
Cultural Resources/SHPO Concurrence, Plants T&E Report	Provide known survey data, information, reports, etc., Review Product (Note: previously completed for Parcels 1, 2, and A)		N/A
Hazmat Review	Site Survey, Report (Note: previously completed for Parcels 1, 2, and A)		N/A
Environmental Assessment (NEPA)	ID Team & NEPA Checkpoints (Note: previously completed for Parcels 1, 2, and A)		N/A
Forest Process Oversight	Lands Staff Review		N/A
Survey	Legal Description Verification; Cadastral Surv. Verify by FS - Assignment from BLM (Note: previously completed for Parcels 1, 2, and A)		N/A
<b>FOREST SERVICE ESTIMATED TOTAL COST</b>			

Estimates based on known information today without field visits or extensive data search. An assessment for Overhead Costs will not apply in this instance. Unspent collections will be returned to proponent.

**EXHIBIT E**  
**ASSEMBLED EXCHANGE**

This is an assembled land exchange developed pursuant to 36 CFR 254.5. As such, both the Federal and non-Federal lands are to be appraised in a similar manner.

In this case, the non-Federal party was requested by the Forest Service to secure the non-Federal ownerships for the purposes of the exchange. The various ownerships on the non-Federal side must be appraised as though each is in an individual transaction, and the sum of the individual values of those ownerships will be the non-Federal value of this transaction. The value of the Federal lands is the sum of the value of the various parcels of Federal lands involved in the exchange, each individual parcel valued as though in a separate transaction.

Differences between the physical characteristics of the non-Federal lands and Federal lands may require additional acreage to be added to the transaction by either party to achieve value equalization. If this becomes necessary, the added lands may also be appraised on an individual basis, as described above.

# LAND EXCHANGE PROPOSAL

## Town of Breckenridge Land Exchange White River and San Juan National Forests Dolores, La Plata, and Summit Counties, Colorado

February 11, 2011

### I. BACKGROUND

The Town of Breckenridge Land Exchange is a proposed exchange involving the Town of Breckenridge, referred to as the Non-Federal Party, and the U.S. Forest Service. Western Land Group, Inc. (“WLG”) has been retained by the Non-Federal Party to facilitate the land exchange and serve as the point of contact with the Forest Service. This document is intended to comply with provisions of Draft FSH 5409.13 – Land Acquisition, Chapter 30, Land Exchange, Section 32.8, Feasibility Analysis.

### II. EXCHANGE PROPOSAL

The Non-Federal Party proposes to convey Non-Federal land totaling 407.05 acres, more or less, in Dolores and La Plata counties to the United States in exchange for 53.29 acres, more or less, of Federal lands located in Summit County. The Non-Federal exchange parcels are located within the Mancos-Dolores Ranger District and Columbine Ranger District, San Juan National Forest. The Federal exchange parcels are all located within the Dillon Ranger District, White River National Forest. (See Exhibit 1 –“Vicinity Maps of Federal and Non-Federal Parcels”.)

The Non-Federal Party has proposed an equal value land exchange, where the value of Federal parcels matches the value of the Non-Federal parcels. In the event that the appraised value of the Non-Federal lands is greater than the appraised value of the Federal lands, the Non-Federal Party will reduce amount of Non-Federal land in the exchange and/or the Forest Service will provide cash equalization funds.

The lands proposed for inclusion in the land exchange are summarized below.

**Table 1: Non-Federal Parcels in the Town of Breckenridge Land Exchange**

<b>Parcel ID</b>	<b>Parcel Name</b>	<b>Acreage</b>	<b>Location</b>	<b>Proponent/Owner</b>
A	Mitchell Lakes	160.00	La Plata County	Under contract to Town of Breckenridge (owned by Trust for Public Land)
B	Flattop Mountain	247.05	Dolores County	Under contract to Town of Breckenridge (owned by Trust for Public Land)
	<b>TOTAL</b>	407.05		

**Table 2: Federal Parcels in the Town of Breckenridge Land Exchange**

<b>Parcel ID</b>	<b>Parcel Name</b>	<b>Acreage</b>	<b>Location</b>	<b>Proponent/Owner</b>
1	Claimjumper	36.49	Summit County	Town of Breckenridge
2	Cucumber Gulch Wedge	16.80	Summit County	Town of Breckenridge
	<b>TOTAL</b>	53.29		

Topographic maps of the Federal and Non-Federal parcels are displayed in Exhibit 2.

Non-Federal Lands to be conveyed to the United States:

**Non-Federal Parcel A – Mitchell Lakes**

Township 37 North, Range 9 West, New Mexico P.M., La Plata County, Colorado  
 Section 23: SE1/4NW1/4, SW1/4NE1/4, NE1/4SW1/4, NW1/4SE1/4

Totaling: Approximately 160.00 acres, more or less.

