



BRECKENRIDGE TOWN COUNCIL WORK SESSION
Tuesday, November 8, 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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3:00 – 3:15 p.m.	I	<u>PLANNING COMMISSION DECISIONS</u>	2
3:15 – 3:45 p.m.	II	<u>LEGISLATIVE REVIEW*</u>	
		Mill Levy	59
		Summit Housing Development Corporation-Buy-Down Agreement	61
		Encroachment License Agreement – Rugrats Properties, LLC	78
3:45 – 4:00 p.m.	III	<u>MANAGERS REPORT</u>	
		Public Projects Update	9
		Housing/Childcare Update	Verbal
		Committee Reports	10
		Financials	12
4:00 – 5:00 p.m.	IV	<u>OTHER</u>	
		McCain/Stillson Solar Garden	25
5:00 – 5:15 p.m.	V	<u>PLANNING MATTERS</u>	
		Summit Huts Scoping Letter	44
5:15 p.m.		<u>DINNER ON YOUR OWN</u>	

***ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA** **54**

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

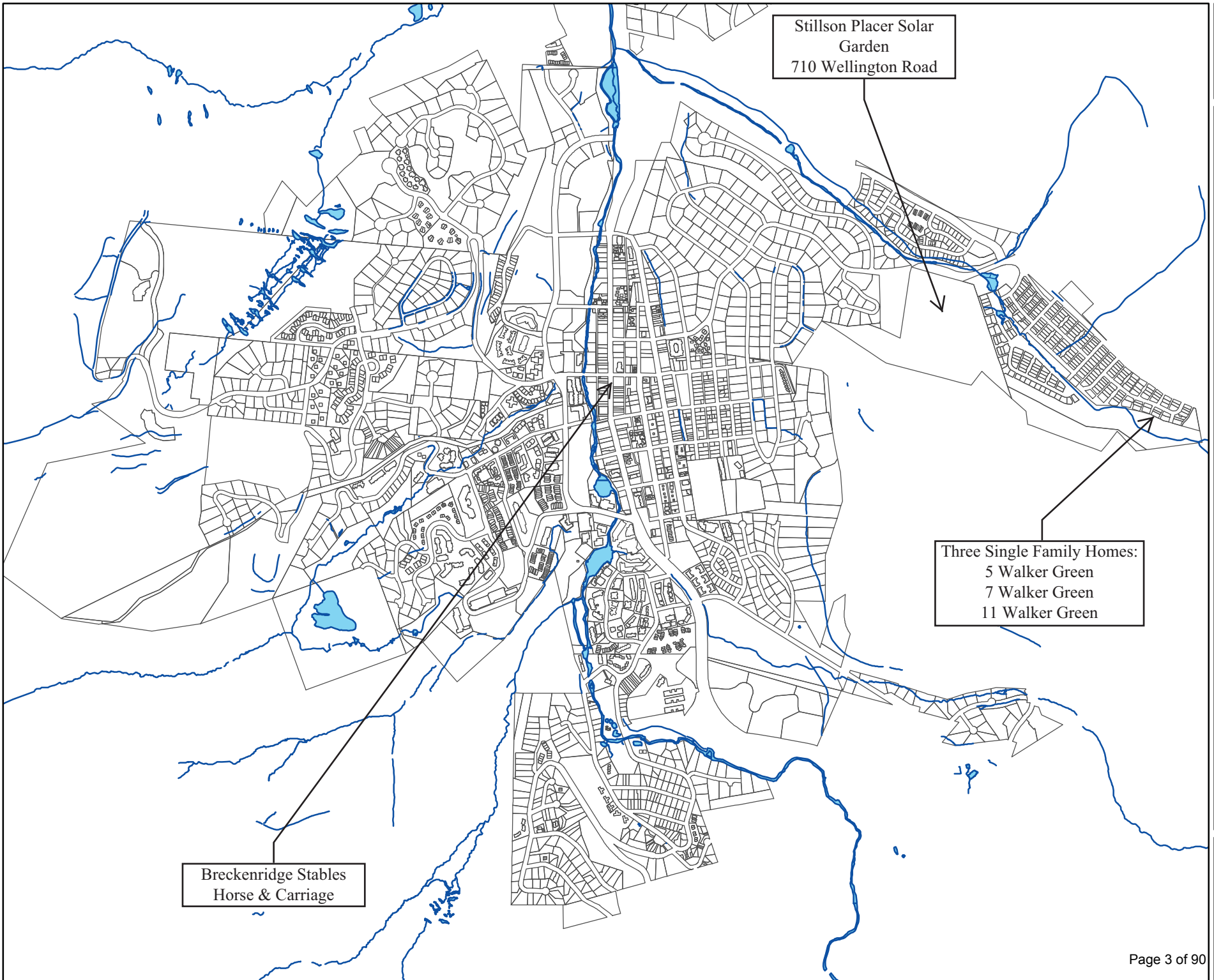
Date: November 2, 2011

Re: Town Council Consent Calendar from the Planning Commission Decisions of the November 1, 2011, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF November 1, 2011:

CLASS C APPLICATIONS:

1. Wellington Neighborhood Lot 9A, Block 9, Single Family Home, PC#2011070; 5 Walker Green
Construct a new single family residence with 4 bedrooms, 3 bathrooms, 1,602 sq. ft. of density and 2,086 sq. ft. of mass for a F.A.R. of 1:1.93. Approved.
2. Wellington Neighborhood Lot 9B, Block 9, Single Family Home, PC#2011071; 7 Walker Green
Construct a new single family residence with 2 bedrooms, 2 bathrooms, 1,180 sq. ft. of density and 1,334 sq. ft. of mass for a F.A.R. of 1:2.65. Approved.
3. Wellington Neighborhood Lot 10, Block 9, Single Family Home, PC#2011072; 11 Walker Green
Construct a new single family residence with 3 bedrooms, 3 bathrooms, 1,463 sq. ft. of density and 1,947 sq. ft. of mass for a F.A.R. of 1:. Approved.
4. Breckenridge Stables Horse and Carriage, PC#2011061
To operate a horse drawn carriage for rides and tours around Breckenridge as well as provide taxi service for special events, weddings, dinner rides, etc. Waiting location to be at the southeast corner of Main Street and Lincoln Avenue. Approved.



Breckenridge Stables
Horse & Carriage

Stillson Placer Solar
Garden
710 Wellington Road

Three Single Family Homes:
5 Walker Green
7 Walker Green
11 Walker Green



NOT TO SCALE

printed 4/12/2011

Breckenridge South

Town of Breckenridge and Summit County governments
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PLANNING COMMISSION MEETING

The meeting was called to order at 7:02 p.m.

ROLL CALL

Kate Christopher Jim Lamb Trip Butler
Gretchen Dudney Michael Rath

Dave Pringle arrived at 7:08 p.m.
Dan Schroder arrived at 7:13 p.m.

APPROVAL OF MINUTES

With no changes, the October 18, 2011 Planning Commission meeting minutes were approved unanimously (5-0).

APPROVAL OF AGENDA

With no changes, the November 1, 2011 Planning Commission meeting agenda was approved unanimously (5-0).

CONSENT CALENDAR:

1. Wellington Neighborhood Lot 9A, Block 9 Single Family Home (MGT) PC#2011070
2. Wellington Neighborhood Lot 9B, Block 9 Single Family Home (MGT) PC#2011071
3. Wellington Neighborhood Lot 10, Block 9 Single Family Home (MGT) PC#2011072

With no requests for call up, the Consent Calendar was approved as presented.

CONTINUED HEARINGS:

1. Breckenridge Stables Horse and Carriage (CN) PC#2011061

Mr. Neubecker presented a proposal to operate a horse drawn carriage for rides and tours around Breckenridge as well as provide taxi service for special events, weddings, dinner rides, etc. The proposed new location is at the southeast corner of Main Street and Lincoln Avenue. On October 4, 2011, the Planning Commission reviewed this application. Based on public comment from neighboring business and property owners, the Planning Commission continued the hearing to allow Staff and the Applicant to consider other locations. Planning Staff has met with Staff from the Public Works and Police departments to consider other possible locations and has also talked with the Applicant about possible waiting locations. Based on visibility and location, as well as turning movements, the Applicant has indicated that the location at Main Street and Lincoln Avenue is their preferable new location. Staff recommend that the Planning Commission approve the Breckenridge Stables Horse and Carriage use (PC#2011061), along with the attached Findings and Conditions.

Commissioner Questions / Comments:

Mr. Butler: Is there going to be a curb bulb out? (Mr. Neubecker: There is already a bulb out in that location.)
Mr. Pringle: Everybody loves the carriage ride but everyone hates to have it in front of their house. You and your employees need to come up with a rock solid plan to address odors and to collect urine; then I think all the issues will go away, but if it can't then everybody will object to it. I'm glad that we found a place that works because the last thing I want to see is this operation becoming a problem. (Mr. Brad Bays, Applicant: We will work on keeping it clean and keeping the smells down.)
Mr. Butler: Is this an annual permit? (Mr. Neubecker: It is a yearly permit. It could be renewed as a Class D, or it could possibly end up being a Class C and a Town Council call up if need be.) If the Applicant had proved that he had overcome those objections, couldn't it be incentive for him to run a tight ship?
Mr. Pringle: The waiting area and restroom area in the Lincoln Mall is much greater than Creatures Great and Small. I would be reluctant to hint that if you do a real good job you could move it back where it was, because it might be a better location for everybody. (Mr. Neubecker: The permit is for this location. A change of location would require a new permit.)
Mr. Lamb: This is a better location for visibility.
Mr. Schroder: Seems like a great spot, with public restrooms; are there any community members that have objections to the new location? (Mr. Neubecker: Yes, some have. We've heard from property manager and a business owner in Lincoln West Mall. They are mostly concerned about the odor and cleanup process.) I am in support of the carriage as a whole. I believe our community will benefit from it.

Ms. Dudney opened the hearing to public comment. There was no public comment and the hearing was closed.

Ms. Christopher made a motion to approve the Breckenridge Stables Horse and Carriage, PC#2011061, with the presented findings and conditions. Mr. Pringle seconded, and the motion was carried unanimously (7-0).

WORKSESSIONS:

1. Town Council Report (Mayor John Warner)

Mayor Warner presented updates to recent Town Council agendas and discussions.

Dr. Warner: The idea of a solar garden; how do you do that without affecting the public right-of-away (i.e.: visibility in the historic district)? We came up with a list of relative priorities. I think Stillson Placer is a good location of for a solar garden. I just want to remind you that the SustainableBreck plan is in favor of something like this. I appreciate all of your comments; you (Planning Commission) raised the idea of a garden some place (when we were discussing the solar panel ordinance); but we as a group want to hear what you guys have to say. It is important for us to contemplate the possibility of solar gardens. Suggest looking at Park City and how they have few controls and have sprawled their historic district. There are only a handful of historic ski towns in the United States, so looking at Park City would be worthwhile as a field trip for the Planning Commission.

Major issues discussed: Block 11, McCain Property, Joint Meetings

We will be talking about the possibility of a bridge or culverts near Coyne Valley Road when the Blue River is moved to the west.

We don't have a plan for the McCain Property. We have an 80 acre rock pile. We have thought about a reservoir, reflection pools, and water pump-back. I do know that the Council and the Army Corps are very keen on reclaiming the western portion of the Blue River on the McCain Property. The Town has budgeted \$2 million, it is a \$5 million project. (Ms. Dudney: Did you feel the process worked properly with what we considered on the solar gardens?) Dr. Warner: It seemed from what I read in the minutes that there was some pre-judgment about the project. I feel you should go into a presentation with an open mind. You are supposed to listen and then make a decision. Some seemed skeptical of the positive point nature of the renewable energy. I was just surprised at the level of skepticism at Council's motives for being enthusiastic about this. It seemed to answer so many questions and issues with regards to the historic district and its restrictions; maybe I am misreading the minutes and I kind of struggled with it. (Mr. Pringle: I felt that this was an application given to us. This was a project that the Planning Commission was asked to make a decision on even though it was being proposed at Town's level. I thought there were a number of questions; I was kind of taken back that we would propose an application somewhere on the property. We can't take into consideration of past, present and how we have interpreted other policies. This was the application.) (Ms. Dudney: My understanding was that it was an application review process.)

There is no master plan in place for the McCain property. We signed a letter of intent with this solar company. We are in an RFP process; we haven't paid any money yet. It was kind of a "look-see", tell us what you don't like about it. You will see it again if we go forward. (Mr. Neubecker: We have the direction from the Planning Commission; we will be working on a more specific site plan.) I read the minutes in the context that it was a done deal. (Mr. Pringle: Now you understand why there should be a Town Council representative at our meetings.) (Dr. Warner explained why Mr. Berry, the Town Attorney, doesn't want a Council member here because of voting problems.) You are right; there is a breakdown of communication. I will be happy to try and see if one of us (from Town Council) can be here once a month so we can make sure there aren't any communication breakdowns. I think it is important that we both can function on a high level. I'm here to bridge that gap and you will see more of me. I would like to have two joint meetings per year. I wouldn't mind bumping that up to three or four times a year. It is hard to get Council members to do more stuff, especially when they are already on multiple committees. I'm asking for your patience and keep the faith, as I'm renewing a process for us to have better communication.

Mr. Eric Buck, Town Resident: There may have been a shortfall between the minutes and what was said because I was here during that meeting. Advanced consideration of what they will be reviewing, a lot of the issue came up with the fact that it seemed like it just got thrown in their lap. They should have the ability to go out and seen the site before reviewing the application.

BLOCK 11 PROPERTY:

Dr. Warner: Let's rethink the density on Block 11; let's make sure we understand our parking requirements, relative to the ski area. There have to be 500 spaces between the new CMC and Block 11 for skier parking. There is clearly a disconnect between how much parking is needed, the idea of carpooling, etc. Before we start building on Block 11, we really need to understand parking and housing requirements. Also, CMC has been thinking about the possibility of having residential (dormitory) uses near

their parking lot. This would push our parking requirements to the south. (Mr. Schroder: Who owns the land to the south of skier parking?) The School District owns 5 acres past the fence; it has been roped off. We have been talking to them about affordable housing, etc. They are holding onto that land.

The parking master plan is in a state of flux. 500 cars? 1,000 cars? We are struggling with the density level, 350 (11 units /acre); how quickly is this going to happen? (Mr. Pringle: Would it include seasonal rental/year-round apartments?) The new master plan for Block 11 includes: Multi-family, single family and town houses, a really unique mix. (Mr. Pringle: I think there is a need for seasonal rentals; Pinewood Village is a great example.) The rental stock needs to be bumped up.

Commissioner Questions / Comments:

- Mr. Pringle: I think the meetings between us are so important. I have never felt so isolated from the Council. It has been a detriment to the town with this lack of communication between the two.
- Ms. Dudney: I understand we have to use the code. Sometimes I do more thinking that what is needed (with regards to the business side of the deal). How would you suggest that I present that? Could I write a letter? Go to the meetings? (Dr. Warner: As far as the business side, I think we are always happy to hear what you are thinking. Minutes should reflect point analysis, etc., not the business side of the deal.) I struggled with not knowing anything of the 50 year lease for the solar garden. I believe there is a substantial risk with this. How to get the point to the Council that this seemed to be something that they should pay extra attention to?
- Ms. Christopher: It (solar garden) could have been presented as a worksession.
- Mr. Pringle: Is it being presented as a Town project or regular application by a private party? (Mr. Neubecker: Staff was uncertain about which way it was supposed to go; that is why tonight's presentation is a work session.)

2. Stillson Patch Placer Solar Garden (JP), 710 Wellington Road

Ms. Puester presented a proposal to install a 500 kilowatt photovoltaic (PV) solar garden on a 4 acre portion of the 38 acre Stillson Patch Placer property. The proposed solar panels would consist of approximately 2,130 panels in 9 rows and produce approximately 780,000 kWh of energy per year. The proposed solar panels would be managed by Clean Energy Collective (CEC). They would then sell panels to residents and businesses within the entire Summit County area who would pay the upfront cost of the panels. Xcel Energy would credit the purchaser's Xcel bill monthly for their share of the value of the energy produced.

Since this is a worksession, the Planning Commission meeting minutes will be forwarded to the Town Council for further discussion of solar garden sites.

Any additional comments or concerns that the Commission has with a solar garden of this size at the Stillson Patch Placer site would be appreciated.

Commissioner Questions / Comments:

- Mr. Pringle: When we talk about solar devices outside of the conservation district, I don't think that when we wrote this policy or when we were contemplating this policy, solar gardens were a part of the thought process. I think we need to expand this to talk about solar arrays on a macro scale. I am in favor of modifying the policy to apply to solar gardens. (Ms. Puester: We were thinking we would see some detached systems when we wrote this policy. This is what we have in place. The way the code works would be to look at the other policies regarding buffering and landscaping and so on.) It would be nice if we could have a dual track-where they fit, how they are going to be addressed, what are the other needs that are going to have to be mitigated because of the size of the gardens and what is going to be incorporated there. I am a firm believer solar gardens are a way to offset carbon footprints. (Ms. Puester: I don't think we would want to write a policy so tight that it would eliminate the need for our point system to work to buffer this site.) Does this sort of policy really apply to a 10 acre area? (Mr. Neubecker: It is the policy we have in place and I think the policies we have cover most of the concerns people have. What we can do tonight is get your feedback on other issues even if we don't nail down Policy 33; maybe down the road we might need to add to Policy 33/R.)
- Mr. Schroder: The policy almost implies it would be near a home, I would like to address the land use. Does Public Works have a place to go with their materials? (Ms. Puester: Yes.) Need to think about where to offset that material. Given the Xcel sub-station being there, it is a pretty heavy-duty area. I think it is a good location. I understand the community feel there and of looking at this berm and you can't see over that berm easily, it is pretty huge.

Mr. Pringle: If I was going to be a potential owner of the solar panel, do I get the tax credit from the government? Who owns the solar panel? (Ms. Lauren Martindale, Clean Energy Collective: We provided a discount system in the amount of the tax credit; you do get the savings as a onetime upfront rebate. The Federal Government offers a onetime 30% tax credit for solar. If businesses buy in, they can use accelerated depreciation schedule and take it out on their own tax returns.) Apparently there is a 25 year life of a panel and then you will come in and replace the panels? Do I have to buy another one and all the panels will be resold again or will they be replaced to the original owners at no cost? (Ms. Martindale: We haven't had enough time to flush out all details with Council. But panels will last more than 25 years, we don't intend to replace them all unless they have issues. The industry thinks they should last 40 years, maybe 50 if they are maintained correctly. Our plan is to not replace them all, but the initial sale price includes everything for 50 years. There are no additional fees assessed to the customers except a 5% management fee that the customer doesn't pay; it is taken off the Xcel utility bill and includes funds for a local solar installer to replace panels, and pay for the maintenance activities.)

Mr. Rath: So this is a program with Xcel, since they are giving you a break. Is that as long as you live within that specific home or within an Xcel district? Are you getting to take the panel if you move? (Ms. Martindale: You can sell the panel to a new customer or back to CEC, for whatever panels are selling for at market price. Xcel will not let us move it to a new county. If you always rent within the County or move within the County, you can keep using it, transferred. You don't lose the value, it maintains the value.)

Ms. Dudney opened the hearing to public comment.

Mr. Eric Buck, full time resident in Breckenridge: When it comes to Town and Planning Commission matters, I see absolutely nothing wrong with this location. I think it is a great location. My only comment might be that I think that the current requirements of the public notice of 300 feet around a development/notice of public hearings may not be enough. I think we need to make sure everyone in the neighborhood has enough time to comment on their own behalf. (Mr. Neubecker: This would really be a Class D permit per the code, at staff level we have elevated it to a worksession and we will bump it up to a Class C application should Council move it forward. We have noticed this worksession and will also for the Class C process which is not required at all by code. We are already going above and beyond the code for notice.)

There was no more public comment and the hearing was closed.

Commissioner Questions / Comments:

Mr. Pringle: Believe that that is why we need a new code section for this type of application. (Mr. Grosshuesch: This is a very through public process; we have even held an open house on this in addition to all the public notice.) Judging solar gardens is like Main Street Station being reviewed as a single family home. Policy 5 and this application are two different things. Not credible. (Mr. Lamb: This is how the code works. Look at the other policies and points to achieve what you are looking for. We would require more landscaping at Main Street Station than for a single family to get the same points.) I would suggest we look into enhancing the landscaping on the berm so there is no impact to the people driving by. There are already uses there that are not pretty; people are looking down on this location too.

Mr. Lamb: I think it is a great location; the buffering off Wellington Rd. is quite good; I really like this project. I never see the junk behind the berm. Get in the program before it goes away. (Mr. Grosshuesch: If Xcel even continues the program than we can consider re-writing the policy. Submitted under this code. Not going to be able to write a new policy before this comes through.)

Ms. Dudney: Like the project here.

Mr. Rath: Seems like our first baby step and wait for the larger gateway one. This is the perfect location for a Town project now.

Staff had the following specific questions for the Planning Commission:

- 1) Did the Commission find that the existing berm along Wellington Road provides effective site buffering?
 - a. Mr. Schroder: Compatible.
 - b. Mr. Lamb: Yes, plenty large.
 - c. Ms. Dudney: Always like to see more trees but not required for this location, I think berm is high enough.
 - d. Mr. Butler: Berm provides effective side buffering.
 - e. Ms. Christopher: Great location, great project; yes.

- f. Mr. Rath: Yes, perfect location for something like this.
- g. Mr. Pringle: Could use more trees on the berm to blend more.
- 2. Did the Commission feel that the project met the intent of the Community Needs section of Policy 24/R?
 - a. Mr. Schroder: Striving to really start meeting mid/long-term goals; significant introduction into this arena; I am pleased to see that we are actively looking into this. Agree with positive six (+6) points here as well. (All Commissioners agreed with +6 points.)
 - b. Mr. Lamb: Yes.
 - c. Mr. Butler: Meets intent of community needs.
 - d. Ms. Christopher: Yes.
 - e. Mr. Rath: Yes.
- 3. Did the Commission believe that the project conserves significant amounts of energy and Policy 33/R should apply?
 - a. Mr. Schroder: Yes.
 - b. Mr. Lamb: Yes.
 - c. Mr. Butler: Yes.
 - d. Ms. Christopher: Yes.
 - e. Mr. Rath: Yes.
- 4. Did the Commission have concerns with the policies addressed by staff in this report?
 - a. Mr. Lamb: No concerns with report.
 - b. Ms. Dudney: No.
 - c. Mr. Butler: No concerns; looking forward to seeing project.
 - d. Ms. Christopher: No.
 - e. Mr. Rath: No.
- 5. Are there any applicable policies that the Commission finds missing from the report?
 - a. Mr. Lamb: No, nothing noticed missing from the analysis.
 - b. Ms. Dudney: No.
 - c. Mr. Butler: No.
 - d. Ms. Christopher: No.
 - e. Mr. Rath: No.

OTHER MATTERS:

Mr. Neubecker: Save the dates of February 1-3, 2012, for the “Saving Places” historic preservation conference in Denver. They are not taking registration yet, but in two weeks you can register online. Everyone is encouraged to attend. If you register early, you save \$30-\$40. Please register through Ms. Brewster in the Community Development office. This year the event will be at the convention center.

Mr. Pringle: Selection of Chair/Vice-Chair
Ms. Dudney nominated Mr. Schroder for Chair, Mr. Pringle seconded. The motion was approved unanimously (7-0).
Mr. Pringle nominated Ms. Dudney for Vice-Chair, Mr. Schroder seconded. The motion was approved unanimously (7-0).

Mr. Neubecker: More than one meeting with Town Council a year? We will keep it in the spring for now.

ADJOURNMENT:

The meeting was adjourned at 9:24 p.m.

Gretchen Dudney, Vice-Chair

Memorandum

TO: Town Council
FROM: Tom Daugherty, Town Engineer
DATE: November 3, 2011
RE: Public Projects Update

Airport Road Sidewalk

The project has been completed. Qwest is planning to complete splicing to their relocated line this year.

Main Street Streetscape Project

Work on the Main Street project has been wrapped up due to the weather. If the snow melts, flagstone installation will be completed this year, but is planned to resume in Spring 2012. Sand has been placed to grade in the areas where flagstone rock is planned.

The rip-rap rock has been removed from the median and replacement with the new flagstone this year is contingent on weather, but is currently planned for Spring 2012.

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: November 2, 2011
SUBJECT: Committee Reports for 11.8.2011 Council Packet

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

Police Advisory Committee (PAC)	Chief Holman	November 2, 2011
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- **Discussion on new members:** The group discussed adding one or two new members to fill vacancies. Committee members suggested adding someone from the late night work force and/or a member of the Latino community.
- **Recent Events:** The committee was provided a recap of Oktoberfest and Halloween. Changes to the operational structure of Oktoberfest seemed to provide a more successful event financially for the BRC and the police reported few problems during and after the event. Police reported on another successful Halloween event in both the Wellington and High Street neighborhoods.
- **Parking:** The group was briefed on the implementation of winter parking regulations including overnight and pay parking. Many committee members requested a reminder flyer regarding employee parking permits for their staff. The department will be sending out a permit reminder flyer to BRC membership and the Restaurant Association. The committee was briefed on the new "uphill skiing" permit that will be offered for free through the police department. While discussing parking management, committee members were brought up to date on the recently ordered License Plate Reader (LPR). Commander Haynes reviewed how the LPR works, as well as the impact the device will have on safety and efficiency for our 3-hour parking enforcement and parking counts.
- **Wildlife:** Committee members reviewed educational material being released to Breckenridge residents reference wildlife. Members were asked to share this information and encourage others to follow town ordinances regarding feeding wildlife and control of pets.
- **Other items:** There was discussion on some on-going problem solving activity the department is addressing related to late-night noise complaints coming from the area of La Cima mall. Some members of the group feel this area may be at capacity for bar/tavern licenses and feel others in the community would probably support limiting the number of bar/taverns in that area of Town.

I-70 Coalition	Tim Gagen	November 2, 2011
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The BOD met on 11/2. The primary topic was whether the Coalition should consider changing its current structure to a Transportation Management Organization or TMO as has been suggested by CDOT Exe. Dir. Don Hunt. The Board studied this topic several years ago and agreed to wait a few years to see how the I-70 project progressed. The Board wanted to gather more information but generally felt that the Coalition was doing most of the things a formal TMO does, so a change would not be hard and may qualify the Coalition for some funding. The Board also discussed the need for a point person/Czar on all things I-70 as we regularly run into problems trying to figure out who in the CDOT organization we should be going to for different issues on I-70. Finally, the Board authorized the TDM committee to pursue a study of how the Hogback lots are being used by travelers on I-70, using remaining CDOT grant dollars.

Committees	Representative	Report Status
CAST	Mayor Warner	Verbal Report
CDOT	Tim Gagen	No Meeting/Report
CML	Tim Gagen	No Meeting/Report
I-70 Coalition	Tim Gagen	Included
Mayors, Managers & Commissions Meeting	Mayor Warner	Verbal Report
Summit Leadership Forum	Tim Gagen	No Meeting/Report
Liquor Licensing Authority*	MJ Loufek	No Meeting/Report
Wildfire Council	Matt Thompson	No Meeting/Report

Public Art Commission*	Jenn Cram	No Meeting/Report
Summit Stage Advisory Board*	James Phelps	No Meeting/Report
Police Advisory Committee	Rick Holman	Included
Housing/Childcare Committee	Laurie Best	Verbal Report
CMC Advisory Committee	Tim Gagen	No Meeting/Report

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

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

FINANCIAL MEMORANDUM

TO: TIM GAGEN, TOWN MANAGER
FROM: CLERK AND FINANCE DIVISION
SUBJECT: SEPTEMBER NET TAXABLE SALES & RETT REPORTING
DATE: 11/3/2011

This memo explains significant items of note in relation to sales that occurred within the Town of Breckenridge in the month of September. Real Estate Transfer Tax, including an analysis of the monthly “churn” and sales by property type, is also included.

New Items of Note:

Net Taxable Sales

- Overall, Net Taxable sales for September were up 17.2% over 2010 but fell short of 2006 #s.
- Every category except for Utilities tracked ahead of prior year. Do note that the 2010 are remarkably low, so this was not a difficult accomplishment.
- We did receive outstanding returns in the supplies sector for August. The figures in the report have been updated to reflect this. The addition of the outstanding returns brought the category ahead of prior year for August.
- Restaurants and Grocery continue to track quite well & had their best sales in September ever (also had best August ever).

Real Estate Transfer Tax

- Total October collections fell behind prior year by 70.1%, and behind budget by 33.9%
- Overall YTD collections declined versus prior year, and are currently behind prior year by 4.2%. However, the “churn” is still tracking ahead of prior year by 13%. Therefore, it appears that we have had less new construction than prior year, but re-sales seem to have picked up, as compared to last year.
- Sales of single family homes continue to be up a from prior year.

Continuing Items of Note:

- Net Taxable Sales are reported in the first Council meeting following the due date of the tax remittance to the Town of Breckenridge. Taxes collected from the customer by the vendor are remitted to the Town on the 20th of the following month.
- Quarterly taxes are reported in the last month of the period. For example, taxes collected in the first quarter of the year (January – March), are include on the report for the period of March.
- Net Taxable Sales are continually updated as late tax returns are submitted to the Town of Breckenridge. Therefore, you may notice slight changes in prior months, in addition to the reporting for the current month.

**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

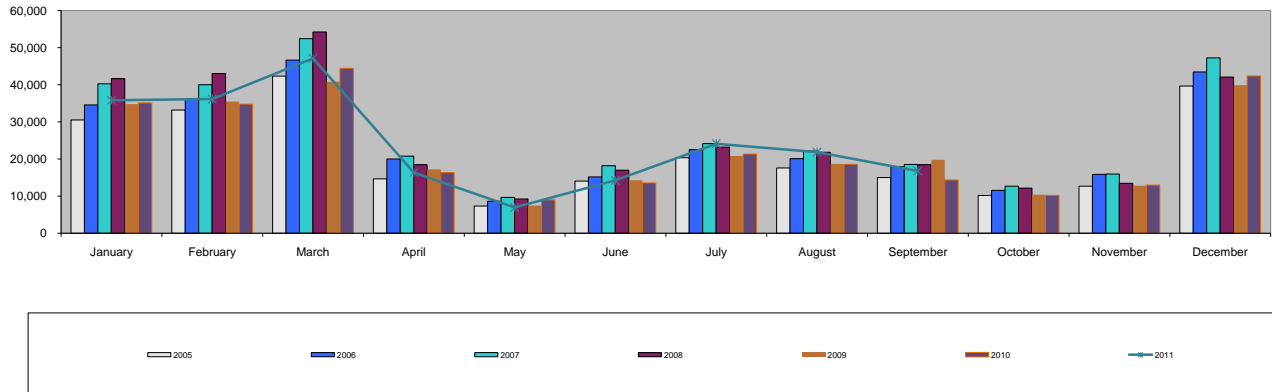
(in Thousands of Dollars)

Total - All Categories*

* excluding Undefined and Utilities categories

	Actual 2005	YTD 2005	Actual 2006	YTD 2006	Actual 2007	YTD 2007	Actual 2008	YTD 2008	Actual 2009	YTD 2009	Actual 2010	YTD 2010	Actual 2011	YTD 2011	Monthly 10-11	YTD % Change 10-11
January	30,549	30,549	34,589	34,589	40,283	40,283	41,665	41,665	34,783	34,783	35,105	35,105	35,805	35,805	2.0%	2.0%
February	33,171	63,720	36,236	70,825	40,034	80,317	43,052	84,717	35,453	70,236	34,791	69,896	36,128	71,933	3.8%	2.9%
March	42,370	106,090	46,603	117,428	52,390	132,707	54,237	138,954	40,810	111,046	44,485	114,381	47,101	119,034	5.9%	4.1%
April	14,635	120,725	19,963	137,391	20,758	153,465	18,483	157,437	17,171	128,217	16,346	130,727	16,371	135,405	0.2%	3.6%
May	7,355	128,080	8,661	146,052	9,629	163,094	9,251	166,688	7,475	135,692	8,999	139,726	6,971	142,376	-22.5%	1.9%
June	14,043	142,123	15,209	161,261	18,166	181,260	16,988	183,676	14,286	149,978	13,557	153,283	14,235	156,611	5.0%	2.2%
July	20,366	162,489	22,498	183,759	24,168	205,428	23,160	206,836	20,788	170,766	21,346	174,629	24,134	180,745	13.1%	3.5%
August	17,625	180,114	20,071	203,830	22,125	227,553	21,845	228,681	18,656	189,422	18,603	193,232	21,878	202,623	17.6%	4.9%
September	15,020	195,134	17,912	221,742	18,560	246,113	18,481	247,162	19,806	209,228	14,320	207,552	16,790	219,413	17.2%	5.7%
October	10,170	205,304	11,544	233,286	12,687	258,800	12,120	259,282	10,410	219,638	10,226	217,778	0	219,413	n/a	n/a
November	12,647	217,951	15,877	249,163	15,943	274,743	13,483	272,765	12,809	232,447	12,985	230,763	0	219,413	n/a	n/a
December	39,687	257,638	43,431	292,594	47,258	322,001	42,076	314,841	39,859	272,306	42,343	273,106	0	219,413	n/a	n/a
Totals	257,638		292,594		322,001		314,841		272,306		273,106		219,413			

2011 Monthly Sales Tax Activity (in thousands of dollars)



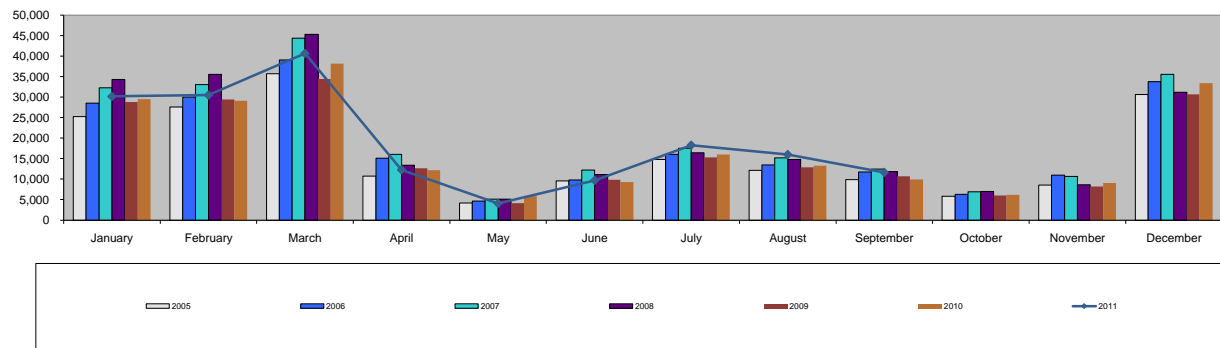
**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail-Restaurant-Lodging Summary

	2005		2006		2007		2008		2009		2010		2011		Monthly 10-11	YTD % Change 10-11
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	25,240	25,240	28,528	28,528	32,258	32,258	34,290	34,290	28,802	28,802	29,538	29,538	30,174	30,174	2.2%	2.2%
February	27,553	52,793	29,972	58,500	33,039	65,297	35,511	69,801	29,401	58,203	29,090	58,628	30,504	60,678	4.9%	3.5%
March	35,705	88,498	39,051	97,551	44,390	109,687	45,338	115,139	34,428	92,631	38,136	96,764	40,676	101,354	6.7%	4.7%
April	10,773	99,271	15,134	112,685	16,025	125,712	13,410	128,549	12,653	105,284	12,154	108,918	12,281	113,635	1.0%	4.3%
May	4,179	103,450	4,647	117,332	5,146	130,858	5,111	133,660	4,125	109,409	5,836	114,754	4,077	117,712	-30.1%	2.6%
June	9,568	113,018	9,789	127,121	12,225	143,083	11,112	144,772	9,829	119,238	9,302	124,056	9,713	127,425	4.4%	2.7%
July	14,766	127,784	16,038	143,159	17,499	160,582	16,446	161,218	15,305	134,543	15,993	140,049	18,296	145,721	14.4%	4.1%
August	12,122	139,906	13,446	156,605	15,167	175,749	14,815	176,033	12,859	147,402	13,261	153,310	16,010	161,731	20.7%	5.5%
September	9,897	149,803	11,761	168,366	12,418	188,167	11,794	187,827	10,705	158,107	9,894	163,204	11,657	173,388	17.8%	6.2%
October	5,824	155,627	6,248	174,614	6,934	195,101	6,977	194,804	5,986	164,093	6,143	169,347	0	173,388	n/a	n/a
November	8,557	164,184	10,963	185,577	10,650	205,751	8,637	203,441	8,234	172,327	9,068	178,415	0	173,388	n/a	n/a
December	30,619	194,803	33,736	219,313	35,517	241,268	31,211	234,652	30,667	202,994	33,363	211,778	0	173,388	n/a	n/a
Totals	194,803		219,313		241,268		234,652		202,994		211,778		173,388			

2011 Monthly Sales Tax Activity (in thousands of dollars)



Tourism Ratio (Retail + Restaurant)/Lodging

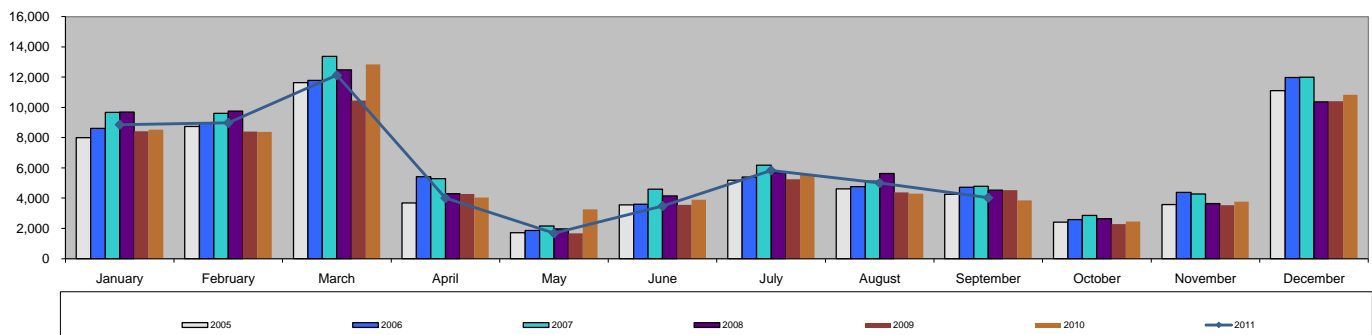
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail Sales

	2005		2006		2007		2008		2009		2010		2011		Monthly 10-11	YTD 10-11
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	8,001	8,001	8,607	8,607	9,665	9,665	9,684	9,684	8,430	8,430	8,530	8,530	8,862	8,862	3.9%	3.9%
February	8,744	16,745	8,942	17,549	9,607	19,272	9,763	19,447	8,401	16,831	8,378	16,908	8,982	17,844	7.2%	5.5%
March	11,632	28,377	11,774	29,323	13,373	32,645	12,479	31,926	10,449	27,280	12,851	29,759	12,125	29,969	-5.6%	0.7%
April	3,678	32,055	5,406	34,729	5,287	37,932	4,301	36,227	4,274	31,554	4,032	33,791	4,006	33,975	-0.6%	0.5%
May	1,708	33,763	1,858	36,587	2,165	40,097	1,965	38,192	1,675	33,229	3,251	37,042	1,679	35,654	-48.4%	-3.7%
June	3,565	37,328	3,589	40,176	4,597	44,694	4,153	42,345	3,558	36,787	3,895	40,937	3,477	39,131	-10.7%	-4.4%
July	5,174	42,502	5,403	45,579	6,176	50,870	5,700	48,045	5,240	42,027	5,582	46,519	5,834	44,965	4.5%	-3.3%
August	4,620	47,122	4,757	50,336	5,110	55,980	5,631	53,676	4,384	46,411	4,302	50,821	5,003	49,968	16.3%	-1.7%
September	4,249	51,371	4,726	55,062	4,783	60,763	4,527	58,203	4,536	50,947	3,848	54,669	4,031	53,999	4.8%	-1.2%
October	2,404	53,775	2,591	57,653	2,866	63,629	2,635	60,838	2,277	53,224	2,453	57,122	0	53,999	n/a	n/a
November	3,586	57,361	4,376	62,029	4,267	67,896	3,641	64,479	3,540	56,764	3,764	60,886	0	53,999	n/a	n/a
December	11,099	68,460	11,971	74,000	12,000	79,896	10,358	74,837	10,403	67,167	10,824	71,710	0	53,999	n/a	n/a
Totals	68,460		74,000		79,896		74,837		67,167		71,710		53,999			

2011 Monthly Sales Tax Activity (in thousands of dollars)



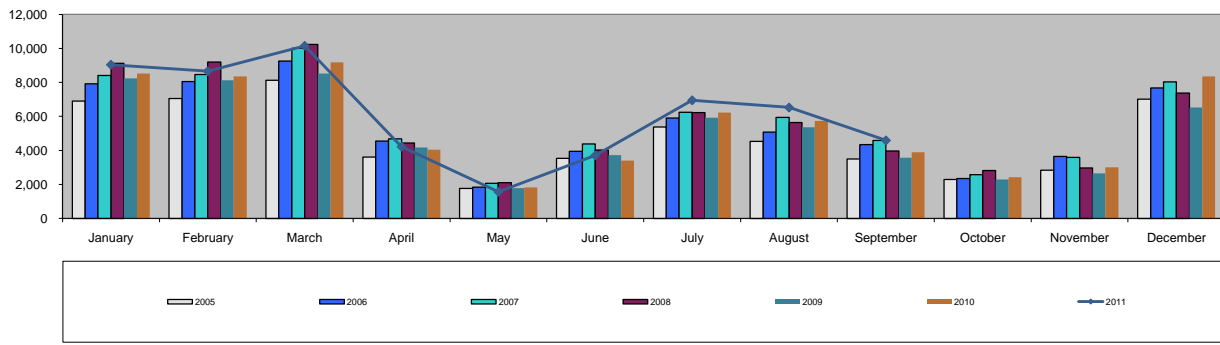
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Restaurants/Bars