Non-Federal Parcel A was analyzed for conveyance to the United States as part of the Environmental Impact Statement for the Hermosa/Mitchell Lakes Land Exchange. The May 2010 Record of Decision for this exchange signed by Forest Supervisor Mark W. Stiles selected an alternative that did not include the Mitchell Lakes parcel, as there was insufficient Federal land value and cash equalization funds for the Forest Service to acquire it in the exchange. However, the Record of Decision notes the Mitchell Lakes parcel remains a concern to the Forest Service and other approaches to acquire this property may someday be considered.

In November 2010 the Trust for Public Land acquired the Mitchell Lakes parcel, with the intent of seeing it conveyed to the United States in the future.

**Non-Federal Parcel B – Flattop Mountain**

Township 40 North, Range 10 West, New Mexico P.M., Dolores County, Colorado

Section 2: Lot 3 (NE1/4NW1/4), E1/2SE1/4

Township 41 North, Range 10 West, New Mexico P.M., Dolores County, Colorado

Section 35: SE1/4NW1/4, E1/2SW1/4

Totaling: Approximately 247.05 acres, more or less.

Non-Federal Parcel B is comprised of two sub-parcels which are completely surrounded by National Forest System lands. Non-Federal Parcel B has not been previously analyzed for conveyance to the United States. This parcel ranges in elevation from 9,900 feet to 11,100 feet and consists of high elevation mixed conifer forests (Sub-alpine fir and Engelmann spruce) interspersed with native grass meadows. Due to its remote setting, the property provides suitable habitat for elk, black bear, mule deer, and the Federally-threatened Canada lynx.

*Federal Lands to be conveyed by the United States:*

**Federal Parcel 1 – Claimjumper**

Township 6 South, Range 77 West, 6<sup>th</sup> P.M., Summit County, Colorado

Section 30: Lots 46, 47 and 49 (9.29 acres)

Section 31: Lot 27 (7.23 acres)

Township 6 South, Range 78 West, 6<sup>th</sup> P.M., Summit County, Colorado

Section 25: Lot 8 (1.67 acres)

Lot 17 (1.12 acres)

Lot 18 (14.18 acres)

Lot 19 (0.51 acres)

Section 36: Lot 10 (2.49 acres)

Totaling: Approximately 36.49 acres, more or less.

**Federal Parcel 2 – Cucumber Gulch Wedge**

Township 6 South, Range 78 West, 6<sup>th</sup> P.M., Summit County, Colorado

Section 36: Lot 36 (16.77 acres)

Lot 37 (0.01 acres)

Lot 38 (0.02 acres)

Totaling: Approximately 16.80 acres, more or less.

Both Federal Parcel 1 and Federal Parcel 2 were analyzed for conveyance to the United States in the Environmental Assessment for the Snake River Land Exchange. While the approved appraisals for the exchange indicated that these parcels were not needed to equalize values, the Decision Notice found both parcels to be suitable for conveyance in a future land exchange



where acceptable non-Federal lands are being offered to the United States. This decision assumes the proposed conveyance is to the Town of Breckenridge or other government entity and for those uses contemplated in the Environmental Assessment, namely affordable housing and open space uses on the Claimjumper property and open space uses on the Cucumber Gulch Wedge property.

### **III. TITLE EVIDENCE**

Title commitments, including copies of documents listed as exceptions to title in Schedule B, for Non-Federal Parcels A and B are attached as Exhibit 3. There are no major title encumbrances that would make the Non-Federal Parcels unacceptable for acquisition by the United States.

Title policies for Non-Federal Parcels A and B will be forwarded to the Forest Service as soon as they are received from the title company.

### **IV. BOUNDARY MANAGEMENT REVIEW**

Land Description Verification forms for Federal Parcels 1 and 2 and for Non-Federal Parcel A are located in Exhibit 4. A Land Description Verification form for Non-Federal Parcel B has not yet been completed.

### **V. OTHER**

A proposed draft Agreement to Initiate and Implementation Schedule are included in Exhibit 5.

### **LIST OF EXHIBITS**

Exhibit 1	Vicinity Maps of Federal and Non-Federal Parcels
Exhibit 2	Topographic Maps of Federal and Non-Federal Parcels
Exhibit 3	Evidence of Title
Exhibit 4	Land Description Verification Forms
Exhibit 5	Draft Agreement to Initiate, Including Implementation Schedule

**Exhibit 1**

**Vicinity Maps of Federal and Non-Federal Parcels**

**Exhibit 2**

**Topographic Maps of Federal and Non-Federal Parcels**

**Exhibit 3**  
**Evidence of Title**

**Exhibit 4**

**Land Description Verification Forms**

**Exhibit 5**

**Draft Agreement to Initiate, Including Implementation Schedule**



**Western  
Land  
Group, Inc.**

1760 High Street, Denver, CO 80218 • (303) 715-3570 Office • (303) 715-3569 Fax • [www.westernlandgroup.com](http://www.westernlandgroup.com)

February 11, 2011

Mr. Paul Semmer  
U.S. Forest Service  
Dillon Ranger District  
P.O. Box 620  
Silverthorne, CO 80498

RE: Exchange Proposal, Town of Breckenridge Land Exchange

Dear Paul,

I am pleased to submit the attached exchange proposal on behalf of the Town of Breckenridge. This proposal embodies what was discussed at the January 24, 2011 meeting at the Regional Office regarding the most appropriate land exchange configuration to expedite conveyance of the Claimjumper and Cucumber Gulch Wedge parcels to the Town of Breckenridge.

As you know, much work and analyses have already been completed on the two Federal parcels the Town wants to acquire, as well as the Mitchell Lakes non-Federal parcel. Consequently, I have prepared an abbreviated exchange proposal. Let me know if I can assist in providing any additional information and documents that are not included in the proposal.

A couple comments on the attached proposal:

- Electronic versions of the proposal and the five exhibits are on the enclosed CD.
- Trust for Public Land is still waiting to receive title policies on the Mitchell Lakes and Flattop Mountain parcels. I will email them to you as soon as TPL gets them.
- Title exception documents are on the CD, but I did not print hard copies.
- If you want the Federal parcels vicinity map to have the White River National Forest Visitor Map as the background, let me know. I do not have access to this GIS data and will need your help to get it.

I look forward to working with the Forest Service and Breckenridge finally bring the saga of conveying Claimjumper and Cucumber Gulch Wedge to a success close.

Sincerely,

Todd Robertson

cc: Tim Gagen, Town of Breckenridge

**EXHIBIT "B" to Resolution**

**PURCHASE AND SALE AGREEMENT  
(For Equal Value Land Exchange)**

This Purchase and Sale Agreement (“**Agreement**”) is dated as of \_\_\_\_\_ 2011 (“**Effective Date**”), by and between **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation (“**Seller**”), and the **TOWN OF BRECKENRIDGE**, a Colorado municipal corporation (“**Buyer**”). Seller and Buyer hereby agree as follows:

**RECITALS**

A. The address and telephone numbers of the Parties are as follows (telephone numbers are included for information only):

<b>SELLER:</b>  The Trust For Public Land 1410 Grant Street #D210 Denver, CO 80203 Attention: Tim Wohlgenant Tel: (303) 867-2336 Fax: (303) 837-1131 Email: <a href="mailto:tim.wohlgenant@tpl.org">tim.wohlgenant@tpl.org</a>	<b>BUYER:</b>  Town of Breckenridge 150 Ski Hill Road P.O. Box 168 Breckenridge, CO 80424 Attention: Tim Gagen Tel: (970) 453-3161 Fax: (970) 547-3104 Email: <a href="mailto:ting@townofbreckenridge.com">ting@townofbreckenridge.com</a>
<b>With copies to:</b>  The Trust for Public Land 1600 Lena Street; Bldg. C Santa Fe, NM 87505 Attention: Peter Ives Tel: (505) 982-6968 Fax: (505) 988-5967 Email: <a href="mailto:peter.ives@tpl.org">peter.ives@tpl.org</a>	<b>With copies to:</b>  Western Land Group, Inc. 1760 High Street Denver, Colorado 80218 Attention: Todd Robertson Tel: (303) 715-3570 Fax: (303) 715-3569 Email: <a href="mailto:trobertson@westernlandgroup.com">trobertson@westernlandgroup.com</a>

B. Buyer anticipates entering into an agreement to initiate a land exchange (“**Land Exchange**”) with the USDA Forest Service (“**USFS**”) to acquire real property owned by the USFS in Summit County, Colorado (“**Federal Parcels**”) in exchange for real property of equal market value sought by the USFS. The valuation of all such properties shall be determined by the USFS.

C. Seller owns certain real property commonly referred to as the “**Mitchell Lakes Property**,” consisting of 160 acres, more or less, located in La Plata County, Colorado. Seller also owns certain real property commonly referred to as the “**Flattop Mountain Property**,” consisting of 247.05 acres, more or less, located in Dolores County, Colorado. The Mitchell



Lakes Property and Flattop Mountain Property are more particularly described in Exhibit A attached hereto (collectively referred to as the “**Property**”).

D. Seller is a conservation organization having among its purposes the acquisition of open space, scenic and recreational lands for public benefit. Seller is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is included in the "Cumulative List of Organizations" described in Section 170(c) of the Internal Revenue Code published by the Internal Revenue Service. Seller is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.

NOW, THEREFORE, the Parties agree as follows:

### AGREEMENT

1. **The Transaction.** Buyer shall acquire the Property in accordance with the following procedures:

1.1 **Earnest Money.** As consideration for Seller entering into this Agreement to make the Property available for purchase by Buyer, Buyer shall make an earnest money payment of \$3,000.00 (“**Earnest Money**”) to Colorado Land Title Company LLC (“**Title Company**”) within ten (10) business days of this Agreement. The Earnest Money shall apply to the Purchase Price and is nonrefundable, unless Buyer terminates this Agreement as provided in this Agreement.