	2005		2006		2007		2008		2009		2010		2011		Monthly 10-11	YTD 10-11
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	6,897	6,897	7,924	7,924	8,414	8,414	9,117	9,117	8,231	8,231	8,515	8,515	9,039	9,039	6.2%	6.2%
February	7,047	13,944	8,058	15,982	8,467	16,881	9,208	18,325	8,129	16,360	8,343	16,858	8,660	17,699	3.8%	5.0%
March	8,117	22,061	9,256	25,238	10,015	26,896	10,240	28,565	8,527	24,887	9,186	26,044	10,151	27,850	10.5%	6.9%
April	3,609	25,670	4,552	29,790	4,678	31,574	4,440	33,005	4,173	29,060	4,042	30,086	4,222	32,072	4.5%	6.6%
May	1,760	27,430	1,832	31,622	2,058	33,632	2,107	35,112	1,783	30,843	1,812	31,898	1,570	33,642	-13.4%	5.5%
June	3,525	30,955	3,938	35,560	4,370	38,002	4,030	39,142	3,712	34,555	3,397	35,295	3,704	37,346	9.0%	5.8%
July	5,375	36,330	5,905	41,465	6,249	44,251	6,218	45,360	5,931	40,486	6,222	41,517	6,949	44,295	11.7%	6.7%
August	4,521	40,851	5,067	46,532	5,933	50,184	5,639	50,999	5,365	45,851	5,729	47,246	6,526	50,821	13.9%	7.6%
September	3,498	44,349	4,340	50,872	4,585	54,769	3,971	54,970	3,565	49,416	3,883	51,129	4,592	55,413	18.3%	8.4%
October	2,290	46,639	2,352	53,224	2,564	57,333	2,818	57,788	2,285	51,701	2,420	53,549	0	55,413	n/a	n/a
November	2,841	49,480	3,651	56,875	3,593	60,926	2,972	60,760	2,649	54,350	3,006	56,555	0	55,413	n/a	n/a
December	7,017	56,497	7,681	64,556	8,028	68,954	7,371	68,131	6,524	60,874	8,351	64,906	0	55,413	n/a	n/a
Totals	56,497		64,556		68,954		68,131		60,874		64,906		55,413			

2011 Monthly Sales Tax Activity (in thousands of dollars)



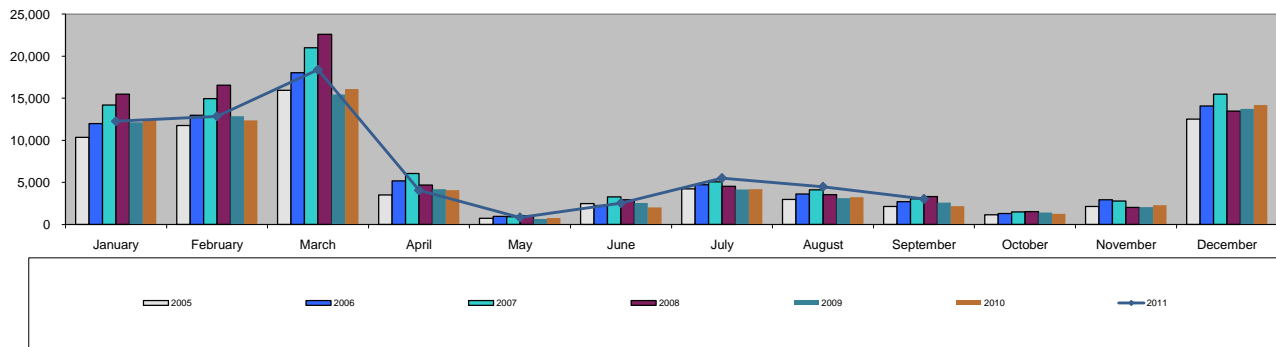
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Short-Term Lodging

	2005		2006		2007		2008		2009		2010		2011		Monthly 10-11	YTD 10-11
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	10,342	10,342	11,997	11,997	14,179	14,179	15,489	15,489	12,141	12,141	12,493	12,493	12,273	12,273	-1.8%	-1.8%
February	11,762	22,104	12,972	24,969	14,965	29,144	16,540	32,029	12,871	25,012	12,369	24,862	12,862	25,135	4.0%	1.1%
March	15,956	38,060	18,021	42,990	21,002	50,146	22,619	54,648	15,452	40,464	16,099	40,961	18,400	43,535	14.3%	6.3%
April	3,486	41,546	5,176	48,166	6,060	56,206	4,669	59,317	4,206	44,670	4,080	45,041	4,053	47,588	-0.7%	5.7%
May	711	42,257	957	49,123	923	57,129	1,039	60,356	667	45,337	773	45,814	828	48,416	7.1%	5.7%
June	2,478	44,735	2,262	51,385	3,258	60,387	2,929	63,285	2,559	47,896	2,010	47,824	2,532	50,948	26.0%	6.5%
July	4,217	48,952	4,730	56,115	5,074	65,461	4,528	67,813	4,134	52,030	4,189	52,013	5,513	56,461	31.6%	8.6%
August	2,981	51,933	3,622	59,737	4,124	69,585	3,545	71,358	3,110	55,140	3,230	55,243	4,481	60,942	38.7%	10.3%
September	2,150	54,083	2,695	62,432	3,050	72,635	3,296	74,654	2,604	57,744	2,163	57,406	3,034	63,976	40.3%	11.4%
October	1,130	55,213	1,305	63,737	1,504	74,139	1,524	76,178	1,424	59,168	1,270	58,676	0	63,976	n/a	n/a
November	2,130	57,343	2,936	66,673	2,790	76,929	2,024	78,202	2,045	61,213	2,298	60,974	0	63,976	n/a	n/a
December	12,503	69,846	14,084	80,757	15,489	92,418	13,482	91,684	13,740	74,953	14,188	75,162	0	63,976	n/a	n/a
Totals	69,846		80,757		92,418		91,684		74,953		75,162		63,976			

2011 Monthly Sales Tax Activity (in thousands of dollars)



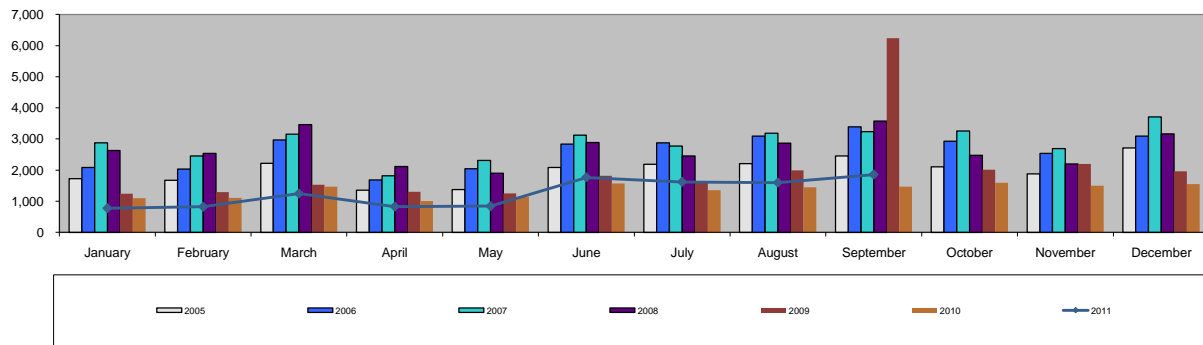
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Supplies

	2005		2006		2007		2008		2009		2010		2011		Monthly 10-11	YTD 10-11
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	1,720	1,720	2,084	2,084	2,876	2,876	2,631	2,631	1,240	1,240	1,095	1,095	777	777	-29.0%	-29.0%
February	1,669	3,389	2,031	4,115	2,459	5,335	2,532	5,163	1,297	2,537	1,111	2,206	821	1,598	-26.1%	-27.6%
March	2,216	5,605	2,967	7,082	3,156	8,491	3,463	8,626	1,530	4,067	1,472	3,678	1,245	2,843	-15.4%	-22.7%
April	1,359	6,964	1,680	8,762	1,813	10,304	2,114	10,740	1,305	5,372	1,006	4,684	829	3,672	-17.6%	-21.6%
May	1,370	8,334	2,045	10,807	2,314	12,618	1,894	12,634	1,250	6,622	1,139	5,823	841	4,513	-26.2%	-22.5%
June	2,083	10,417	2,836	13,643	3,119	15,737	2,886	15,520	1,814	8,436	1,573	7,396	1,765	6,278	12.2%	-15.1%
July	2,186	12,603	2,872	16,515	2,770	18,507	2,450	17,970	1,602	10,038	1,354	8,750	1,619	7,897	19.6%	-9.7%
August	2,211	14,814	3,096	19,611	3,187	21,694	2,869	20,839	1,990	12,028	1,446	10,196	1,597	9,494	10.4%	-6.9%
September	2,452	17,266	3,394	23,005	3,234	24,928	3,574	24,413	6,237	18,265	1,471	11,667	1,855	11,349	26.1%	-2.7%
October	2,107	19,373	2,924	25,929	3,259	28,187	2,470	26,883	2,016	20,281	1,595	13,262	0	11,349	n/a	n/a
November	1,876	21,249	2,537	28,466	2,693	30,880	2,199	29,082	2,196	22,477	1,495	14,757	0	11,349	n/a	n/a
December	2,712	23,961	3,091	31,557	3,713	34,593	3,160	32,242	1,958	24,435	1,548	16,305	0	11,349	n/a	n/a
Totals	23,961		31,557		34,593		32,242		24,435		16,305		11,349			

2011 Monthly Sales Tax Activity (in thousands of dollars)



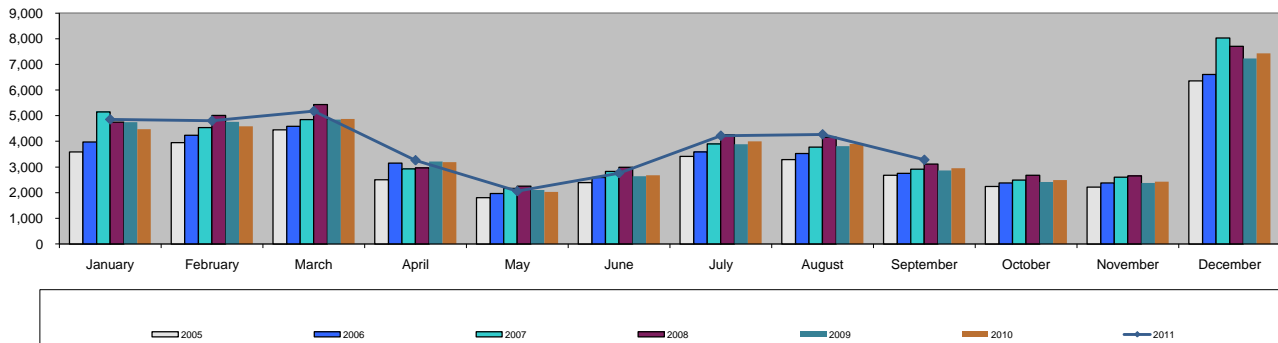
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Grocery/Liquor Stores

	2005		2006		2007		2008		2009		2010		2011		Monthly 10-11	YTD 10-11
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	3,589	3,589	3,977	3,977	5,149	5,149	4,744	4,744	4,741	4,741	4,472	4,472	4,854	4,854	8.5%	8.5%
February	3,949	7,538	4,233	8,210	4,536	9,685	5,009	9,753	4,755	9,496	4,590	9,062	4,803	9,657	4.6%	6.6%
March	4,449	11,987	4,585	12,795	4,844	14,529	5,436	15,189	4,852	14,348	4,877	13,939	5,180	14,837	6.2%	6.4%
April	2,503	14,490	3,149	15,944	2,920	17,449	2,959	18,148	3,213	17,561	3,186	17,125	3,261	18,098	2.4%	5.7%
May	1,806	16,296	1,969	17,913	2,169	19,618	2,246	20,394	2,100	19,661	2,024	19,149	2,053	20,151	1.4%	5.2%
June	2,392	18,688	2,584	20,497	2,822	22,440	2,990	23,384	2,643	22,304	2,682	21,831	2,757	22,908	2.8%	4.9%
July	3,414	22,102	3,588	24,085	3,899	26,339	4,264	27,648	3,881	26,185	3,999	25,830	4,219	27,127	5.5%	5.0%
August	3,292	25,394	3,529	27,614	3,771	30,110	4,161	31,809	3,807	29,992	3,896	29,726	4,271	31,398	9.6%	5.6%
September	2,671	28,065	2,757	30,371	2,908	33,018	3,113	34,922	2,864	32,856	2,955	32,681	3,278	34,676	10.9%	6.1%
October	2,239	30,304	2,372	32,743	2,494	35,512	2,673	37,595	2,408	35,264	2,488	35,169	0	34,676	n/a	n/a
November	2,214	32,518	2,377	35,120	2,600	38,112	2,647	40,242	2,379	37,643	2,422	37,591	0	34,676	n/a	n/a
December	6,356	38,874	6,604	41,724	8,028	46,140	7,705	47,947	7,234	44,877	7,432	45,023	0	34,676	n/a	n/a
Totals	38,874		41,724		46,140		47,947		44,877		45,023		34,676			

2011 Monthly Sales Tax Activity (in thousands of dollars)



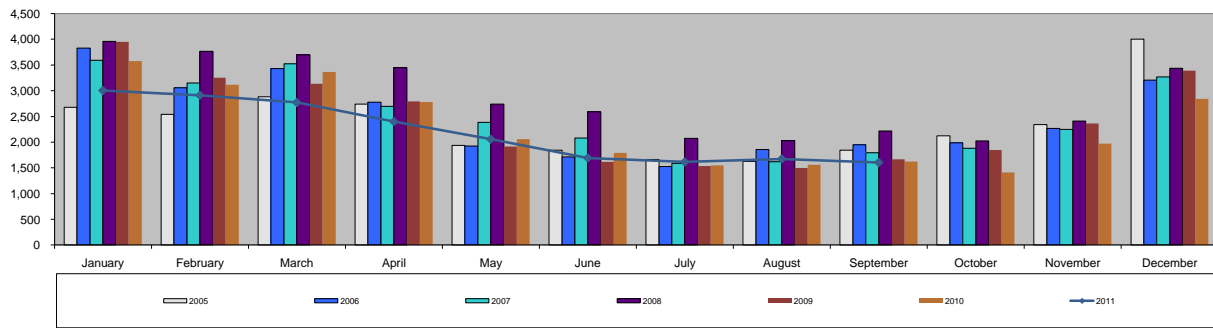
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Utilities

	2005		2006		2007		2008		2009		2010		2011		Monthly 10-11	YTD 10-11
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	2,675	2,675	3,829	3,829	3,591	3,591	3,961	3,961	3,950	3,950	3,577	3,577	3,004	3,004	-16.0%	-16.0%
February	2,540	5,215	3,056	6,885	3,149	6,740	3,765	7,726	3,253	7,203	3,118	6,695	2,913	5,917	-6.6%	-11.6%
March	2,883	8,098	3,428	10,313	3,525	10,265	3,699	11,425	3,134	10,337	3,365	10,060	2,772	8,689	-17.6%	-13.6%
April	2,741	10,839	2,778	13,091	2,694	12,959	3,448	14,873	2,792	13,129	2,779	12,839	2,400	11,089	-13.6%	-13.6%
May	1,939	12,778	1,926	15,017	2,386	15,345	2,742	17,615	1,917	15,046	2,057	14,896	2,057	13,146	0.0%	-11.7%
June	1,846	14,624	1,713	16,730	2,078	17,423	2,588	20,203	1,620	16,666	1,793	16,689	1,693	14,839	-5.6%	-11.1%
July	1,663	16,287	1,529	18,259	1,588	19,011	2,075	22,278	1,539	18,205	1,548	18,237	1,614	16,453	4.3%	-9.8%
August	1,629	17,916	1,854	20,113	1,621	20,632	2,031	24,309	1,497	19,702	1,558	19,795	1,673	18,126	7.4%	-8.4%
September	1,843	19,759	1,949	22,062	1,792	22,424	2,219	26,528	1,667	21,369	1,625	21,420	1,604	19,730	-1.3%	-7.9%
October	2,127	21,886	1,987	24,049	1,883	24,307	2,026	28,554	1,845	23,214	1,412	22,832	0	19,730	n/a	n/a
November	2,340	24,226	2,264	26,313	2,251	26,558	2,411	30,965	2,364	25,578	1,972	24,804	0	19,730	n/a	n/a
December	4,005	28,231	3,206	29,519	3,271	29,829	3,435	34,400	3,389	28,967	2,845	27,649	0	19,730	n/a	n/a
Totals	28,231		29,519		29,829		34,400		28,967		27,649		19,731			

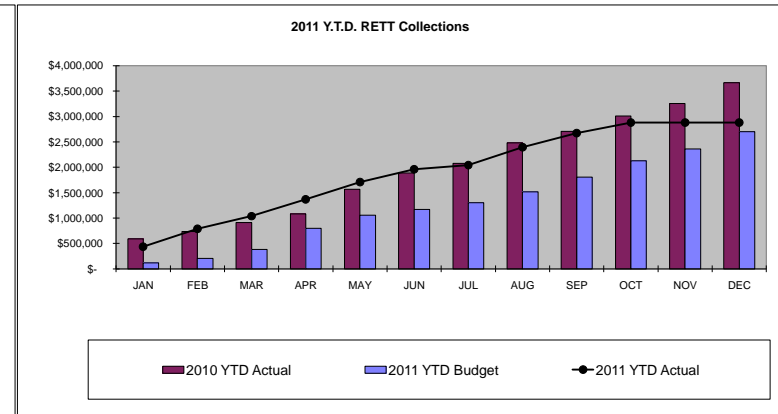
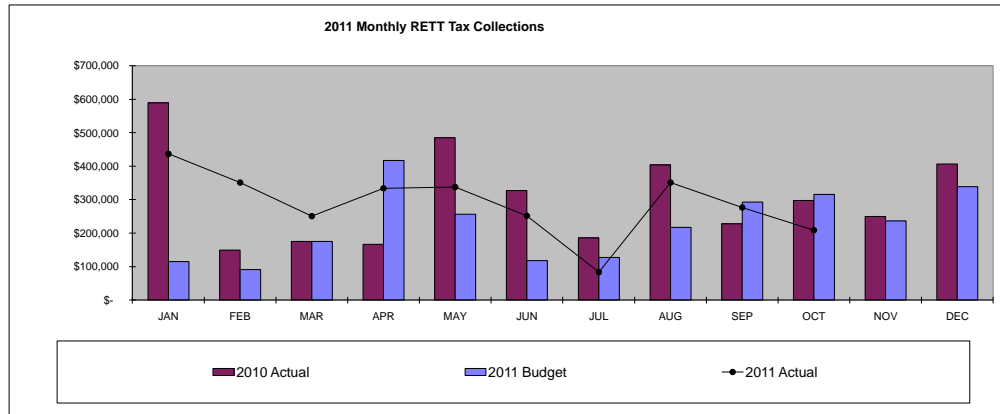
2011 Monthly Sales Tax Activity (in thousands of dollars)



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

Sales Period	2007 Collections			2010 Collections			2011 Budget			2011 Monthly				2011 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%	\$ 436,605	378.5%	23.7%	-25.9%	\$ 436,605	378.5%	23.7%	-25.9%
FEB	342,995	695,953	12.3%	149,303	738,178	20.2%	90,951	206,306	7.6%	350,866	385.8%	2.3%	135.0%	787,471	381.7%	13.2%	6.7%
MAR	271,817	967,770	17.1%	175,161	913,339	24.9%	175,256	381,562	14.1%	250,986	143.2%	-7.7%	43.3%	1,038,457	272.2%	7.3%	13.7%
APR	564,624	1,532,394	27.0%	167,038	1,080,377	29.5%	417,147	798,708	29.6%	333,424	79.9%	-40.9%	99.6%	1,371,881	171.8%	-10.5%	27.0%
MAY	533,680	2,066,074	36.4%	484,618	1,564,995	42.7%	256,110	1,054,819	39.1%	337,577	131.8%	-36.7%	-30.3%	1,709,458	162.1%	-17.3%	9.2%
JUN	522,999	2,589,073	45.6%	326,779	1,891,775	51.6%	117,793	1,172,611	43.4%	251,806	213.8%	-51.9%	-22.9%	1,961,263	167.3%	-24.2%	3.7%
JUL	343,610	2,932,683	51.7%	186,067	2,077,841	56.7%	127,768	1,300,380	48.2%	83,522	65.4%	-75.7%	-55.1%	2,044,785	157.2%	-30.3%	-1.6%
AUG	594,349	3,527,032	62.1%	404,004	2,481,846	67.8%	217,061	1,517,440	56.2%	350,730	161.6%	-41.0%	-13.2%	2,395,515	157.9%	-32.1%	-3.5%
SEP	711,996	4,239,028	74.7%	227,440	2,709,285	74.0%	292,261	1,809,701	67.0%	276,774	94.7%	-61.1%	21.7%	2,672,289	147.7%	-37.0%	-1.4%
OCT	392,752	4,631,779	81.6%	297,809	3,007,094	82.1%	316,040	2,125,742	78.7%	208,831	66.1%	-46.8%	-29.9%	2,881,120	135.5%	-37.8%	-4.2%
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	0.0%	2,881,120	122.0%	-43.4%	-11.5%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 406,078	\$ 3,662,755	100.0%	\$ 338,238	\$ 2,700,002	100.0%	0.0%	n/a	n/a	0.0%	\$ 2,881,120	106.7%	-49.2%	-21.3%