1.2 **Sale and Purchase.**

(a) Seller shall make the Property available for purchase by Buyer, subject to Seller receiving internal approval of this Agreement from its Projects Review Committee within sixty (60) days of this Agreement (“**Internal Approval**”). Seller shall provide written notification to Buyer that the Internal Approval has been granted or denied. If the Internal Approval is denied, then this Agreement is automatically terminated, all Earnest Money payments shall be returned to Buyer, and the Parties shall have no further obligation to each other under this Agreement except those expressly stated to survive.

(b) The term of this Agreement shall be from its Effective Date through and until December 31, 2011. Buyer may elect by written notice to Seller to extend the option for up to one (1) additional one (1)-year period to December 31, 2012 if, as of the then-current Option termination date, the Land Exchange is still in process, but has not closed and is not expected to close prior to December 31, 2011.

1.3 **Purchase Price and Payment.** The purchase price (“**Purchase Price**”) for the Property shall be the appraised market value of the Property as approved by the USFS. An appraisal shall be prepared by a mutually-acceptable, independent qualified appraiser selected by the Parties from a list of approved appraisers provided by the USFS, in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions (the “**Appraisal**”). The cost and expense of the Appraisal for the Property shall be the sole obligation of the Buyer.

At least one (1) business day prior to the scheduled closing, Buyer shall deposit with Escrow Holder cash in the amount of the Purchase Price, plus Buyer's share of closing costs.

## 2. **Identification of Property to be Conveyed.**

2.1 **Identification of Property to be Conveyed.** The Parties acknowledge that Seller intends to sell all of the Property to the USFS, that Seller has been pursuing that objective since acquiring the Property, and that a sale to the Buyer of the Property, so long as the Property is conveyed directly to the United States, shall accomplish Seller's intent of conveying the Property to the USFS.

### 2.2 **Reduction of Property to Equalize Exchange Values.**

(a) In the event the Appraisal indicates the appraised market value of the Property is greater than the appraised market value of the Federal Parcels, the Parties agree to be bound by good faith and diligent efforts to identify how to equalize values between the Property and the Federal Parcels. Options to be considered by the Parties include:

- (1) securing a commitment for cash equalization funds from the USFS;
- (2) Buyer providing cash funds up to one (1) percent of the appraised market value of the Federal Parcels; and/or
- (3) removing a portion of the Flattop Mountain Property from this Agreement.

(b) If the Parties agree to remove a portion of the Flattop Mountain Property, this Agreement will be amended prior to Buyer entering into an Exchange Agreement with the USFS.

(c) In the event the Parties are not able to mutually agree on to how to equalize values between the Property and the Federal Parcels, then Buyer, at its sole and absolute discretion, may terminate this Agreement, all Earnest Money payments shall be returned to Buyer, and the Parties shall have no further obligation to each other under this Agreement except those expressly stated to survive.

## 3. **Inspections.**

3.1 **Title.** Seller has provided to Buyer the title information within Seller's possession regarding the Property. The Parties shall cause a title insurance commitment (the "**Title Commitment**") on the Property to be generated from the Title Company dated within thirty (30) days of this Agreement.

3.2 The Property and Property Information. Buyer may investigate any matters which may directly or indirectly affect the Property and/or the present or future value, use, control, operation or ownership of the Property.

(a) Access. Commencing on the Effective Date, Seller shall provide Buyer and its respective representatives, employees and agents, at Buyer's sole and absolute risk and liability, and, only if applicable, the USFS and its respective representatives, employees and agents, reasonable access after reasonable written notice to Seller, to enter upon the Property to conduct such inspections, tests, surveys and investigations as they deem appropriate, including, without limitation, making an environmental assessment of the soils, waters, biological resources and any improvements on the Property.

(b) Property Information. Seller has provided to Buyer a complete and accurate copy of all information and/or agreements in Seller's possession that Seller reasonably believes may affect the value, use, control, operation or ownership of the Property, now or in the future (“**Property Information**”). The Property Information shall include, but will not be limited to any and all permits, entitlements, approvals, leases, licenses, easements, deed restrictions, side letters, correspondence, service agreements, contracts, property tax bills, maps, surveys, records, and reports (including without limitation, environmental assessments, notices from governmental entities, feasibility or engineering studies, biological or botanical reports).

(c) No Liability/Indemnification. Buyer shall not be liable to Seller for any liability, costs, damage or claims (including, without limitation, claims that the Property has declined in value) which are related to Buyer's discovery of any information potentially having a negative impact on the Property (including, without limitation, any claims arising out of, resulting from or incurred in connection with the discovery of any Hazardous Substances (as defined in Section 6.4 below) on or about the Property), unless caused by Buyer's, or Buyer's agents', negligence or intentional actions. To the extent permitted by law, Buyer shall indemnify and hold Seller harmless from any and all demands, actions, causes of action, liabilities, judgments, costs, fee, including reasonable attorney's fees, arising out of or in connection with any investigations of the Property performed by Buyer or on Buyer's behalf.

3.3 Objection, Cure and Waiver.

(a) USFS and Buyer's Review. Within one-hundred eighty (180) days following Buyer's receipt from Seller of all of the materials identified in Sections 3.1 and 3.2, above, Buyer may notify Seller of (i) any exceptions, other than the standard title exceptions, to title and/or issues related to the legal description of the land shown on the Title Commitment to which the USFS and/or Buyer objects or (ii) matters related to the Property to which the USFS and/or Buyer objects, in Buyer's sole and absolute discretion. (“**Buyer's Objections**”). Matters set forth in the Title Commitment to which the USFS and Buyer do not so object shall be deemed “**Permitted Exceptions**”.

(b) Seller's Cure. Seller shall have the right, but not the obligation, to remove and/or remedy any of Buyer's Objections within thirty (30) days after receiving Buyer's Objections ("**Cure Period**"). If Seller is unable to remove and/or remedy any Buyer's Objections to Buyer's satisfaction during the Cure Period, as determined by Buyer in Buyer's sole and absolute discretion, Buyer may take any of the following actions, by written notice thereof to Seller:

(1) terminate this Agreement, in which event all Earnest Money payments shall be returned to Buyer in accord with Section 1.1 and the Parties shall have no further obligation to each other under this Agreement except those expressly stated to survive; or

(2) proceed with the purchase of the Property.

In any event and notwithstanding anything to the contrary herein, Seller shall pay in full and remove all monetary liens and encumbrances (except any statutory liens for nondelinquent real property taxes), judgments or court actions affecting the Property on or prior to the Close of Escrow ("**Liens**").

#### 4. Closing.

4.1 Escrow Holder. Within ten (10) days after Buyer's signing of an Exchange Agreement with the USFS which includes the Property under this Agreement ("**Exchange Agreement**"), Buyer shall open an escrow with the Title Company, (the "**Escrow Holder**") for the purpose of consummating the purchase and sale of the Property in accordance with the terms hereof. Escrow shall close on the date which is within ninety (90) days after the opening of Escrow (the "**Close of Escrow**"). However, the Close of Escrow may be extended by Buyer as necessary to provide for a back-to-back transaction between Seller, Buyer, and USFS. If the Close of Escrow falls on a Monday, Buyer may elect that the Close of Escrow occurs on the Tuesday following such date. The closing of the transaction shall be carried out pursuant to this Section 4.

#### 4.2 Documents.

(a) Seller's Documents. At least one (1) business day prior to the Close of Escrow, Seller shall deposit with Escrow Holder:

(1) one (1) original duly executed, acknowledged and dated General Warranty Deed in a form mutually acceptable to the Parties, conveying to the United States of America marketable, record, fee simple title to the Property ("**Deed**"), which Deed shall be recorded at the Close of Escrow in the Official Records of LaPlata County, Colorado and Dolores County, Colorado;

(2) one (1) original duly executed and dated Owner's Title Affidavit;

(3) one (1) original duly executed and dated joint escrow instructions which shall instruct Escrow Holder in its closing of this transaction pursuant to the terms herein, the provisions of which shall not conflict the provisions of this Agreement (“**Joint Escrow Instructions**”);

(4) one (1) original duly executed corporate resolutions of Seller authorizing the transaction and the execution of the documents required of Seller herein; and

(5) such other instruments and documents as may be reasonably required by Escrow Holder and/or Title Company to transfer the Property to the United States of America and issue the Title Policy (as defined below).

(b) Buyer’s Documents. At least one (1) business day prior to the Close of Escrow, Buyer and/or USFS shall deposit with Escrow Holder:

(1) one (1) original duly executed and dated counterpart of the Joint Escrow Instructions;

(2) such other instruments and documents as may be reasonably required by Escrow Holder and/or Title Company to transfer the Property to the United States of America.

4.3 Funds. At least one (1) business day prior to the Close of Escrow, Buyer shall deposit (or cause to be deposited) with the Escrow Holder the Purchase Price (plus or minus additional sums as may be credited/debited to Buyer hereunder).

(a) Prorations.

(1) All real property taxes based on the most recent property tax bills available, rents, issues, expenses and profits from the Property shall be prorated as of the Close of Escrow. Any tax bills received by Buyer after the Close of Escrow relating to a period prior to the Close of Escrow shall be prorated between the Parties as if said tax bills had been available as of the Close of Escrow. The provisions of this Section shall survive the Close of Escrow.

(2) All past due rent, if any, (including operating expense pass throughs) shall for purposes of proration be deemed received by Seller; provided, however, Buyer agrees to use its good faith efforts (without litigation) to obtain and promptly deliver to Seller all past due rents accrued prior to the Close of Escrow. All security and other deposits and unused portions of advance rentals, if any, paid by any tenant under any of the leases shall be transferred to Buyer upon Close of Escrow.