October RETT #s through 10/18/2011

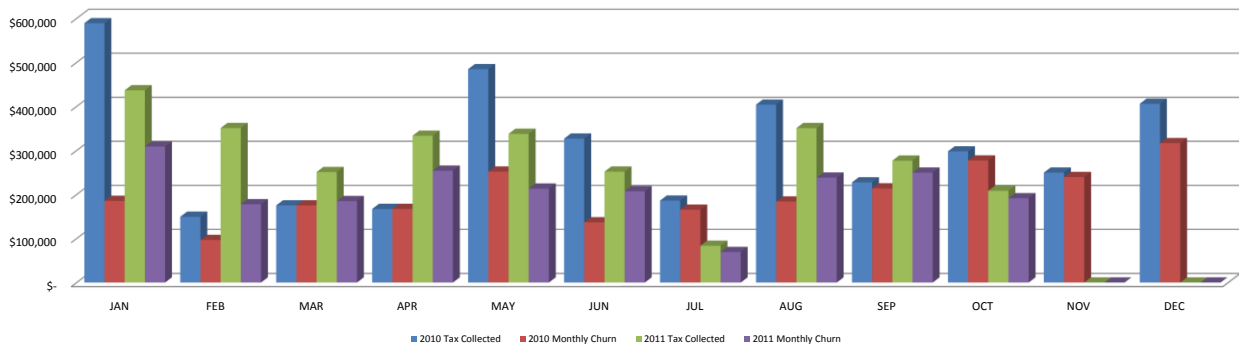


**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX CHURN
REPORTED IN THE PERIOD EARNED**

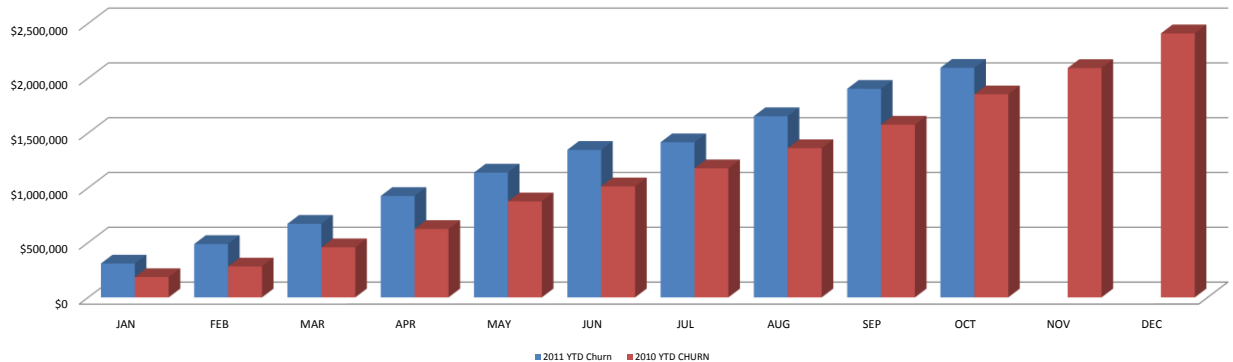
Sales Period	Tax Collected	Year To Date	2010 Collections					Monthly Churn	YTD Churn	% of YTD Total
			New Construction							
			Beaver Run	Grand Lodge	1 Ski Hill	Water House	Other			
JAN	\$ 588,874	\$ 588,874	0	403,514	0	0	\$ 185,361	\$185,361	31.5%	
FEB	\$ 149,303	\$ 738,178	0	52,748	0	0	\$ 96,555	\$281,915	38.2%	
MAR	\$ 175,161	\$ 913,339	0	0	0	0	\$ 175,161	\$457,077	50.0%	
APR	\$ 167,038	\$ 1,080,377	0	0	0	0	\$ 167,038	\$624,115	57.8%	
MAY	\$ 484,618	\$ 1,564,995	0	0	232,663	0	\$ 251,955	\$876,070	56.0%	
JUN	\$ 326,779	\$ 1,891,775	0	0	189,994	0	\$ 136,786	\$1,012,856	53.5%	
JUL	\$ 186,067	\$ 2,077,841	0	0	20,767	0	\$ 165,300	\$1,178,157	56.7%	
AUG	\$ 404,004	\$ 2,481,846	220,000	0	0	0	\$ 184,004	\$1,362,161	54.9%	
SEP	\$ 227,440	\$ 2,709,285	0	13,758	0	0	\$ 213,682	\$1,575,843	58.2%	
OCT	\$ 297,809	\$ 3,007,094	0	20,555	0	0	\$ 277,254	\$1,853,097	61.6%	
NOV	\$ 249,583	\$ 3,256,677	0	10,065	0	0	\$ 239,517	\$2,092,614	64.3%	
DEC	\$ 406,078	\$ 3,662,755	0	43,263	10,292	35,908	\$ 316,615	\$2,409,229	65.8%	

Sales Period	Tax Collected	Year To Date	2011 Collections				Monthly Churn	YTD Budget	YTD Churn	% of YTD Total	% Change In Churn from Prior Year
			New Construction								
			Grand Lodge	1 Ski Hill	Water House	Other					
JAN	\$ 436,605	\$ 436,605	74,378	0	53,370	0	\$ 308,857	\$ 115,354	\$308,857	70.7%	66.6%
FEB	\$ 350,866	\$ 787,471	135,046	26,482	11,550	0	\$ 177,787	\$ 206,306	\$486,644	61.8%	72.6%
MAR	\$ 250,986	\$ 1,038,457	56,805	0	9,300	0	\$ 184,880	\$ 381,562	\$671,524	64.7%	46.9%
APR	\$ 333,424	\$ 1,371,881	41,651	7,296	19,170	11,300	\$ 254,006	\$ 798,708	\$925,531	67.5%	48.3%
MAY	\$ 337,577	\$ 1,709,458	87,830	36,403	0	0	\$ 213,344	\$ 1,054,819	\$1,138,875	66.6%	30.0%
JUN	\$ 251,806	\$ 1,961,263	44,417	0	0	0	\$ 207,389	\$ 1,172,611	\$1,346,264	68.6%	32.9%
JUL	\$ 83,522	\$ 2,044,785	14,277	0	0	0	\$ 69,244	\$ 1,300,380	\$1,415,508	69.2%	20.1%
AUG	\$ 350,730	\$ 2,395,515	107,470	0	0	5,050	\$ 238,210	\$ 1,517,440	\$1,653,718	69.0%	21.4%
SEP	\$ 276,774	\$ 2,672,289	27,114	0	0	0	\$ 249,660	\$ 1,809,701	\$1,903,378	71.2%	20.8%
OCT	\$ 208,381	\$ 2,880,670	2,223	0	0	14,800	\$ 191,359	\$ 2,125,742	\$2,094,737	72.7%	13.0%
NOV	\$ -	\$ 2,880,670					\$ -	\$ 2,361,764	\$2,094,737	n/a	n/a
DEC	\$ -	\$ 2,880,670					\$ -	\$ 2,700,002	\$2,094,737	n/a	n/a

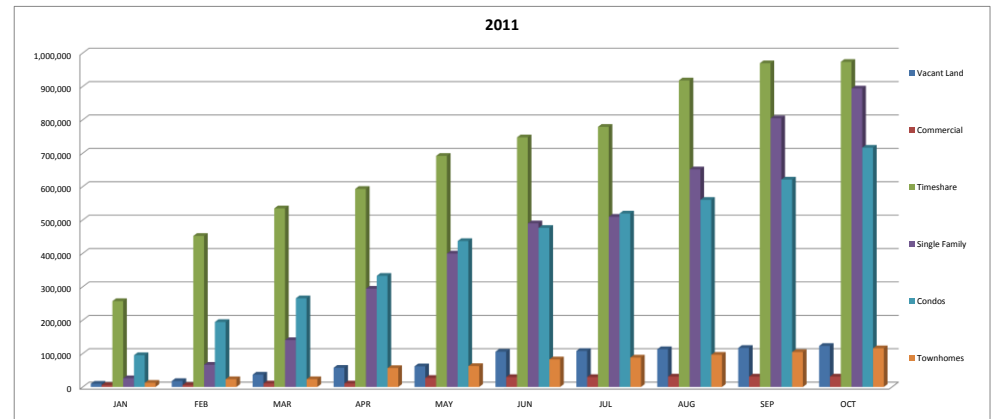
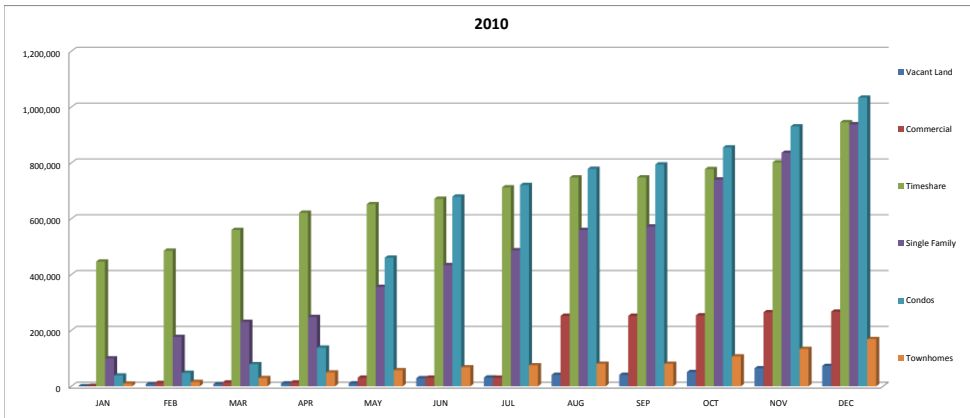
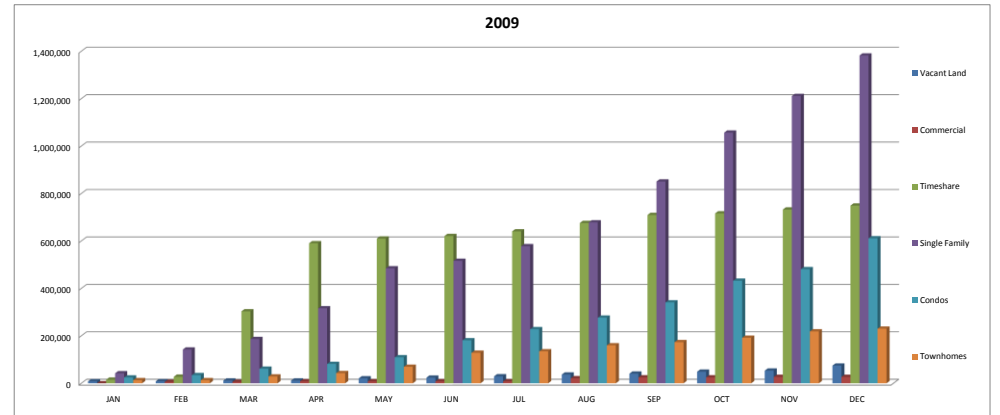
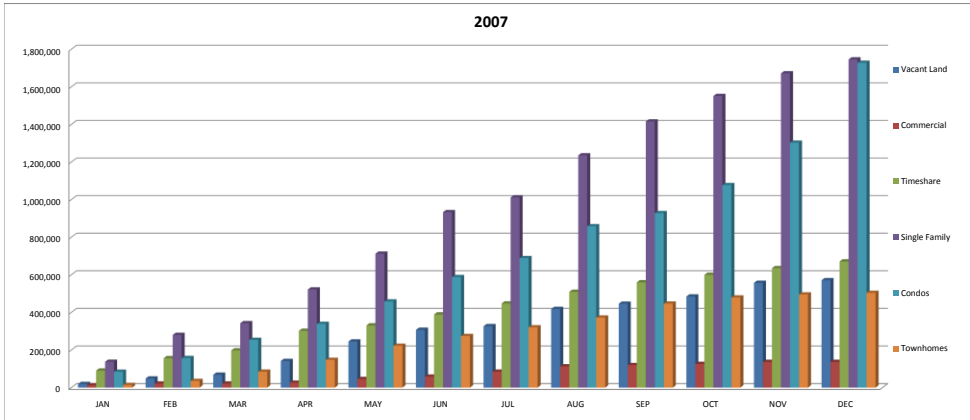
RETT Monthly Collections vs. Churn



YTD Churn Analysis

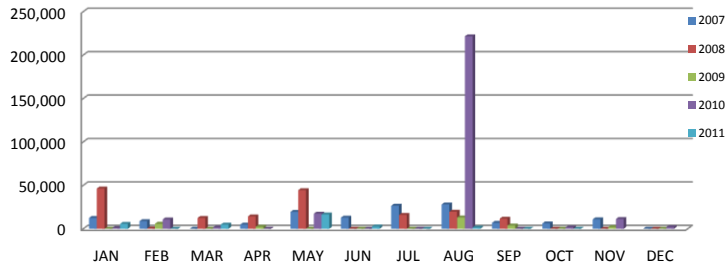


**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
YTD CATEGORIES BY MONTH**

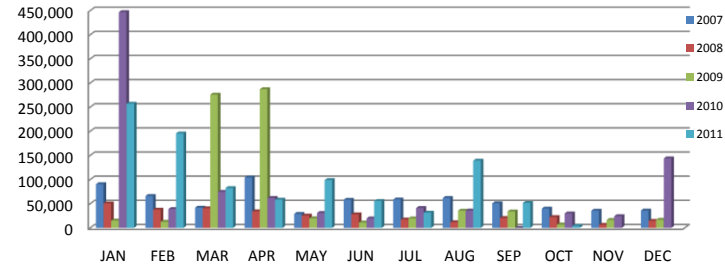


TOWN OF BRECKENRIDGE REAL ESTATE TRANSFER TAX COLLECTIONS MONTHLY BY CATEGORY

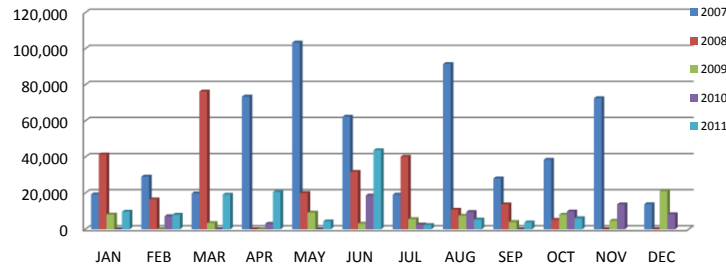
Commercial



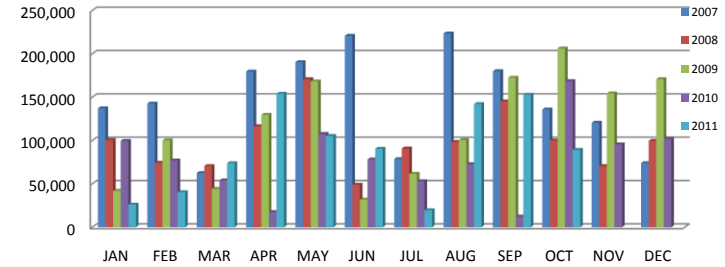
Timeshare



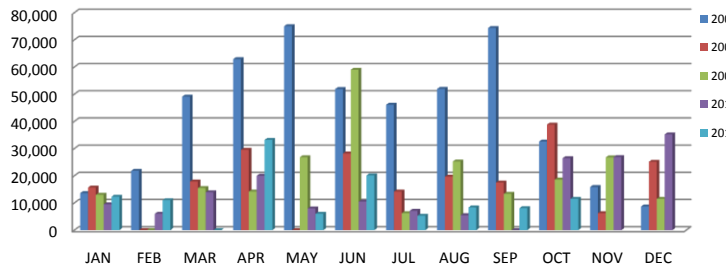
Vacant Land



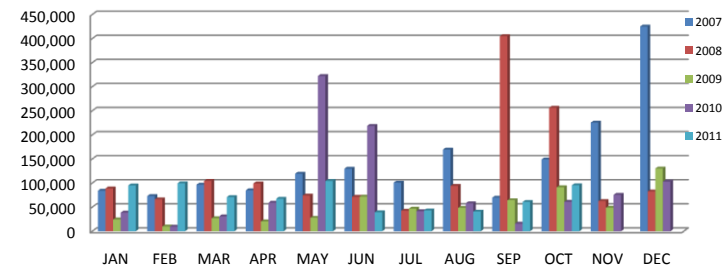
Single Family



Townhomes



Condos



TO: BRECKENRIDGE TOWN COUNCIL
FROM: BRIAN WALDES, FINANCIAL SERVICES MANAGER
SUBJECT: MCCAIN AND STILLSON SOLAR GARDEN PROJECTS
DATE: 10/28/11
CC: TIM GAGEN, KATE BONIFACE

The purpose of this memo is to update Council with respect to the two potential Solar Garden (SG) projects. The two projects are the County SG, which will be potentially located on the Stillson property, and the Breckenridge SG, which will potentially be located on Stillson or somewhere on the McCain Property.

There are currently 4 possible decision outcomes; a SG on both properties, a SG on only McCain, a SG on only Stillson, or no project on either location.

Stillson SG Status

The site plan for a Stillson SG is included herein. There is very little room for modification, as the site is restricted by a utility easement and the arrays must also be set outside the range of the power lines' shadows. The array depicted is roughly 500 kW.

Initially, the County SG project was planned to be located at the County landfill. However, land use restrictions have removed that location from consideration for this particular application process. Consequently, the County and the private developer for both projects, Clean Energy Collective (CEC), began researching other potential locations. The Stillson property had previously been identified as a potential location for the Breckenridge SG. Site analysis concluded the Stillson property could not accommodate the 2 mW array the Town is contemplating. Instead, this site can fit around 500 kW, which is the size that the County was looking to put in at the landfill.

Council expressed interest in being an anchor tenant for this project at the September 13, 2011, work session. The Town has executed an LOI with CEC to that end. Making the Stillson property available for this project would enable CEC and the County to move forward. It is doubtful they could continue without Stillson.

Stillson still remains as an option for a Town solar garden if the decision is made to not proceed with McCain.

The Stillson SG site design went before Planning Commission on 11-1-11 as a work session item. The Commission feels the screening is adequate and has no other negative concerns about this location. One commissioner did express the opinion that landscaping should be improved on the extant berm.

McCain SG Status

There are several outstanding issues regarding the Town's 2mW SG project that staff addresses in this packet.

The Breckenridge SG went before Planning Commission on October 18th. The Commission expressed great enthusiasm for a Solar Garden project in Breckenridge, but had concerns about the screening of the array at its potential location on McCain. As a result of this feedback, Staff obtained from CEC a written commitment to adequately screen the array at any location (attached). A revised staff report on the McCain SG project is included in the Planning Matters portion of this packet.

Attached is the last depiction of the McCain master plan that was not adopted by the Council. Also attached are 2 renderings of the McCain property (Option 1 and Option 2) with potential SG locations. They depict not only the location of the 2 mW array, but also the other programming for the site that has been contemplated. These uses include;

1. Solar Array
2. Reservoir
3. Parking
4. Service Commercial Area
5. Snow Storage
6. Public Works Storage
7. Alpine Rock Processing
8. River Corridor

The property currently owned by Alpine Rock is bordered in red(25 acres). The red shaded area represents the 5 acres Alpine Rock will retain for its processing plant if the Town exercises its purchase option after 10 years. The Town does have the right to purchase this property from Alpine with a two year notice. Some of the programming (snow storage in option 1 and SG in option 2) overlaps with this Alpine property. The assumption is that those uses for the property would not begin until the property has been purchased by the Town, i.e. in no less than 2 years.

Option 1

This rendering shows the SG occupying 10 acres, which would allow for a 2 mW array. The other potential programming locations for the site are labeled on the map. This arrangement would place the array and the snow storage area north of a potential reservoir and parking area. If a 1 mW array were to be selected then less than 10 acres would be needed.

Option 2

Option 2 places the SG closer to the highway in an area that could provide better screening and conflict less with the future planning of the rest of McCain, but would currently only allow a maximum of 1 mW capacity. The reservoir would then be north of the snow storage area.

At this point in time Council needs to make a decision in regard to a commitment to placing an array at one of these locations on McCain. We do not have to pick which one right now, but we do have to commit to CEC that we will allow the array somewhere on McCain if the process is to continue.

With this assurance, CEC can proceed in crafting a proposal to Xcel. Without such commitment from the Town, CEC would understandably be very hesitant to proceed.