(b) Closing Costs.

(1) Buyer shall pay the following closing costs: (i) the escrow fee; (ii) all documentary tax, or real property transfer tax; (iii) any additional premium of the Title Policy in excess of that payable by Seller described in Section 4.3(b)(2) below (including extended coverage and any endorsements thereof); and (iv) recording fees for the Deed.

(2) Seller shall pay the premium for the Title Policy to the United States.

(3) Other fees and charges will be allocated according to custom of the counties in which the Property is located. Each party shall pay its own attorneys' fees and other expenses incurred by it in connection herewith.

4.4 Delivery of Possession. Seller shall deliver possession of the Property to the USFS at Close of Escrow.

4.5 Title Insurance. At the Close of Escrow, Seller shall cause Title Company to provide the USFS with an ALTA U.S. Policy – 9/28/91 form of title insurance in an amount acceptable to the United States insuring that title to the Property is vested in the United States of America upon Close of Escrow without any Liens and subject only to the Permitted Exceptions (“**Title Policy**”).

4.6 Conditions to Close.

(a) Buyer's Conditions. Escrow shall not close and Buyer shall have no obligation to close unless and until the following conditions precedent and contingencies have been satisfied or waived in writing by Buyer. If any condition precedent set forth in this Section 4.6(a) is not satisfied or waived by Buyer within one (1) year of the Effective Date, in addition to any other rights and remedies of Buyer set forth herein, Buyer may terminate this Agreement by written notice to Seller in which event all Earnest Money payments shall be returned to Buyer in accord with Section 1.1, and the Parties shall have no further obligation to each other under this Agreement except those expressly stated to survive.

(1) Buyer and the USFS have entered into an Exchange Agreement; all appraisals required in connection with the Exchange Agreement are acceptable to the Buyer in its sole and subjective discretion; and the USFS is ready to close the Land Exchange under the terms and conditions contained in said Exchange Agreement;

(2) All instruments described in Section 4.2(a) have been delivered to the Escrow Holder;

(3) On the Close of Escrow, Seller shall not be in material default in the performance of any covenant or agreement to be performed by Seller under this Agreement;

(4) On the Close of Escrow, all representations and warranties made by Seller herein shall be materially true and correct as if made on and as of the Close of Escrow; and

(5) On the Close of Escrow, Title Company shall be in a position to issue the Title Policy.

(b) Seller's Conditions. Escrow shall not close and Seller shall have no obligation to close unless and until the following conditions precedent and contingencies have been satisfied or waived in writing by Seller. If any condition precedent set forth in this Section 4.6(b) is not satisfied or waived by Seller, in addition to any rights and remedies of Seller set forth herein, Seller may terminate this Agreement by written notice to Buyer, the Earnest Money shall be delivered to Seller, and the Parties shall have no further obligation to each other under this Agreement except those expressly stated to survive.

(1) All instruments described in Section 4.2(b) have been delivered to the Escrow Holder;

(2) All funds described in Section 4.3 have been delivered to the Escrow Holder;

(3) On the Close of Escrow, Buyer shall not be in material default in the performance of any covenant or agreement to be performed by Buyer under this Agreement; and,

(4) On the Close of Escrow, all representations and warranties made by Buyer herein shall be materially true and correct as if made on and as of the Close of Escrow.

5. **No Encumbrance.** From the Effective Date until the Close of Escrow, and except as otherwise permitted by this Section or as otherwise may be mutually agreed in writing by the Parties, Seller shall not cause, permit or suffer to exist any new lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be created, placed upon or claimed upon with respect to the Property.

6. **Seller's Representations and Warranties.** Seller hereby covenants that the following representations and warranties of Seller are true as of the Effective Date and shall be true and correct as of the Close of Escrow:

6.1 Litigation. To the best of Seller's knowledge without obligation to investigate, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Property, authority to convey the Property, affect the value of the Property, or subject an owner of the Property to liability. To the best of Seller's

knowledge, no events have occurred which might give rise to such claims, actions or proceedings.

6.2 Other Sales Contracts. Seller has not entered into any other options, rights of first refusal, or contracts for the sale or transfer of the Property that are in force or effect.

6.3 Violation of Law. To the best of Seller's knowledge without obligation to investigate, the Property is being operated in compliance with all federal, state and local building, zoning, planning, environmental, health and insurance laws, ordinances, rules and regulations. No notices of violation of any ordinance, rule or regulation relating to the Property or Seller have been issued to, served upon, received by or entered against Seller.

6.4 Hazardous Substances. To the best of Seller's knowledge without obligation to investigate, there is no and has been no:

(a) condition at, on, under or related to the Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law;

(b) release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Property or into or upon ground or surface water at the Property or within the immediate vicinity of the Property;

(c) asbestos-containing material incorporated into any buildings or interior improvements or asbestos containing equipment that may be part of the Property to be transferred under this Agreement;

(d) notices or other information giving Seller reason to believe that any conditions existing on the Property or in the vicinity of the Property or in ground or surface waters associated with the Property.