There are issues around the current lease status on the McCain property. Once staff receives from Council a preferred location, we are confident these issues can be resolved in a relatively short time frame in order to allow the proposal process to proceed.

Conclusion

The decision currently before Council is if we can commit to the placement of arrays at one or both of these locations. The exact location on McCain does not have to be decided at this time. However, the commitment to placing these arrays at these locations does need to be made if the proposal to Xcel is to take place. The designation of either location as a “County” or “Town” solar garden can be determined at a later time. The fact is that either SG would be owned by CEC, and, as the lessor of the land, the Town can make arrangements with CEC for how the SG will be allocated.

Please keep in mind that there are many other steps remaining before either one of these projects is a ‘done deal’. Council’s approval of location(s) for the projects is necessary for the process to continue, but in no way guarantees we will have a project next summer.



CENTERLINE WELLINGTON ROAD

70.00'

ACCESS EASEMENT
RECEPTION No. 132224

N 74°29'00" W 753.50' (D)
N 74°21'21" W 758.82' (C & M)

PUBLIC SERVICE COMPANY
OF COLORADO

P.S.CO. ELECTRIC EASEMENT
RECEPTION No. 172557

HIGH-TENSION TOWER

MYRTLE ANNIE LODE

70.45' (D)

70.00' (D)



Date: October 26, 2011

To: Town of Breckenridge Staff, Planning Commission and Council

From: The Clean Energy Collective

Re: Landscaping for McCain Property Community Solar Garden

The CEC would like to communicate with all parties involved in permitting the McCain parcel Community Solar Garden that we agree to install landscaping. We paid close attention to the comments made by Planning Commission at the October 18th meeting and plan to find a solution that will work for all parties to the maximum extent possible. CEC will work with staff to design a visually and cost effective solution.

We appreciate the Town's review and consideration of the project.



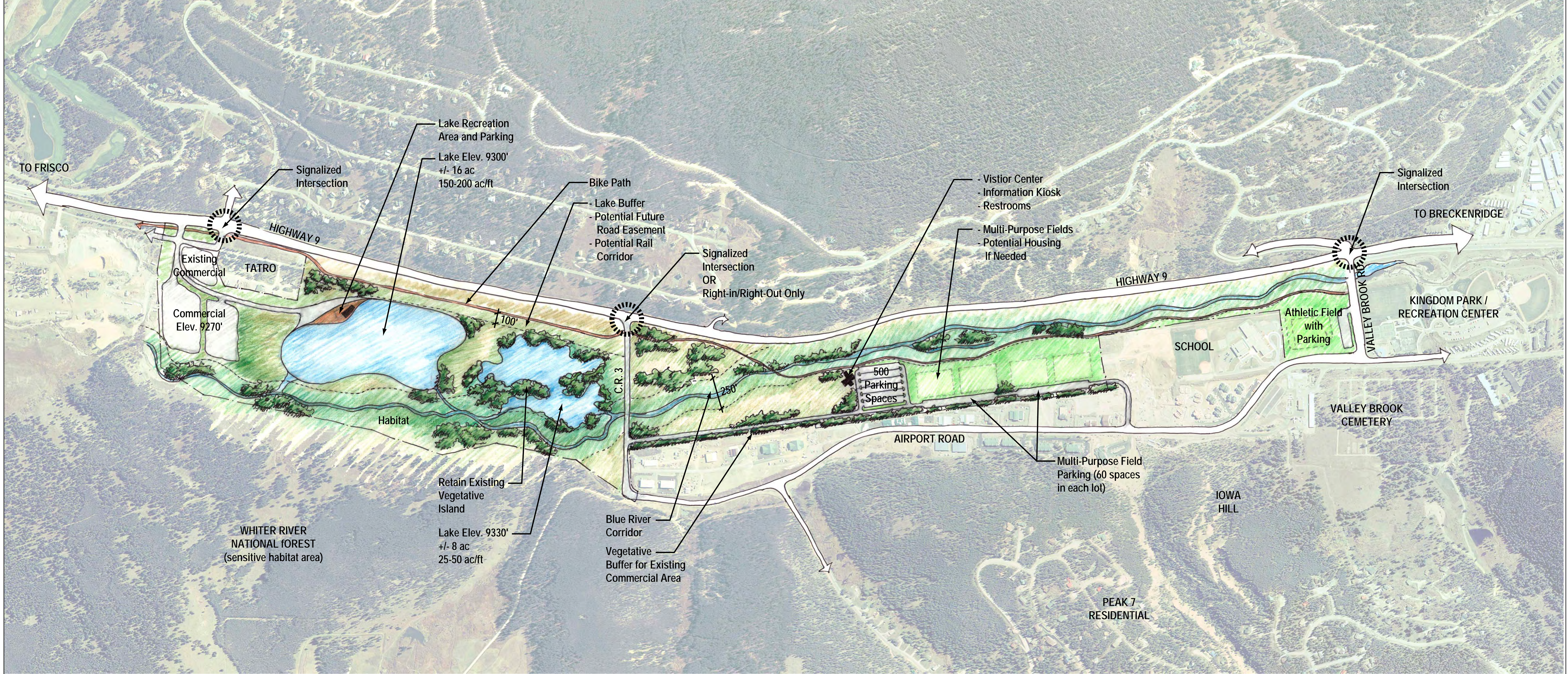
The Clean Energy Collective is a new idea in power generation. A member-owned cooperative venture that builds and operates centralized clean power-generation facilities at the community level.

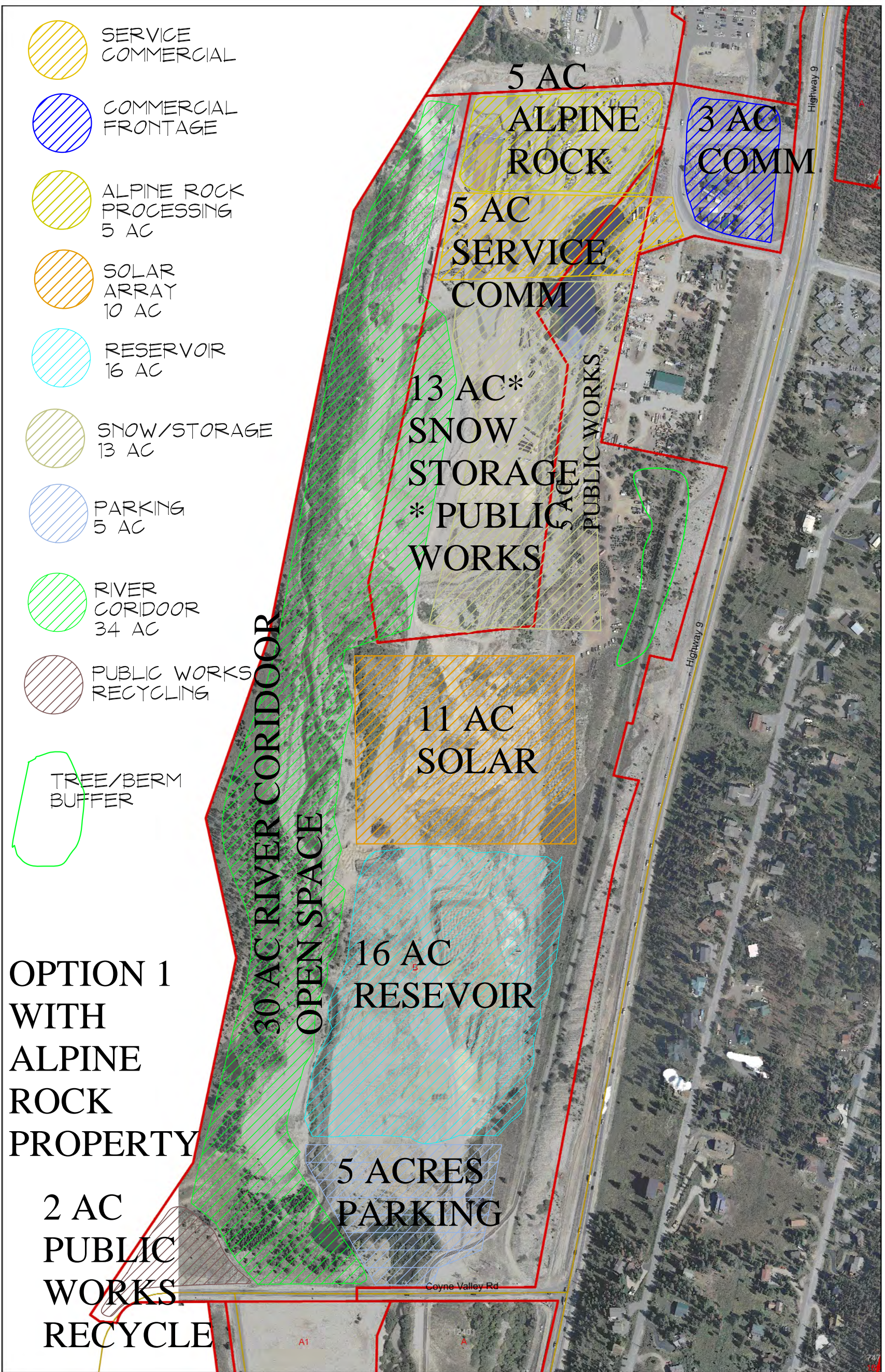
go ahead. power up.



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B L O C K 1 1 - M c C A I N P R O P E R T Y P R E F E R R E D P L A N





SERVICE COMMERCIAL

COMMERCIAL FRONTAGE

ALPINE ROCK PROCESSING
5 AC

SOLAR ARRAY
10 AC

RESERVOIR
16 AC

SNOW/STORAGE
13 AC

PARKING
5 AC

RIVER CORRIDOR
34 AC

PUBLIC WORKS RECYCLING

TREE/BERM BUFFER

OPTION 1 WITH ALPINE ROCK PROPERTY

2 AC PUBLIC WORKS RECYCLE

30 AC RIVER CORRIDOR
OPEN SPACE

5 AC ALPINE ROCK

3 AC COMM.

5 AC SERVICE COMM

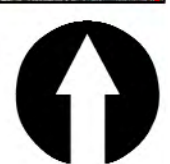
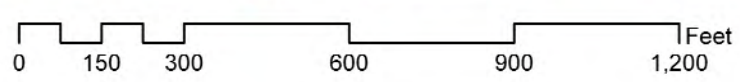
13 AC* SNOW STORAGE * PUBLIC WORKS

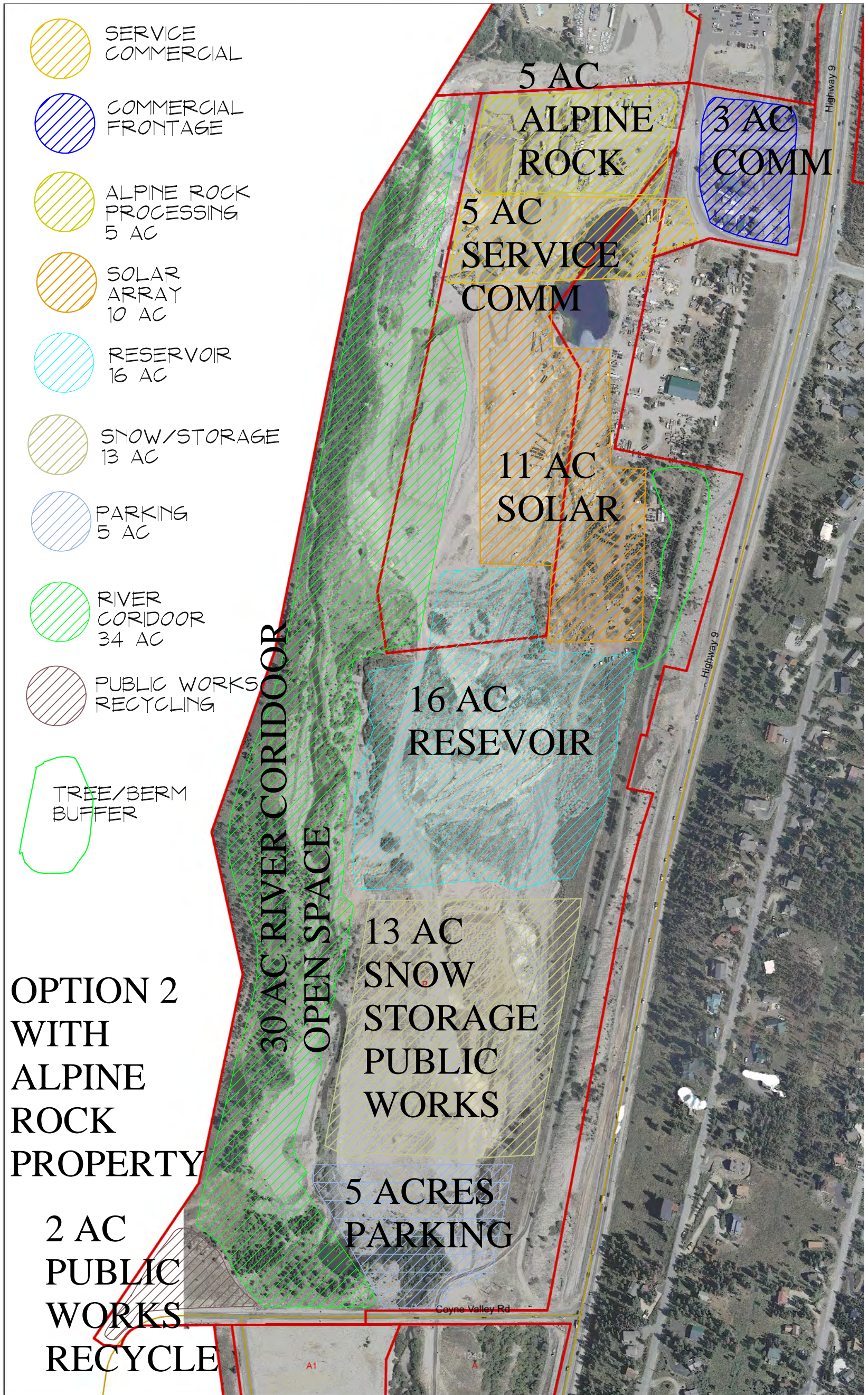
11 AC SOLAR

16 AC RESEVOIR

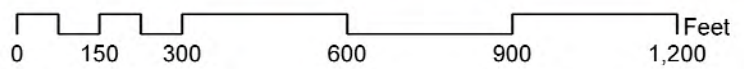
5 ACRES PARKING

McCAIN





McCAIN



Town Council Staff Report

Project Manager: Julia Puester, AICP

Date: October 28, 2011 (For meeting of November 8, 2011)

Subject: McCain Solar Garden (Public Project; PC#2011065)

Applicant/Owner: Town of Breckenridge

Agent: Brian Waldes, Finance Director, Town of Breckenridge

Proposal: A proposal to install a 2 megawatt photovoltaic (PV) solar garden on a 10 acre portion of the McCain property. The proposed solar panels would consist of approximately 8,333 panels in 27-30 rows and produce approximately 3,000,000 kWh of energy per year.

The proposed solar panels would be managed by Clean Energy Collective (CEC). CEC would sell panels to residents and businesses within the entire Summit County area, who would pay the upfront cost of the panels purchased. In turn, Xcel Energy would credit the purchaser's Xcel bill monthly for their share of the value of the energy produced.

Address: 12920 CO Highway 9 (north of Coyne Valley Road and west of CO Highway 9)

Legal Description: McCain Property (A resubdivision of B&L MS 14044, Annie MS 14044, Bryan Placer MS 14025 & Fairview Placer MS 13660)

Site Area: 10 acres of the 102 acre site

Land Use District: 43: Recreational, Open Space, Governmental Uses, Mining

Site Conditions: This 10 acre portion of the site is stepped with two primary differing grades and covers previously disturbed dredged area. The Blue River is located to the west and the Highway and Summit County bike path to the east. The northern half of the location has an existing berm, and some mature lodge pole pine trees toward the southern half of the eastern property line.

Adjacent Uses: North: Alpine Rock Processing Plant and service commercial land uses
South: Coyne Valley Rd/Colorado Mountain College
East: CO Highway 9/Silver Shekel Subdivision
West: Red Tail Ranch Subdivision/ US Forest Service

Height: Recommended: No more than 2 full stories
Proposed: 13'-15' structure height of panels on mounting system

Lot Coverage: Building / non-Permeable: 0 sq. ft. (0% of site)
Hard Surface / non-Permeable: 0 sq. ft. (0% of site)

Setbacks:	Front:	200 ft.
	Side:	800 ft.
	Side:	20 ft.
	Rear:	450 ft.

Staff Comments

This project does not include the construction of any buildings, and hence does not affect the allowed density, mass or parking. It also does not create additional paved surfaces, and will not affect drainage. It also has no impact on the need for employee housing. This report will not discuss any of these items, which do not apply to the application.

The exact siting of the solar garden as shown may change as the Town Council reviews the plan and evaluates future uses for the site and the Town determines any limitations imposed by existing and renegotiated leases throughout the McCain property. At the November 8th Town Council meeting, staff will provide additional information and potential options for alternative locations of the panels on the McCain property.

If approved to move forward with an application on the McCain property, the Town will be submitting a Request for Proposal (RFP) to Xcel Energy with this preliminary information for their selection process. Should the Town’s solar garden project be selected, we will move forward on finalizing the exact location of the panels on the site.

Public Projects Process

Since this is a public project, the Planning Commission reviewed the proposal for compliance with applicable policies, and had discussion and made a recommendation to the Town Council which has been included in the Council packet. The Planning Commission denied the project on October 18th based on a failing point analysis.

Land Use (Policies 2/A & 2/R): Land Use District 43 was created in 2003 to allow for recreational, open space, governmental uses, and mining and processing operations. Staff believes the solar garden is a governmental use which would benefit the community that could be allowed in Land Use District 43.

Architectural Compatibility (5/A): This policy addresses issues of architectural compatibility of buildings, as well as solar panel installations. The policy identifies a priority preference list for the location and type of solar panels. Following are the preference order for solar panels outside the conservation district:

Outside of the Conservation District a solar device shall be located based upon the following order of preference. Preference 1 is the highest and most preferred; preference 6 is the lowest and least preferred. A solar device shall be located in the highest preference possible. The order of preference for the location of a solar device outside of the Conservation District is as follows:

- (1) as a building-integrated photo-voltaic device;*
- (2) flush mounted (9” above the roofline) panel on an accessory structure roof, **or as a detached array of solar devices;***
- (3) flush mounted roof panel on the primary structure or screened detached array;*

- (4) a tilted roof mounted panel that is not highly visible from the public right of way;
 - (5) a tilted or angled and tilted roof mounted panel that is not highly visible from the public right of way; and
 - (6) a tilted or angled and tilted roof mounted panel that is highly visible from the public right of way.
- (Emphasis added)**

This policy also considers the visibility of solar panels from adjacent properties and from public rights-of-way. It encourages that visibility of panels be reduced to the extent possible.

(e) The location of detached solar devices shall also consider visibility from adjacent properties and public right of way, which shall be reduced to the extent possible while still maintaining solar access. Detached solar devices which serve the structure on the site may be located outside of the building or disturbance envelope if no significant existing vegetation must be removed for the installation and an adequate buffer is provided to adjacent properties.

As this is a benched site on the valley floor, the primary visibility from adjacent properties would be from those looking down onto the site. The intent of this policy is to encourage solar panels in the locations that have the least visual impact on the community and adjacent properties while still maintaining good solar access. In this case, there is an ability to provide some additional screening with trees and/or increasing the height of the existing berm, to improve screening from the Highway which sits above the site. CEC has submitted a letter which states that they are willing to work with staff on a landscape plan once a location has been selected.

It would be much more difficult to screen the solar garden from properties that look down onto the site from the adjacent subdivision of Silver Shekel. (Public notice was mailed out to property owners within 300' of the McCain property and the property was posted for the Planning Commission hearing).

Site and Environmental Design (7/R): This policy encourages design that is compatible with the natural features of a site, including topography and vegetation. It also encourages projects to provide visual buffering, and to limit the amount of paved surfaces, as well as to avoid development on physically constraining portions of the site.

2X(-2/+2) A. Site Design And Grading: In order to reduce the amount of site disturbance, including vegetative removal, developments should be designed in a manner that minimizes the amount of cut and fill on a site, particularly those areas visible from adjacent properties and rights of way. Placement of buildings on the site should be accomplished in a manner that further minimizes new grading and any vegetative removal necessary for site access and drainage. Grading large areas to create a flat "benched" building pad is strongly discouraged unless disruption is planned to be minimized with a mechanical shoring method. The town must approve any such plan.

The site will need to be graded flat in order to install the solar panels. This site is already disturbed by historic dredge activity and mining. It is currently a benched site, with two differing primary grades. Based on past precedent, no negative points have been assigned for grading on sites which have been disturbed by historic dredge and mining operations. Staff recommended that no negative points are applicable under this section of Policy 7/R and the Planning Commission concurred.

4X(-2/+2) B. Site Buffering: Developments should be buffered from adjacent properties and public rights of way. To achieve this, buildings and other development impacts should be located in a manner that allows for site buffering (existing or proposed). Buffering between the

developments and neighboring properties may include, but are not limited to:

- *Existing mature tree stands.*
- ***The physical distance from property edge to the development.***
- *New landscaping.*
- *Landscaped berms at the property perimeter.*
(Emphasis added)

Providing greater buffers than those required by building envelopes, disturbance envelopes, designated building locations, and/or recommended setbacks are encouraged. However, positive points awarded under this portion of this policy for new landscaping or landscaped berms shall not be awarded positive points under Policy 22 (Relative)(Landscaping) of this Chapter.

The proposed panels will be visible from CO Highway 9 with some screened sections to the 10 acre portion of the parcel. The site sits well below the grade of the Highway. The northern half of the location is partially buffered by an existing berm on the east, providing some screening from the Summit County bike path but is not high enough to screen from the highway. The southern half of the site has some mature lodge pole pine trees to the east which will provide some screening from the highway.

As proposed, the panels would be located approximately 200 feet from the right of way, providing a relatively large distance from the property edge to the improvements. Based on this policy, staff recommended the assignment of negative four (-4) points as much of the solar garden will be visible. The Planning Commission changed the point analysis to a negative eight (-8) points, resulting in a failing point analysis.

Staff believes that with the addition of landscaping, as CEC has committed to providing since the Planning Commission hearing, no negative points would be warranted. This would result in a passing point analysis for the project.

Placement of Structures (9/A & 9/R): As a non-residential project, the proposed solar panels are not required to meet a specific setback from the property line. The panels would remain on Town owned property, and would not encroach into any adjacent property. The closest property line to the proposed panels is the Alpine Rock property to the north. The panels would be approximately 20 feet from the northern property line, adjacent to Alpine Rock.

Snow Removal and Storage (13/R): The proposed panels would be raised above grade and the rows of panels would be spaced at least 20 feet apart to facilitate snow removal from snow sliding off of the panels. Neither staff nor the Planning Commission had concerns with the snow removal or snow storage.

Landscaping (22/A & 22/R): This policy encourages developments to maintain healthy trees and to provide landscape improvements for the purposes of: complementing the natural landscape and retaining the sense of a mountain environment; improving the general appearance of the community and enhancing its aesthetic appeal; preserving the economic base; improving the quality of life; delineating and separating use areas; increasing the safety, efficiency, and aesthetics of use areas and open space; screening and enhancing privacy; mitigating the adverse effects of climate, aspect, and elevations; conserving energy; abating erosion and stabilizing slopes; deadening sound; and preserving air and water quality.

2 x (-1/+3) A. All developments are strongly encouraged to include landscaping improvements that exceed the requirements of Policy 22 (Absolute), "Landscaping", of this Chapter. New landscaping installed as part of an approved landscape plan should enhance forest health, preserve the natural landscape and wildlife habitat and support fire-wise practices. A layered landscape consistent with the Town's mountain character, achieved through the use of ground covers, shrubs, and trees that utilize diverse species and larger sizes where structures are screened from view sheds, public rights of way and other structures, is strongly encouraged. The resulting landscape plan should contribute to a more beautiful, safe, and environmentally sound community.

No new landscaping was proposed with the application to Planning Commission. However, as CEC has since committed to providing landscaping per staff direction, staff believes that the negative two (-2) points (which is the maximum number of negative points under this policy) would not be warranted with a revised application.

Social Community / Community Needs (24/R): Each year the Town Council identifies its yearly goals and objectives in a list called Council Goals.

3 x (0/+2) B. *Community Need: Developments which address specific needs of the community which are identified in the yearly goals and objectives report are encouraged. Positive points shall be awarded under this subsection only for development activities which occur on the applicant's property.*

The most recent Council Goals identify using renewable sources of energy as one of its priorities, and the proposed solar panels help to meet that goal. In addition to these priorities, the Town Council recently adopted the SustainableBreck Plan. The Plan, which was reviewed on numerous occasions by the Planning Commission and Council, went through an extensive public review process resulting in numerous goals and actions related to pursuing renewable energy and reducing the Town's carbon footprint. The complete section from the Resource Conservation section has been included in the packet for the Council's review. (Link to view the entire SustainableBreck Plan from the Town website: <http://www.townofbreckenridge.com/index.aspx?page=968>). In particular, the following actions from the Resource Conservation section of the Plan are directly related to the proposed project:

Actions to be Undertaken within the Next Year

5. Installation of solar panels on public buildings and properties

Long term actions

13. Explore the establishment of a community solar garden and explore other opportunities to develop large solar arrays outside of the downtown core

At the October 18th Planning Commission meeting, positive six (+6) points were recommended which is the maximum under this policy.

Energy Conservation (33/R): The goal of this policy is to incentivize energy conservation and renewable energy systems in new and existing development at a site plan level. This policy seeks to reduce the community's carbon footprint and energy usage and to help protect the public health, safety and welfare of its citizens.

D. Other Design Features:

1x(-2/+2) *Other design features determined by the planning commission to conserve significant amounts of energy may be considered for positive points. Alternatively, other features that use excessive amounts*

of energy may be assigned negative points.

A 2 megawatt solar garden would provide enough energy to serve approximately 300 homes. The Commission opted not to assign any positive points to the project under this policy, however, staff believes that after further discussion with the Commission on this policy regarding the Stillson Patch site worksession, positive points would also be assigned to this project.

Point Analysis (Section: 9-1-17-3): Staff believes that with the addition of landscaping and potential berms, the project would be able to pass a point analysis by *eliminating or reducing* the negative eight (-8) points under Policy 7/R Site and Environmental Design for lack of buffers, and eliminating negative two (-2) points under Policy 22/R-Landscaping for lack of new plantings. Positive points could include six (+6) points under Policy 24/R-Council Goals for the use of renewable energy and a positive two (+2) points under Policy 33/R-Energy Conservation (which the Planning Commission declined to support at the time). Depending on Planning Commission input, this could result in a passing point analysis of positive four to eight (+4 to +8) points. However, staff reiterates the difficulties of screening the site from homes which are located on the ridgelines of the Silver Shekel Subdivision.

Staff Recommendation

The Planning Commission recommended denial of the McCain Parcel Solar Garden, PC#2011065, 12920 CO Highway 9, due to failing score of negative four (-4) points with a vote of 5-1 (Mr. Lamb opposed).

The Planning Commission voiced support for the use of renewable sources of energy as an active step to reduce the Town's carbon footprint. However, due to concerns regarding the lack of landscape buffer to the site mentioned in the report above, they were uncomfortable with the application with no new landscaping.

Staff believes that this project can pass a point analysis with the addition of landscaping to buffer the site should the Town Council decided to move forward with this location.

Final Hearing Impact Analysis				
Project:	McCain Solar Garden	Positive Points	+8	
PC#:	2011065	Negative Points	- 4	
Date:	10/31/2011			
Staff:	Julia Puester			
		Total Allocation:	+4	
Items left blank are either not applicable or have no comment				
Sect.	Policy	Range	Points	Comments
1/A	Codes, Correlative Documents & Plat Notes	Complies		
2/A	Land Use Guidelines	Complies		
2/R	Land Use Guidelines - Uses	4x(-3/+2)		
2/R	Land Use Guidelines - Relationship To Other Districts	2x(-2/0)		
2/R	Land Use Guidelines - Nuisances	3x(-2/0)		
3/A	Density/Intensity	Complies		
3/R	Density/ Intensity Guidelines	5x (-2>-20)		
4/R	Mass	5x (-2>-20)		
5/A	Architectural Compatibility / Historic Priority Policies	Complies		
5/R	Architectural Compatibility - Aesthetics	3x(-2/+2)		
5/R	Architectural Compatibility / Conservation District	5x(-5/0)		
5/R	Architectural Compatibility H.D. / Above Ground Density 12 UPA	(-3>-18)		
5/R	Architectural Compatibility H.D. / Above Ground Density 10 UPA	(-3>-6)		
6/A	Building Height	Complies		
6/R	Relative Building Height - General Provisions	1X(-2,+2)		
	For all structures except Single Family and Duplex Units outside the Historic District			
6/R	Building Height Inside H.D. - 23 feet	(-1>-3)		
6/R	Building Height Inside H.D. - 25 feet	(-1>-5)		
6/R	Building Height Outside H.D. / Stories	(-5>-20)		
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
	For all Single Family and Duplex Units outside the Conservation District			
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
6/R	Minimum pitch of eight in twelve (8:12)	1x(0/+1)		
7/R	Site and Environmental Design - General Provisions	2X(-2/+2)		
7/R	Site and Environmental Design / Site Design and Grading	2X(-2/+2)		
7/R	Site and Environmental Design / Site Buffering	4X(-2/+2)	- 4	Although landscaping is proposed, panels will be slightly visible from CO Highway 9 and uphill properties.
7/R	Site and Environmental Design / Retaining Walls	2X(-2/+2)		
7/R	Site and Environmental Design / Driveways and Site Circulation Systems	4X(-2/+2)		
7/R	Site and Environmental Design / Site Privacy	2X(-1/+1)		
7/R	Site and Environmental Design / Wetlands	2X(0/+2)		
7/R	Site and Environmental Design / Significant Natural Features	2X(-2/+2)		
8/A	Ridgeline and Hillside Development	Complies		
9/A	Placement of Structures	Complies		
9/R	Placement of Structures - Public Safety	2x(-2/+2)		
9/R	Placement of Structures - Adverse Effects	3x(-2/0)		
9/R	Placement of Structures - Public Snow Storage	4x(-2/0)		
9/R	Placement of Structures - Setbacks	3x(0/-3)		
12/A	Signs	Complies		
13/A	Snow Removal/Storage	Complies		
13/R	Snow Removal/Storage - Snow Storage Area	4x(-2/+2)		
14/A	Storage	Complies		
14/R	Storage	2x(-2/0)		
15/A	Refuse	Complies		
15/R	Refuse - Dumpster enclosure incorporated in principal structure	1x(+1)		
15/R	Refuse - Rehabilitated historic shed as trash enclosure	1x(+2)		
15/R	Refuse - Dumpster sharing with neighboring property (on site)	1x(+2)		
16/A	Internal Circulation	Complies		
16/R	Internal Circulation / Accessibility	3x(-2/+2)		
16/R	Internal Circulation - Drive Through Operations	3x(-2/0)		
17/A	External Circulation	Complies		
18/A	Parking	Complies		
18/R	Parking - General Requirements	1x(-2/+2)		
18/R	Parking-Public View/Usage	2x(-2/+2)		
18/R	Parking - Joint Parking Facilities	1x(+1)		
18/R	Parking - Common Driveways	1x(+1)		
18/R	Parking - Downtown Service Area	2x(-2/+2)		

19/A	Loading	Complies		
20/R	Recreation Facilities	3x(-2/+2)		
21/R	Open Space - Private Open Space	3x(-2/+2)		
21/R	Open Space - Public Open Space	3x(0/+2)		
22/A	Landscaping	Complies		
22/R	Landscaping	2x(-1/+3)		Complies with the addition of landscaping by CEC
24/A	Social Community	Complies		
24/R	Social Community - Employee Housing	1x(-10/+10)		
24/R	Social Community - Community Need	3x(0/+2)	+6	Use of renewable sources of energy for the community are a priority for the Town Council.
24/R	Social Community - Social Services	4x(-2/+2)		
24/R	Social Community - Meeting and Conference Rooms	3x(0/+2)		
24/R	Social Community - Historic Preservation	3x(0/+5)		
24/R	Social Community - Historic Preservation/Restoration - Benefit	+3/6/9/12/15		
25/R	Transit	4x(-2/+2)		
26/A	Infrastructure	Complies		
26/R	Infrastructure - Capital Improvements	4x(-2/+2)		
27/A	Drainage	Complies		
27/R	Drainage - Municipal Drainage System	3x(0/+2)		
28/A	Utilities - Power lines	Complies		
29/A	Construction Activities	Complies		
30/A	Air Quality	Complies		
30/R	Air Quality - wood-burning appliance in restaurant/bar	-2		
30/R	Beyond the provisions of Policy 30/A	2x(0/+2)		
31/A	Water Quality	Complies		
31/R	Water Quality - Water Criteria	3x(0/+2)		
32/A	Water Conservation	Complies		
33/R	Energy Conservation - Renewable Energy Sources	3x(0/+2)		
33/R	Energy Conservation - Energy Conservation	3x(-2/+2)		
33/R	HERS index for Residential Buildings			
33/R	Obtaining a HERS index	+1		
33/R	HERS rating = 61-80	+2		
33/R	HERS rating = 41-60	+3		
33/R	HERS rating = 19-40	+4		
33/R	HERS rating = 1-20	+5		
33/R	HERS rating = 0	+6		
33/R	Commercial Buildings - % energy saved beyond the IECC minimum standards			
33/R	Savings of 10%-19%	+1		
33/R	Savings of 20%-29%	+3		
33/R	Savings of 30%-39%	+4		
33/R	Savings of 40%-49%	+5		
33/R	Savings of 50%-59%	+6		
33/R	Savings of 60%-69%	+7		
33/R	Savings of 70%-79%	+8		
33/R	Savings of 80% +	+9		
33/R	Heated driveway, sidewalk, plaza, etc.	1X(-3/0)		
33/R	Outdoor commercial or common space residential gas fireplace (per fireplace)	1X(-1/0)		
33/R	Large Outdoor Water Feature	1X(-1/0)		
33/R	Other Design Feature	1X(-2/+2)	+2	Significant savings equivalent to 300 homes.
34/A	Hazardous Conditions	Complies		
34/R	Hazardous Conditions - Floodway Improvements	3x(0/+2)		
35/A	Subdivision	Complies		
36/A	Temporary Structures	Complies		
37/A	Special Areas	Complies		
37/R	Community Entrance	4x(-2/0)		
37/R	Individual Sites	3x(-2/+2)		
37/R	Blue River	2x(0/+2)		
37/R	Cucumber Gulch/Setbacks	2x(0/+2)		
37/R	Cucumber Gulch/Impervious Surfaces	1x(0/-2)		
38/A	Home Occupation	Complies		
39/A	Master Plan	Complies		
40/A	Chalet House	Complies		
41/A	Satellite Earth Station Antennas	Complies		
42/A	Exterior Loudspeakers	Complies		
43/A	Public Art	Complies		
43/R	Public Art	1x(0/+1)		
44/A	Radio Broadcasts	Complies		
45/A	Special Commercial Events	Complies		
46/A	Exterior Lighting	Complies		
47/A	Fences, Gates And Gateway Entrance Monuments	Complies		
48/A	Voluntary Defensible Space	Complies		



printed 10/12/2011

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

McCain

1 inch = 500 feet
 0 250 500 Feet

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2 MW PV System - 100 kW per row
Area = 750' x 600' = 10.3 acres





MEMORANDUM

TO: Town Council
FROM: Scott Reid, Open Space and Trails Planner
DATE: November 2, 2011
SUBJECT: U.S. Forest Service Scoping for Summit Huts' Weber Gulch Hut Proposal

Summit Huts Association (SHA) has proposed construction of a new backcountry hut on National Forest lands on the northeastern flank of Bald Mountain (a.k.a. Weber Gulch Backcountry Hut), to be accessed primarily via French Gulch and Sallie Barber Roads. This topic was discussed with Town Council at its June 14, 2011 meeting.

The U.S. Forest Service (USFS) has issued a scoping letter in response to the SHA proposal. The scoping process helps the USFS outline potential issues warranting further evaluation during their NEPA-based Environmental Assessment process.

Attached is the USFS scoping notice and a draft response letter for Council's review. The content of the response letter was written by Town staff based on BOSAC and Council's previous input. The scoping comment deadline is November 21, 2011, the same day as BOSAC's next regularly scheduled meeting. BOSAC reviewed this draft response letter via email prior to its inclusion in the Council packet.

Please review the attached letter and provide any comments or input you have. I look forward to discussing this matter with you on Tuesday.



File Code: 1950/2720

Date: October 24, 2011

Dear Interested Participant,

The White River National Forest (WRNF) has accepted Summit Hut Association's (SHA) application for the Weber Gulch Backcountry Hut, and is initiating a site-specific National Environmental Policy Act (NEPA) review. The first stage of the NEPA process is to solicit comments from the public through the scoping period. Details on how to comment are found at the conclusion of this scoping notice. The Purpose and Need for Action and the Proposed Action are discussed in the following sections.

SHA has submitted an application to the WRNF to initiate a NEPA analysis for a new backcountry hut on the north aspect of Baldy Mountain—referred to as the proposed Weber Gulch Backcountry Hut. SHA is a 501-(c)(3) non-profit corporation based in Breckenridge, CO. It operates four backcountry huts under special use permit from the United States Forest Service in Summit and Park counties. SHA emphasizes non-motorized, self-reliant backcountry travel and an intimate connection with the natural environment.

SCOPE OF THE PROJECT AND DECISION TO BE MADE

The Proposed Action will be analyzed within an Environmental Assessment (EA). The EA will contain full disclosure of potential impacts to the physical, biological and human environment that may result from implementation of the Proposed Action. A result of public scoping may be the generation of additional alternative actions designed to address specific resource issues, while still meeting the Purpose and Need for Action.

The Decision Maker for this project is the WRNF Supervisor, Scott Fitzwilliams. His decision will be documented in a Decision Notice (DN) following the public comment period on the EA. If the Proposed Action, or another action alternative is approved in the DN, then a Finding of No Significant Impact (FONSI) will also be prepared.

BACKGROUND

SHA completed a Master Development Plan (MDP) in 1989 which identified five primary hut sites on the WRNF and three secondary sites that could be located on private property. In 1989 the Forest Service completed an EA that approved construction of Janet's Cabin, which opened for public use in January of 1991. The EA for Francies Cabin—the second hut of the SHA system—was completed in November 1990 and the hut opened to the public in January of 1995. The Section House and Ken's Cabin are restorations of historical buildings on the Pike National Forest and are owned by the Forest Service.

PURPOSE OF AND NEED FOR ACTION

The purpose of this proposal is to respond to demand for backcountry huts in Summit County and to provide the public with, and to improve upon, an interconnected series of huts that were originally envisioned by SHA. As defined under the Proposed Action, numerous potential locations for a new hut were considered by SHA and the WRNF, however, there are certain critical factors that ultimately led to the proposed location in Weber Gulch.



Colorado has one of the most well-established and heavily used networks of non-motorized backcountry huts in the United States. These huts have been very popular with the public since the founding of the 10th Mountain Division Hut Association (TMHA) in the mid-1980s, which manages and acts as reservation agent, for 29 huts including those managed by SHA.

Since 1995, the TMHA has operated near capacity during the high season (defined as between late December through late March).

PROPOSED ACTION

Prior to the selection of the Weber Gulch site, SHA considered numerous other potential hut sites. The Weber Gulch location—on the northern aspect of Baldy Mountain in Breckenridge—was selected for consideration based on numerous factors, including:

- The ability to provide the public with the best overall hut experience,
- Quality and quantity of skiing in north-facing trees (away from popular day use areas),
- Views of French Gulch and the Tenmile Range to the north and west,
- Non-motorized access that does not interfere with privately held land,
- A remote feel,
- A flat building site not impaired by wetlands, and
- The ability to connect with the Section House, enabling a hut-to-hut tour which is consistent with SHA's 1989 MDP.

These seven factors precluded other potential sites from further consideration.

The attached map is meant to be reviewed in conjunction with the following description of the Proposed Action.

Location

The proposed Weber Gulch Backcountry Hut site is located at an approximate elevation of 11,500 feet on the northern aspect of Baldy Mountain, east of Breckenridge, within the Dillon Ranger District of the WRNF. The 2002 WRNF Land and Resource Management Plan identifies the National Forest System (NFS) lands in the vicinity of the proposed Weber Gulch Hut site as within Management Area 1.31: Backcountry Recreation- Non-Motorized. The Desired Condition for this management area states: *“A variety of non-motorized recreation opportunities are provided in a natural or natural-appearing setting...improvements such as trailheads, trails, signs, bridges, fences, huts or shelters that enhance the recreational experience may be present”*.

Parts of the proposed travel routes (discussed below) are also within the Golden Horseshoe planning area (GHPA) and are located on Summit County Open Space (SCOS) and Breckenridge Open Space property. The proposal, to use Summit County and Breckenridge open space land for travel routes, has been reviewed and approved by the Summit County Open Space Commission (OSAC) and the Summit County Board of County Commissioners (BOCC).

Recreation Opportunities

The Weber Gulch Backcountry Hut is proposed for both winter and summer use.

Weber Gulch provides the potential for excellent skiing opportunities in northern-aspect trees on the north side of Baldy Mountain. There are several above tree line bowls to the southwest of the site that provide skiing opportunities with relatively minimal avalanche concerns (refer to the attached map). Avalanche terrain dominates slopes to the southeast of the proposed hut site, but can be easily recognized and avoided by anyone with basic backcountry awareness.

Summer opportunities would include hiking and mountain biking on Baldy Mountain, as well as access to the entire Golden Horseshoe area.

Hut Specifications

SHA desires to incorporate “green” building techniques with construction of the proposed hut, such as passive solar. Construction would include post and beam with prefabricated panels of high insulation properties. In general the design parameters are:

- One or two story
- Between 1,400 and 2,000 square feet in size
- Accommodations for approximately 16 guests
- Heat provided by a combination of passive solar design and wood or propane burning stove
- Composting toilets
- A wood burning sauna (either part of the building or a separate structure)
- A leach field to handle grey water from kitchen sinks and discharge from the composting toilets
- Electricity for lights provided by photovoltaic cells

Water

The winter water source would be melted snow. For summer use, the closest surface water is Weber Creek—approximately $\frac{3}{4}$ of a mile away in Weber Gulch. A well is also a possible water source that will be investigated.

Non-Motorized Access to the Weber Gulch Hut

The reader is referred to the attached map to accompany the following description of non-motorized access across existing and proposed roads and trails to the proposed Weber Gulch Backcountry Hut site.

Winter and summer non-motorized access to the proposed Weber Gulch Backcountry Hut site would be achieved by climbing Sallie Barber Road from a new trailhead on French Gulch Road. At the Sallie Barber Mine (at the summit of the climb), hut users would climb the existing *Nightmare on Baldy Trail* for approximately 0.9 mile. A new 4,272-foot segment of singletrack trail is proposed to be constructed between *Nightmare on Baldy* and the *Upper Trail of Tears*. This new segment of singletrack would climb approximately 300 vertical feet. At the intersection with the *Upper Trail of Tears*, the proposed trail would continue eastward to the Weber Gulch Backcountry Hut site. The final segment of trail between

the *Upper Trail of Tears* and the hut site would be constructed to accommodate non-motorized users as well as all-terrain vehicles (ATVs) for construction/maintenance of the hut.

In total, the proposed non-motorized route would extend 3.0 miles. It would utilize 2.2 miles of Sallie Barber Road and *Nightmare on Baldy*, and would involve 0.8 mile of new trail construction. Total vertical gain between the proposed parking area and the hut is roughly 1,300 feet. SHA proposes to construct this route with minimal tree removal. Because year-round recreational access is sought, this route would be constructed to Forest Service standards for trail construction suitable for hiking, mountain biking, and cross country skiing.

SHA would be responsible for the cost of construction and maintenance of new travel routes. Possibilities for construction include utilizing large crews of volunteers to build the trail by hand and the use of trail building machinery such as a SWECO dozer. Travel routes to the hut would be maintained by SHA. Ski routes would be marked with blue diamonds.

Construction & Maintenance Access to the Proposed Weber Gulch Backcountry Hut

There currently is no road access to the proposed Weber Gulch Backcountry Hut site. The closest road that is suitable for full size vehicle traffic is Baldy Road (FDR 5-520W.3).

SHA plans to use a helicopter to ferry heavy building materials and construction machinery to the hut site. SHA envisions designing the building in modular sections, so that much of the construction can be done off site, enabling large sections to be flown into place.

For transportation of light building materials and construction equipment, as well as for long-term maintenance of the hut (including seasonal stocking), a motorized access route to the hut is required. The most logical solution to meet this need is to utilize the existing Baldy Road. Beyond the Iowa Mill, an existing 4WD road would be utilized for approximately 1,000 feet. At that point, the *Upper Trail of Tears* (a non-system singletrack trail on NFS lands) is proposed to be widened and improved for 3,815 feet to create a 50-inch wide ATV trail. The improved ATV trail would intersect the previously-identified non-motorized access trail. From that point, the trail would become a dual-purpose access route for the final 3,266 feet to the hut, accommodating non-motorized hut users throughout the year, as well as motorized administrative use in the summer.

Gates would be installed at key intersections along the proposed ATV route to preclude public motorized use. Cuts and fills resulting from construction of the proposed ATV route would be revegetated to promote soil stabilization.

Parking

The existing Lincoln/Sallie Barber trailhead experiences significant day use in both winter and summer months and is a major access portal to the Golden Horseshoe area. Therefore, a dedicated overnight parking area is proposed to accommodate Weber Gulch Backcountry Hut users. The proposed parking area is just east of the existing Sallie Barber Trailhead, on the north side of French Gulch Road (at the intersection with Humbug Hill).

The proposed parking area will consist of approximately 19 parking spaces.

COMMENT PERIOD

The WRNF is providing a 30-day scoping period for the public to submit comments for this project. The purpose of this scoping period is to provide an opportunity for the public to have early and meaningful participation on this proposal and to learn more about the project. Comments from this scoping period

will help form the foundation of the upcoming environmental analysis by identifying resource issues and potentially, developing additional action alternatives.

To be most effective when submitting comments, please include: (1) name, address, telephone number, and organization represented, if any; (2) the title of the project for which the comment is being submitted; and (3) specific facts, concerns or issues, and supporting reasons for the Responsible Official to consider.

Written, facsimile, hand-delivered, oral, and electronic comments will be accepted. Comments should be submitted by **November 21, 2011** to my attention: Scott Fitzwilliams Forest Supervisor, c/o Shelly Grail Braudis, Snow Ranger, White River National Forest, PO Box 620, Silverthorne, CO 80498; or by e-mail to: wrnf_scoping_comments@fs.fed.us (please include *Summit Huts Weber Gulch Backcountry Hut* in the subject line). For more information about the project, please contact Shelly Grail Braudis at sgrail@fs.fed.us or (970) 262-3484.


Only those persons who submit comments during this scoping period will be placed on the mailing list for future information regarding this project. Names and contact information submitted with comments will become part of the public record and may be released under the Freedom of Information Act.

PUBLIC OPEN HOUSE

A public open house regarding this proposal will be held on November 3, 2011 from 5-7 p.m. at the Stephen C. West Ice Arena, 186 Boreas Pass Road, Breckenridge, Colorado. Representatives from the WRNF and SHA will be present to answer questions and provide additional information on this project.

Thank you for your participation in this project. For more information, please contact Shelly Grail Braudis at sgrail@fs.fed.us or (970) 262-3484.

Sincerely,



SCOTT G. FITZWILLIAMS
Forest Supervisor




Attachment



cc: Shelly L Grail
Cynthia P Keller











Summit Huts Association

Proposed Weber Gulch Hut

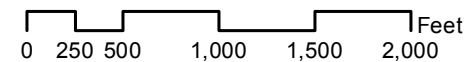
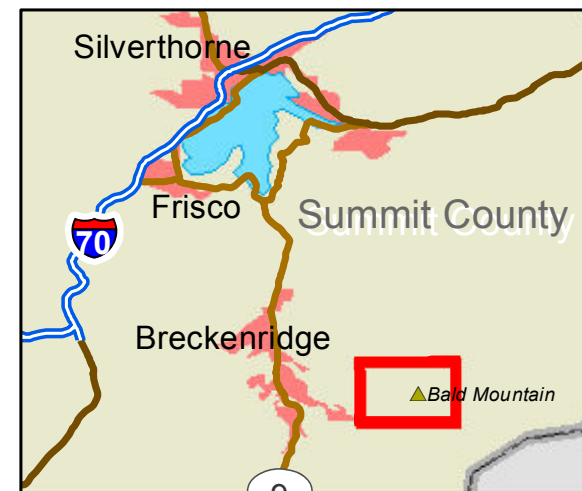
-  Proposed Weber Gulch Hut Location
-  Existing Parking
-  Proposed Hut Parking

- Proposed Access**
-  Hiking/Skiing
 -  ATV (for Administrative Use Only)

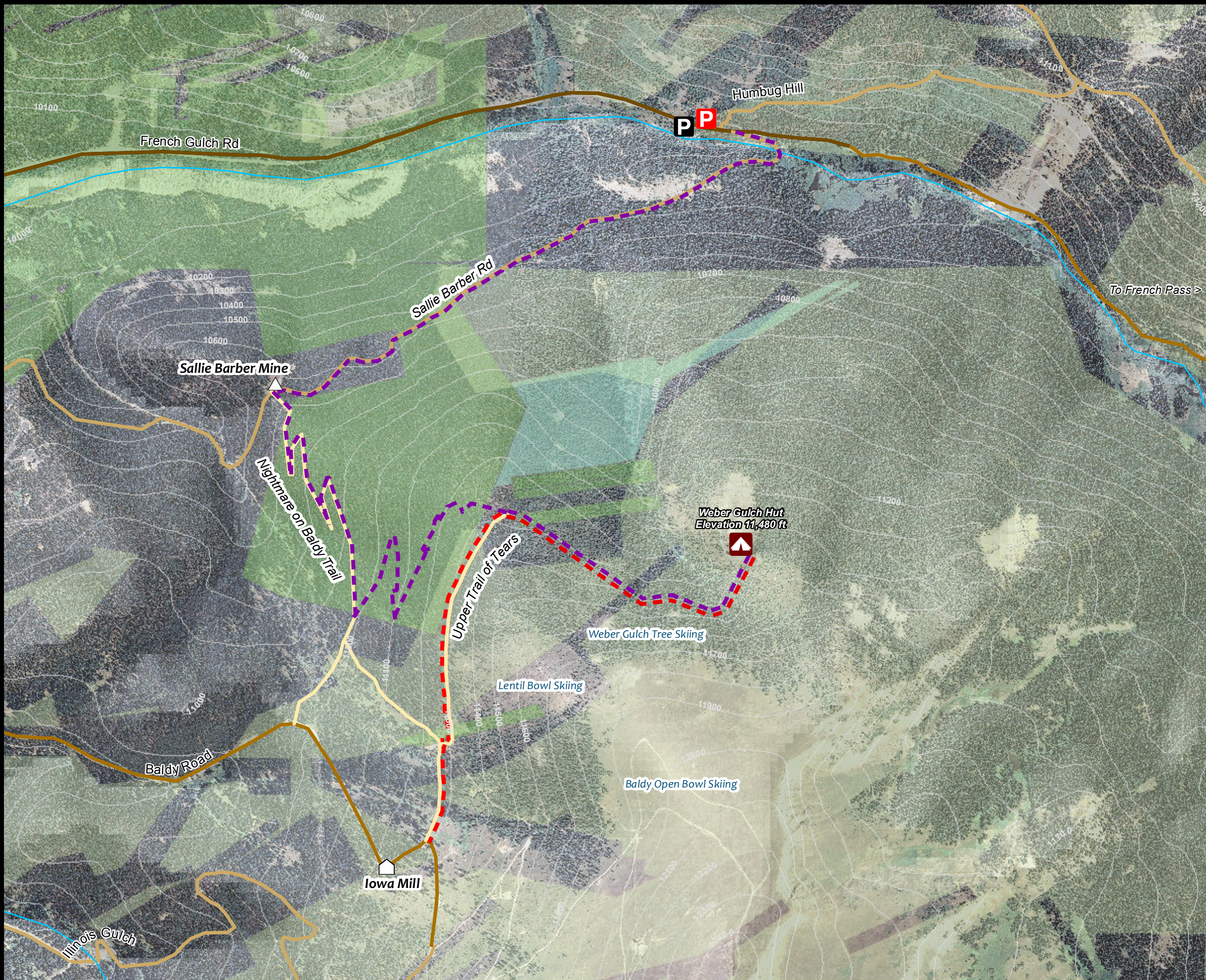
- Existing Access**
-  Trail
 -  Four Wheel Drive Road
 -  Dirt/Passable by Car
 -  2WD

- Land Ownership**
-  Summit County
 -  Summit County/Town of Breckenridge
 -  National Forest
 -  Non-Shaded indicated Private

Project Extent



Contour Interval: 100 Feet
Date: September 2011





November 21, 2011

Scott Fitzwilliams, Forest Supervisor
c/o Shelly Grail
White River National Forest- Dillon Ranger District
P.O. Box 620
Silverthorne, CO 80498

Dear Mr. Fitzwilliams:

This letter is in response to the scoping notice for Summit Huts Association's (SHA) application for a Weber Gulch Backcountry Hut. The Breckenridge Town Council and Breckenridge Open Space Advisory Commission (BOSAC) have reviewed the scoping notice dated October 24, 2011 and appreciate the opportunity to comment on SHA's proposal. We recognize that this comment is part of the initial scoping period that will precede an Environmental Assessment/NEPA analysis process.

The Town of Breckenridge has a keen interest in the Weber Gulch proposal, both because SHA's proposal could result in community impacts (both positive and negative), and because the Town is a joint owner of several open space properties affected by the proposal.

The Breckenridge Town Council has already indicated its support in principle for the Weber Gulch Backcountry Hut by allowing SHA to proceed with its application, including the proposal to construct a new trail access across joint Town of Breckenridge/Summit County open space property. We would like to reiterate this general support, and also request additional NEPA analysis for a number of concerns that have been expressed by both BOSAC and Town Council members. If this project comes to fruition, we want to see it well executed.

The following are the topics the Breckenridge Town Council would like to see evaluated when considering SHA's Weber Gulch Backcountry Hut proposal:

- 1) **Nightmare on Baldy Trail and Upper Trail of Tears extension:** The proposal outlines an extension of the existing Nightmare on Baldy trail uphill to the potential hut site, and the improvement of the Upper Trail of Tears trail for administrative access. As joint owners of public open space across which these trails are proposed, we believe that an environmental impact evaluation of the proposed trail improvements is warranted during the NEPA analysis.
- 2) **Humbug/Wirepatch Trail:** Although SHA's proposal outlines two primary accesses to the hut site (via the Sallie Barber/Nightmare on Baldy extension and via Baldy Road/Upper Trail of Tears), our concern is that hut users will

also access or depart the site via Upper French Gulch Road/Black Gulch. This access currently functions fairly well, but as you know, the Mountain Meadows subdivision residents retain the right to plow Upper French Gulch Road, and could therefore severely curtail the existing ski access on French Gulch Road. The only thing preventing the Mountain Meadow owners from plowing is a “handshake” agreement with Summit County Government. For this reason, we respectfully request that the USFS staff include in their evaluation the concept of a parallel summer/winter singletrack route uphill (and north) of French Gulch Road between the proposed trailhead site and the Mountain Meadows subdivision (the “Humbug/Wirepatch Trail”). Including this proposed trail alignment in the NEPA analysis for the Weber Gulch Backcountry Hut would be an outstanding public benefit, with which the Town would be willing to partner with SHA and Summit County Government to complete expeditiously.

- 3) **Trailhead Design and Management for Public Benefit:** During the Town’s review of SHA’s proposal, public use of the proposed trailhead during both summer and winter was raised as a concern. The consensus of both BOSAC and Town Council is that the proposed trailhead location represents the best (and perhaps only) opportunity for future trailhead expansion. Accordingly, we request that in its NEPA review, the USFS staff maximize the public use and benefit of the proposed trailhead. For example, some of the spaces in the proposed parking area should be designated for public parking. Management of the parking area to clearly delineate SHA overnight guest parking and public parking is important and should be clarified.

Also, how will the parking area be efficiently plowed and managed to maximize the parking spaces? How does the current driveway access to the Friday Lode interface with the proposed trailhead? Can long term public access on the Yellow Brick Road be secured via this proposed trailhead project? We recommend that the NEPA analysis evaluate ways to maximize the public parking opportunities in the proposed trailhead because it is the only opportunity to expand parking in the Lincoln Townsite area. Clarifying the long term access, parking and management of the proposed trailhead should be thoroughly analyzed via NEPA process.

- 4) **Baldy Road Parking Access:** Regarding parking, we also anticipate some hut users accessing the proposed Weber Gulch Hut via Baldy Road. Although some users may utilize the free bus system to reach the Baldy Road access point, it is more likely the existing four-car trailhead at the Baldy Road entry will be utilized by hut users, thereby displacing current users. We recommend that this issue be analyzed and addressed to prevent potential impacts to current day use access via Baldy Road.
- 5) **Traffic:** During our review of SHA’s preliminary proposal, the topic of traffic arose in two ways. First, concerns were expressed regarding the additional long-term traffic loads on French Gulch Road. This road is a popular recreational access and adding vehicular traffic to it (in both summer and

winter) may have negative ramifications for recreational users and local residents along French Gulch Road. Secondly, a concern was expressed regarding the amount of recreational skier traffic that will occur on the west face of Bald Mountain. This area is popular for backcountry skiing and ski touring. Will additional hut traffic negatively affect this existing recreational resource? Also, how does the USFS plan to enforce the no snowmobiling policy in the area? We request that this topic be further evaluated during the Weber Gulch Backcountry Hut NEPA analysis.

Thank you for the opportunity to comment on Summit Hut Association's Weber Gulch Backcountry Hut proposal. If you have any follow up questions to our response to your scoping notice, please contact Town of Breckenridge open space staff at ScottR@townofbreckenridge.com or 970/547-3155.

Sincerely,

John Warner
Mayor

Cc: Karn Stiegelmeier, Chair Summit County Board of Commissioners



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING
Tuesday, November 8, 2011; 7:30 p.m.
Town Hall Auditorium

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C. BRC (Mr. Burke)	
D. Marketing Committee (Mr. Dudick)	
E. Summit Combined Housing Authority (Mr. Joyce)	
F. Breckenridge Heritage Alliance (Mr. Burke)	
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X OTHER MATTERS	
XI SCHEDULED MEETINGS	90
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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

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, OCTOBER 25, 2011
PAGE 1**

CALL TO ORDER and ROLL CALL

Mayor Warner called the October 25, 2011 Town Council meeting to order at 7:30 p.m. The following council members answered roll call: Mr. Bergeron, Mr. Burke, Mr. Dudick, Ms. McAtamney, Mr. Joyce and Mayor Warner. Mr. Mamula was absent.

APPROVAL OF MINUTES – October 11, 2011 Regular Meeting

Mayor Warner pointed out one correction under Communications to Council; Ski Area Update; “Pat Campbell reported that they completed the Echo Day ~~Eco Day~~...”. Mike Dudick corrected his statement made under Other Matters: “Mr. Dudick would be open to hearing ideas, but would like to see their ~~20-year plan~~ 2-year plan...”. Mr. Burke’s comment was not a correction but rather what he felt might have been an omission from the minutes: Sheri Shelton requested retail sales and restaurant sales be separated out from each other. Mr. Gagen clarified for Ms. Shelton those numbers are separate from each other.

APPROVAL OF AGENDA

Ms. Boniface, Assistant Town Manager, stated there are no changes to the agenda. She wanted to state for the record the Public Project McCain Parcel Solar Garden is not subject to call up and is therefore eligible for public comment at this meeting.

COMMUNICATIONS TO COUNCIL

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

Lynne Greene, High Country Conservation Center, presented council with three letters she received in support of the McCain Parcel Solar Garden. The letters were from Chris and Jen Cawley, Deb Sharp, and Greg Gerloff. These letters will be emailed to council. Mayor Warner explained the McCain Parcel Solar Garden item will be discussed at the November 8 work session. It will also be discussed during the November 9 Budget Retreat. He encouraged citizens to attend.

Bryan Whitcomb, Warriors Mark HOA, commented on a home recently built in Warriors Mark. The owner used raw animal sewage as fertilizer. Chris Neubecker, Senior Planner, commented the town code supports 1 inch in depth of horse manure. Concerning this matter, the town’s prosecuting attorney was consulted. He found no code violation. Mayor Warner asked Community Development to review this provision of the code and consider making a distinction between raw and dry manure.

Doug Adams, Executive Director of the National Repertory Orchestra, thanked council for the town’s support. He handed out the 2011 Season Program and highlighted the town’s contribution to the NRO. Included in the program was the NRO’s 2011 Economic Impact Study.

David November spoke in support of the solar garden and asked council to continue to support solar power and look for other locations if the McCain parcel doesn’t work out.

Ric Pocius also spoke in support of the solar garden. He has solar panels at his home and was asked questions concerning the savings he sees.

Eric Buck addressed the letter he submitted to the Summit Daily News. He clarified he is not against solar panels or solar gardens, he is against the subsidy aspect being proposed. He questioned whether the McCain property is the correct location. He believes the town would be giving away the use of very valuable property for a solar garden that could be built in many other locations in the county. He asked council to seriously consider the choice between a solar garden on that parcel or what could be there – housing, a park or other open space and/or a reservoir.

Mayor Warner closed the public comment portion of the meeting and restated during the November 8 work session the McCain Parcel Solar Garden will be discussed further. Additionally, at the November 9 Budget Retreat further discussion will occur with consultants reporting to council on various aspects of the project. The retreat will be held at One Ski Hill Place from 8:30 a.m. to 4:30 or 5:00 p.m. There will be parking. Lunch will begin at approximately 12:30. At this time, Mayor Warner was not sure if time would permit comments from the public. He sees a potential Open House on the subject to hear further public comment.

CONTINUED BUSINESS

A. **SECOND READING OF COUNCIL BILL, SERIES 2011 – PUBLIC HEARING**

None

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, OCTOBER 25, 2011
PAGE 2**

B. Warriors Mark Burn Permit

Matt Thompson, Planner II, explained the Warriors Mark Homeowners Association is asking the council for permission to conduct an open burn of 16 piles of wood that were cut down in relation to a forest health project. Rick Herwehe, A Cut Above Forestry, was present to answer questions. Mr. Thompson reported the HOA's insurance agent has agreed to the required \$5,000,000 policy and naming the town as an additional insured. Red, White and Blue Fire Protection District has agreed to stand by with a water truck for \$150/hour. Mr. Burke is hoping the town will look at these situations closer to insure this doesn't happen again.

Mayor Warner asked for comments from the public. Steve Edberg clarified Red, White and Blue was involved from the beginning. They backed out when there was threat of litigation.

Mr. Burke moved to approve a special permit to allow the Warriors Mark West HOA to burn sixteen burn piles in one location as noted on the attached site plan as early as the end of October, 2011 and as late as the end of January 2012 as weather permits, subject, however, to the special terms and conditions set forth on the attached Exhibit "A", which is incorporated herein by reference. All burning of the burn piles shall comply with the "Open Burning" requirements of Section 307 of the International Fire Code, 2000 Edition. The Warriors Mark West HOA shall notify the town when the burning of the sixteen piles commences. Ms. McAtamney seconded the motion. The motion passed with 6 members of council in favor of the motion.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2011

None

B. RESOLUTIONS, SERIES 2011

None

C. OTHER

a. Cub Scout Pack 187 Burn Permit

Chris Neubecker, Senior Planner, introduced this matter during the work session. At that time he stated local Cub Scout Pack 187 has requested a special burn permit for a camp fire during their December 6, 2011 pack meeting at Carter Park.

Ms. McAtamney moved to approve a special permit to allow Cub Scout Pack 187 to have a camp fire at Carter Park on December 6, 2011 from 6:30 - 7:30 p.m. Cub Scout Pack 187 shall obtain any necessary permits from the Red, White and Blue Fire District, if applicable. Mr. Bergeron seconded the motion. The motion passed with 6 members of council in favor of the motion.

PLANNING MATTERS

A. Planning Commission Decisions of October 18, 2011

Mayor Warner asked for comments or concerns in relation to the Planning Commission Decisions of October 18, 2011. With no request to call an item off the consent calendar, Mayor Warner declared the Planning Commission Decisions of October 18 would stand approved as presented. Mayor Warner stated for the record the McCain Parcel Solar Garden is not part of the consent calendar because it is a public project.

REPORT OF TOWN MANAGER AND STAFF

Ms. Boniface had nothing further to report.

REPORT OF MAYOR AND COUNCILMEMBERS (these reports occurred during the work session; see attached notes)

- A. **CAST/MMC** (Mayor Warner)
- B. **Breckenridge Open Space Advisory Commission** (Mr. Dudick)
- C. **Breckenridge Resort Chamber** (Mr. Burke)
- D. **Marketing Committee** (Mr. Dudick)
- E. **Summit Combined Housing Authority** (Mr. Joyce)
- F. **Breckenridge Heritage Alliance** (Mr. Burke)
- G. **Water Task Force** (Mr. Mamula)

Mr. Bergeron reported the Grants Committee will be meeting on Wednesday, October 26.

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, OCTOBER 25, 2011
PAGE 3**

OTHER MATTERS

Mr. Burke made a motion to cancel the November 22 meeting. Mr. Dudick made the second. Mayor Warner asked for discussion. Mr. Burke stated he makes the motion based on confirmation from the Assistant Town Manager that the town attorney will be out of town for that meeting, council's schedule is on the lighter side, cancelling the meeting will not conflict with any time sensitive items or dates. It was pointed out there is a joint meeting scheduled with the Breckenridge Resort Chamber. Mr. Dudick wondered if the meeting could be moved to the December 13 meeting. Kim Dykstra DiLallo will confirm with the BRC. Ms. Boniface reminded council there is only one meeting in December. Council could call a special meeting if they find there are more items to cover before the end of the year. Mayor Warner felt council was seeing a lot of items come to the surface. He wasn't comfortable cancelling a meeting when he knows council could use the time. Ms. McAtamney was uncomfortable about cancelling a scheduled meeting. Mr. Bergeron did not want to cancel the meeting. Mr. Joyce saw no compelling need to cancel a meeting. Mr. Dudick asked if the evening meeting has to be held at 7:30 p.m. It was explained that special meetings allow the option to change times and locations of meetings, regular meetings need to begin at 7:30 p.m. Mr. Burke withdrew the motion. Mayor Warner stated the November 22 meeting will occur as scheduled, however, council would like to postpone the joint meeting with the BRC. They will try to do as much of their reporting during the work session and then during the evening meeting address action items, trying to adjourn as early as possible to get an early start on the upcoming Thanksgiving holiday.

Mr. Burke commented the street lights do not appear to be programmed correctly. Ms. Boniface will touch base with Public Works. Ms. McAtamney commented the Lincoln and Main traffic light is not programmed correctly. She also stated there is fencing in the Corkscrew that should be taken down. It has been there for a couple years. Mr. Neubecker will follow up.

Mayor Warner stated Vail Resorts would like to have a social event with council and town senior staff members. The Mayor asked Mr. Berry if this would constitute a meeting. Mr. Berry responded if the event is for strictly social purposes, it does not constitute a meeting and no meeting notification is required. If something is given to council (lunch or lift pass), council will need to declare such things on their Gift, Honoraria and Other Benefits disclosure statement.

Mayor Warner reported Vail Resorts and the town will be creating a public service announcement concerning parking at Beaver Run and at the mid lot on Peak 8 for purposes of Skinning. The permits will allow parking at those locations from 5:30 a.m. – 8:30 a.m. for purposes of early morning access to the mountain.

Mayor Warner has requested a meeting with Rob Katz, Vail Resorts. He has been invited to Broomfield for a meeting with Mr. Katz.

Mr. Bergeron wondered if a Public Service Announcement would be possible concerning information about coyotes. There are new people coming to town, they should be informed concerning the presence of coyotes. There have been Mountain Lion sightings in the Wellington Neighborhood area.

SCHEDULED MEETINGS

Ms. Boniface asked council to remember to save Thursday, December 8, from approximately 4:00 p.m. – 7:00 p.m.; location Mi Casa. Coffee Talk will be on November 4, at Clint's. Wake-Up Breck will be held on November 10, there are eight locations. Council members have been asked to sign up for a location. Contact Nikki Arcieri. Mayor Warner stated he will be meeting with representatives of the management company responsible for rental of the commercial spaces at Main Street Station on November 11.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 8:27 p.m.

Submitted by Wanda Creen, Deputy Town Clerk.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor



MEMORANDUM

To: Mayor and Town Council
From: Kate Boniface, Assistant Town Manager
Date: October 26, 2011
Subject: *Reports made during 10/25/11 Worksession*

MMC/CAST: John Warner will attend the CAST meeting this week.

BOSAC: John Warner reported on current trail projects and discussed the Cucumber Gulch Preserve goals and actions document.

BRC: The BRC meeting is today.

BMAC: Kim Dykstra-DiLallo and Dick Carleton reported on the community participation in the Breckenridge Ski Area 50-year anniversary celebration going on throughout the 2011/2012 ski season.

SCHA: No meeting.

BHA: Mark Burke reported on a potential storage location for historic archives. The South Branch Library or a more centrally located facility in the County were suggested. Cost per square foot was also considered. The next steps for moving forward are in the hands of the BHA and Summit Historical Society.

Water Task Force: No meeting.

TO: MAYOR AND TOWN COUNCIL
FROM: CLERK AND FINANCE DIVISION
SUBJECT: 2012 MILL LEVY
DATE: 11/3/2011
CC: TIM GAGEN

The attached ordinance establishing the 2012 Property Tax Mill Levy at the rate of 7.296 mills per dollar of assessed valuation of property within the limits of the Town of Breckenridge is hereby submitted to the Council for first reading. This rate represents a .351 mill increase from the 2011 rate of 6.945 mills.

The increase in the mill levy is due to the decrease in property values as assessed by the County. Property values decreased 16% from the valuation used for the 2010 mill levy calculation. The debt payment portion of the mill levy is inversely related to property values. The debt service for 2012 is \$1,084,528 which is 2.226 mills of the total mill levy versus \$1,091,881 and 1.875 mills in 2011.

Of the 7.296 mills, 5.07 mills are for the purpose of defraying the expenses of the General fund. There is an additional assessment of 2.226 mills to meet the Town's general obligation indebtedness described in Ordinance No. 35, Series 1998, which is due and payable in fiscal year 2012.

COUNCIL BILL NO. 39

Series 2011

AN ORDINANCE SETTING THE MILL LEVY WITHIN THE
TOWN OF BRECKENRIDGE FOR 2012

WHEREAS, the Town Council of the Town of Breckenridge has determined that a mill levy of 7.296 mills upon each dollar of the assessed valuation of all taxable property within the Town of Breckenridge is needed to balance the 2012 General Fund budget;

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

Section 1. For the purposes of defraying the expense of the General Fund of Breckenridge, Colorado for the fiscal year 2012, there is hereby levied a tax of 5.07 mills upon each dollar of assessed valuation for all taxable property within the Town of Breckenridge.

Section 2. In addition to the General Fund mill levy described in Section 1 of this ordinance, there is hereby levied an additional 2.226 mill upon each dollar of assessed valuation of all taxable property within the Town of Breckenridge. Such additional levy is imposed pursuant to the authority granted by the electors to the Town Council by Ordinance No. 35, Series 1998. The revenues generated by such additional mill levy shall be applied toward the installment of the Town's general obligation indebtedness described in Ordinance No. 35, Series 1998, which is due and payable in fiscal year 2012.

Section 3. The Town Clerk is hereby authorized and directed, after adoption of the budget by the Town Council, to certify to the Board of County Commissioners of Summit County, Colorado, the total tax levy for the Town of Breckenridge, Colorado as herein set forth.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
PUBLISHED IN FULL this 8th day of November, 2011. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 22nd day of November, 2011, at 7:30 P.M. or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE

Mary Jean Loufek, CMC, Town Clerk

John G. Warner, Mayo

MEMO

TO: Breckenridge Town Council

FROM: Laurie Best, Community Development Department

RE: Housing Buy Down Program—Summit Housing Development Corporation

DATE: November 1, 2011 (for meeting November 8th)

The Town initiated a Housing Buy Down program several years ago. The intent of the program is to preserve workforce housing by deed restricting existing units, thereby preventing conversion to vacation home, second home, or retiree residence. This provides dedicated workforce housing without new construction or new density, and prevents the loss of market units that serve as workforce housing. The Council has recently indicated that Buy Downs should be considered a priority given current market opportunities. Of the four buy down units that have been acquired by the Town, one has been deed restricted and sold, and the remaining three will be rented for workforce housing.

After acquiring the first buy down units, the Town moved forward with the Valley Brook development utilizing the Summit Housing Development Corporation (SHDC). The SHDC is a 501 3 C corporation established in 1994 for the purpose of developing and/or owning housing, managing housing for rent or for sale, and developing housing. Staff recommends that the SHDC also be utilized to implement the Town buy down program since the program involves the acquisition, ownership, management, and sale of property. The organization was established specifically for the purpose of real estate development and management, has the ability to respond quickly to real estate negotiations, and is eligible for grants, which could be useful in rehabilitation of buy down units.

Similar to the process that was utilized for the Valley Brook Development, staff would recommend an agreement be executed between the Town and the SHDC which outlines the responsibilities of each entity. It is the Town's objective to fund the Town's buy down activities, to seek grants thru the SHDC when available, and to retain oversight and complete control of the Town's buy down activities. This is similar to the Town's responsibilities at Valley Brook.

The attached Agreement has been prepared and a resolution is enclosed in your packets for your consideration this evening. Staff recommends approval of the resolution/agreement. Thank you for your consideration. Staff will be available at the worksession on November 8th to answer questions.

1 FOR WORKSESSION/ADOPTION – NOV. 8

2
3 A RESOLUTION

4
5 SERIES 2011

6
7 A RESOLUTION APPROVING A “BUY-DOWN AGREEMENT” WITH THE SUMMIT
8 HOUSING DEVELOPMENT CORPORATION
9

10 WHEREAS, the Town of Breckenridge lacks sufficient affordable housing (also referred
11 to as “attainable housing”) for its citizens; and
12

13 WHEREAS, the development of an adequate supply of attainable housing within the
14 Town is a top priority of the Breckenridge Town Council; and
15

16 WHEREAS, in an effort to address the lack of sufficient attainable housing the Town
17 Council has adopted a housing plan, and has committed significant amounts of public resources,
18 in the form of both public funds and the expenditure of substantial amounts of Town staff time,
19 to the development and implementation of a housing strategy designed to make more attainable
20 housing available to the citizens of the Town; and
21

22 WHEREAS, the Summit Housing Development Corporation, a Colorado nonprofit
23 corporation (the “SHDC”), was created for purposes that include developing and selling of
24 attainable housing units in Summit County, Colorado; and
25

26 WHEREAS, the Town and the SHDC have agreed to implement a “buy-down program”
27 for the purpose of providing more attainable housing for the citizens of the Town; and
28

29 WHEREAS, the buy-down program with the SHDC will serve a substantial public
30 purpose; and
31

32 WHEREAS, a proposed “Buy Down Agreement” between the Town and the SHDC has
33 been prepared, a copy of which is marked **Exhibit “A”**, attached hereto, and incorporated herein
34 by reference (“**Agreement**”); and
35

36 WHEREAS, the Town Council has reviewed the proposed Agreement, and finds and
37 determines that it would be in the best interests of the Town and its residents for the Town to
38 enter into the proposed Agreement; and
39

40 WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a
41 Resolution may be used to approve a contract.
42

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

1 Section 1. The “Buy Down Agreement” with the Summit Housing Development
2 Corporation (**Exhibit “A”** hereto) is approved; and the Town Manager is authorized,
3 empowered, and directed to execute such Agreement for and on behalf of the Town of
4 Breckenridge.
5

6 Section 2. Minor changes to or amendments of the approved agreement may be made by
7 the Town Manager if the Town Attorney certifies in writing that the proposed changes or
8 amendments do not substantially affect the consideration to be received or paid by the Town
9 pursuant to the approved agreement, or the essential elements of the approved agreement.
10

11 Section 3. This resolution shall become effective upon its adoption.
12

13 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2011.
14

15 TOWN OF BRECKENRIDGE
16
17
18

19 By _____
20 John G. Warner, Mayor
21

22 ATTEST:
23
24
25

26 _____
27 Mary Jean Loufek,
28 CMC, Town Clerk
29

30 APPROVED IN FORM
31
32
33

34 _____
35 Town Attorney Date
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1 BUY-DOWN AGREEMENT

2
3 This Buy-Down Agreement (“**Agreement**”) is dated _____, 2011
4 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”)
5 and SUMMIT HOUSING DEVELOPMENT CORPORATION, a Colorado nonprofit
6 corporation (“**SHDC**”). The Town and SHDC are each individually referred to in this Agreement
7 as a “**Party**”, and collectively as the “**Parties.**”
8

9 **Background**

10
11 The Town of Breckenridge lacks sufficient affordable housing (also referred to as
12 “attainable housing”) for its citizens. The development of an adequate supply of attainable
13 housing within the Town is a top priority of the Breckenridge Town Council. In an effort to
14 address the lack of sufficient attainable housing the Town Council has adopted a housing plan,
15 and has committed significant amounts of public resources, in the form of both public funds and
16 the expenditure of substantial amounts of Town staff time, to the development and
17 implementation of a housing strategy designed to make more attainable housing available to the
18 citizens of the Town. SHDC was created for purposes that include developing and selling of
19 attainable housing units in Summit County, Colorado. The Town and SHDC have agreed to
20 implement a “buy-down program”, as defined and described in this Agreement, for the purpose
21 of providing more attainable housing for the citizens of the Town. The buy-down program will
22 serve a substantial public purpose.
23 .

24 **Agreement**

- 25
26 1. **Definitions.** As used in this Agreement, the following terms have the following
27 meanings, unless the context clearly requires otherwise:
28

ACCEPTABLE DEED
RESTRICTION:

A restrictive covenant acceptable in form and substance to the Town (in its sole discretion) providing long-term assurance that the Buy-Down Unit encumbered by the covenant will be used only as a residence by members of a targeted economic group specifically identified by the Town and described in the covenant.

ACT:

The Colorado Governmental Immunity Act (Section 24-10-101, et. seq., C.R.S), as amended from time to time throughout the term of this Agreement.

BUY-DOWN:

A method of placing an Acceptable Deed Restriction on a Buy-Down Unit so that it will be made available on a long-term basis for use as attainable housing only by

members of a targeted economic group determined by the Town. A buy-down may be accomplished in several ways, including, but not limited to:

A. SHDC taking title to the Buy-Down Unit, completing any necessary repairs to the Buy-Down Unit, placing an Acceptable Deed Restriction on the Buy-Down Unit, and then reselling the Buy-Down Unit to a qualified buyer upon terms that are acceptable to the Town in its sole discretion;

B. SHDC providing a monetary subsidy to a seller or buyer (with funds provided by the Town) in conjunction with the purchase or sale of a Buy-Down Unit in return for the seller or buyer agreeing to place an Acceptable Deed Restriction on the Buy-Down Unit ; or

C. SHDC paying (with funds provided by the Town) a Buy-Down Unit owner to voluntarily place an Acceptable Deed Restriction on the owner's Buy-Down Unit.

BUY-DOWN PROGRAM:

The process of either :

A. acquiring and reselling Buy-Down Units as described in this Agreement; or

B. paying subsidies to Buy-Down Unit owners in return for the owner placing an Acceptable Deed Restriction on the Buy-Down Unit.

BUY-DOWN UNIT:

A lot, tract, parcel, condominium unit, townhome, or other real property that the Town determines to be appropriate for inclusion in the Buy-Down Program.

1
2

1 **2. Town’s Rights and Obligations.**

2
3 A. In connection with the Buy-Down Program, the Town has the right in its sole and
4 subjective discretion to:

5 i. Define from time to time during the term of this Agreement the scope and
6 programing of the Buy-Down Program, and to manage the Buy-Down
7 Program without SHDC’s interference.

8 ii. Identify those Buy-Down Units that are to be included in the Buy-Down
9 Program.

10 iii. Determine the timing of the acquisition and sale of Buy-Down Units.

11 iv. Determine which Buy-Down Units to subsidize, and the amount of each
12 subsidy.

13 v. Determine the appropriate form of Acceptable Deed Restriction for each
14 Buy-Down Unit, including, but not limited to, the applicable AMI and
15 other target group identifiers.

16 vi. Own the proceeds of the sale of the Buy-Down Units.

17 vii. Determine how the proceeds of the sale of the Buy-Down Units will be
18 used.

19 viii. Determine in its discretion how Buy-Down Units will be used (sale or
20 rented), and the terms and conditions of sale or rental including, but not
21 limited to, defining applicable AMI targets. Such right includes the right
22 to review and approve any lease entered into by SHDC with respect to a
23 Buy-Down Unit.

24 ix. Inspect and copy all records kept and maintained by SHDC with respect to
25 the Buy-Down Program. Town also has the right, at its expense, to audit
26 SHDC’s records kept and maintained with respect to the Buy-Down
27 Program.

28 B. In connection the Buy-Down Program, the Town will do the following:

29 i. Provide in a timely manner all funding required by SHDC to purchase a
30 Buy-Down Unit.

31 ii. Provide in a timely manner all funding required by SHDC to provide the
32 agreed subsidies to sellers or buyers of Buy-Down Units.

33 iii. Provide the appropriate form of Acceptable Deed Restriction when
34 required, and the obligation to execute such Acceptable Deed Restriction.

- 1 iv. Pay or reimburse SHDC on an agreed upon payment schedule for all
2 expenses associated with the ownership, maintenance, and upkeep of the
3 Buy-Down Units, including, but not limited to, any costs of necessary
4 rehabilitation of the Buy-Down Unit, management costs associated with
5 the Buy-Down Unit, casualty insurance for the Buy-Down Unit, utilities
6 for the Buy-Down Unit, homeowner association fees associated with the
7 Buy-Down Unit, and carrying costs.
- 8 v. Pay or reimburse SHDC in a timely manner for all funding required by
9 SHDC to sell a Buy-Down Unit.
- 10 vi. Take such further action (except as provided in Section 5) as may be
11 reasonably requested by SHDC to implement the Buy-Down Program.
- 12 C. Town may, but is not required to, contract with the Summit Combined Housing
13 Authority for services related to Buy-Down Units (including, but not limited to,
14 sales service, and income and employment qualifications).
- 15 D. In determining which Buy-Down Units to acquire or subsidize, Town will
16 consider the Summit County Buy-Down Strategy dated March 23, 2011, as
17 amended from time to time throughout the term of this Agreement, a copy of
18 which is marked **Exhibit "A"**; provided, however, that Town is not required to
19 follow the Summit County Buy-Down Strategy.
- 20 3. **SHDC's Rights and Obligations.**
- 21 A. In connection with the Buy-Down Program SHDC has the right to receive
22 payment from the Town as required by this Agreement.
- 23 B. In connection with the Buy-Down Program SHDC will do the following:
- 24 i. Purchase as and when directed by the Town (with funds provided by the
25 Town) those Buy-Down Units identified by Town as being suitable for
26 inclusion in the Buy-Down Program.
- 27 ii. Pay as and when directed by the Town (with funds provided by the Town)
28 subsidies provided