The term "**Hazardous Substances**" means any substance which is (1) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, (2) a petroleum hydrocarbon, including crude oil or any fraction thereof, (3) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or reproductive toxicant, (4) regulated pursuant to any Environmental Law(s), or (5) any pesticide regulated under state or federal law.

7. Buyer's Representations and Warranties. Buyer hereby covenants that the following representations and warranties of Buyer are true as of the Effective Date and shall be true and correct as of the Close of Escrow and shall survive the Close of Escrow. Buyer represents and warrants the following:

7.1 Power of Authority of Buyer. Buyer is a political subdivision of the State of Colorado. Buyer has the requisite power and authority to enter into and carry out the terms of this Agreement and the execution, performance and delivery hereof and of all other agreements



and instruments referred to herein to be executed, performed or delivered by Buyer and the performance by Buyer of Buyer's obligations hereunder will not violate or constitute an event of default under the terms and provisions of any material agreement, document or instrument to which Buyer is a party or by which Buyer is bound. All proceedings required to be taken by or on behalf of Buyer to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Buyer of its obligations under this Agreement.

7.2 Validity of Agreement. This Agreement is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally.

7.3 Annual Appropriation. Financial obligations of the Town under this 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. In the event sufficient funds shall not be made available, this Agreement may be terminated by either party without penalty. The Town's obligations hereunder shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

8. Default. If either party defaults in the performance of any of its obligations, promises, or agreements under this Agreement or if either party breaches any of its representations or warranties hereunder, the other party shall be entitled to exercise any remedy available to it by law or equity, including an action for specific performance and/or an action for damages; but under no circumstances shall either party be entitled to consequential damages. Each party shall indemnify the other from all expense, loss, liability, damages and claims, including attorneys' fees, that are brought by or made by any third party and that arise out of any default.

9. Miscellaneous Terms.

9.1 Notices. All notices required or permitted under this Agreement will be in writing and delivered to the Parties by facsimile transmission, personally by hand, courier service, Express Mail, or by first class mail, postage prepaid, at the addresses stated in Recital A. All notices will be considered given: (a) if sent by mail, when deposited in the mail, first class postage prepaid, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by facsimile, when transmitted and receipt is electronically confirmed. The Parties may, by notice as provided above, designate a different address to which notice will be given. Buyer and Seller agree that notices may be given by the Parties' respective counsel and that, if any communication is to be given by Buyer's and Seller's counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or other communication sent.

9.2 Legal Costs. If either Seller or Buyer bring any legal action that is based upon any matter arising out of or related in any way to this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and all expenses of litigation, whether or not authorized by statute as costs, in such amounts as will be allowed by the court.

9.3 No Broker's Commission. The Parties hereby acknowledge that Western Land Group, Inc. (“**WLG**”) is acting as a transaction broker. WLG will assist the Parties throughout the transaction with communications, interposition, advisement, negotiation, contract terms, and the closing, however, WLG is not an agent or advocate of either Purchaser or Seller in this transaction, but has a duty to treat both Purchaser and Seller honestly. Purchaser and Seller shall not be vicariously liable for the acts of WLG. The Parties agree no commissions shall be paid to WLG upon closing of the contemplated transaction. Other than WLG’s involvement, the Parties hereby each warrant and represent to the other party that no brokers, agents, finders’ fee or commissions are due in connection with this transaction arising by, through or under such party. Each party shall indemnify and save the other party wholly harmless against any loss, cost or other expenses, including reasonable attorneys’ fees, which may be incurred by such other party by reason of any breach of the foregoing warranty. The indemnification obligation of the Parties shall survive closing.

9.4 Time of the Essence; Dates. Time is of the essence of this Agreement. If any date specified in this Agreement falls on Saturday, Sunday or a public holiday, that date shall be considered to be the succeeding day on which public agencies and major banks are open for business.

9.5 Binding on Successors. This Agreement shall be binding not only on the Parties but also on their respective successors and assigns.

9.6 Additional Documents. Seller and Buyer agree to sign and deliver such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

9.7 Entire Agreement. This Agreement is the entire agreement between the Parties about the Property and supersedes all prior and contemporaneous agreements, representations, and understandings.

9.8 Interpretation. This Agreement will be interpreted without regard to any presumption or other rule of interpretation based on who drafted the Agreement.

9.9 Amendment. No amendment of this Agreement will be binding unless in writing and signed by the Parties.

9.10 Waiver. No waiver of any term of this Agreement will be considered a waiver of any other term, whether or not similar, nor will any waiver be considered a continuing waiver. No waiver will be binding unless in writing and signed by the party making the waiver.

9.11 Assigns. This Agreement shall not be assigned by either Party except with the prior written approval of the other Party, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, upon notice to Seller, Buyer may assign this Agreement to an entity controlled by Buyer, provided such entity agrees to assume all of the obligations of the Buyer hereunder.

9.12 Severability. Each term of this Agreement is severable from any and all other terms of this Agreement. Should any term of this Agreement be for any reason unenforceable, the balance will still be of full force and effect.

9.13 No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance of title to the Property, placing any deeds of trust on the Property and delivery of money and documents in the escrow), will not merge with transfer of title but will remain in effect until fulfilled.

9.14 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado.

9.15 Confidentiality. The parties agree that this Agreement contains “confidential commercial information” within the meaning of Section 24-72-204(3)(a)(IV), C.R.S. (which is part of the Colorado Open Record Act). In the event that the Buyer receives a request for disclosure of the terms and provisions of this Agreement pursuant to the Colorado Open Records Act, the Buyer will resist such request, and shall not disclose the terms and provisions of this Agreement except pursuant to a final, non-appealable judgment of a court of competent jurisdiction. Further, upon receipt of a request for disclosure of the terms and provisions of this Agreement pursuant to the Colorado Open Records Act, the Buyer shall promptly notify Seller of the request so that Seller may seek an appropriate protective order or waive the confidentiality provisions of this Paragraph 4. Buyer will not oppose any action by Seller to obtain an appropriate protective order or other reliable assurance that the confidentiality provisions of this Section 9.15 will be enforced to the fullest extent permitted by the law.

9.16 Exhibits. All Exhibits attached to this Agreement are incorporated into this Agreement by this reference.

9.17 Counterparts. This Agreement may be signed in counterparts, each of which will be considered an original and which together will constitute one and the same agreement

9.18 Section Headings. The section headings of this Agreement are for the purposes of reference only and shall not be used for limiting or interpreting the meaning of any section.

IN WITNESS of the foregoing provisions the Parties have signed this Agreement below:

***SELLER:***

***BUYER:***

**The Trust for Public Land**, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Town of Breckenridge**, a Colorado municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**  
**Legal Description of Property**

**Mitchell Lakes Property:**

The SE1/4NW1/4, SW1/4NE1/4, NE1/4SW1/4 and NW1/4SE1/4 all in Section 23, Township 37 North, Range 9 West, N.M.P.M.,

County of La Plata,  
State of Colorado.

**Flattop Mountain Property:**

Parcel 1:

The SE1/4 of the NW1/4 and the E1/2 of the SW1/4, Section 35, Township 41 North, Range 10 West of the New Mexico Principal Meridian,

County of Dolores,  
State of Colorado.

Parcel 2:

The NE1/4 of the NW1/4 and the E1/2 of the SE1/4, Section 2, Township 40 North, Range 10 West of the New Mexico Principal Meridian,

County of Dolores,  
State of Colorado.

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# M E M O R A N D U M

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**TO:** Mayor & Town Council  
**FROM:** Town Clerk  
**DATE:** February 15, 2011  
**SUBJECT:** Setting Summer Sale Days for 2011

Following for your consideration are the dates proposed by the Breckenridge Resort Chamber as this year's "Sidewalk Sale Weekends":

- April 8, 9 and 10, 2011;
- June 24, 25 and 26, 2011; and
- September 2, 3, 4 and 5, 2011 - Labor Day Weekend

If no objections are filed within 30 days or by March 24, 2011, the dates will be set.



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, unless otherwise noted.

FEBRUARY 2011

Tuesday, February 22; 3:00/7:30 p.m. Second Meeting of the Month

MARCH 2011

Tuesday, March 8; 3:00/7:30 p.m. First Meeting of the Month

Tuesday, March 22; 3:00/7:30 p.m. Second Meeting of the Month

NOTE: The FIRST council meeting in April, scheduled for Tuesday, April 12, has been cancelled.

OTHER MEETINGS

- 1st & 3rd Tuesday of the Month; 7:00p.m. Planning Commission; Council Chambers
1st Wednesday of the Month; 4:00p.m. Public Art Commission; 3rd floor Conf Room
2nd & 4th Tuesday of the Month; 1:30p.m. Board of County Commissioners; County
2nd Thursday of every other month (Dec, Feb, Apr, June, Aug, Oct) 12:00 noon Breckenridge Heritage Alliance
2nd & 4th Tuesday of the month; 2:00 p.m. Housing/Childcare Committee
2nd Thursday of the Month; 5:30p.m. Sanitation District
3rd Monday of the Month; 5:30p.m. BOSAC; 3rd floor Conf Room
3rd Tuesday of the Month; 9:00 a.m. Liquor Licensing Authority; Council Chambers
3rd Thursday of the Month; 7:00p.m. Red White and Blue; Main Fire Station
4th Wednesday of the Month; 9a.m. Summit Combined Housing Authority
4th Wednesday of the Month; 8:30a.m. Breckenridge Resort Chamber; BRC Offices
TBD (on web site as meetings are scheduled) Breckenridge Marketing Advisory Committee; 3rd floor Conf Room
Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition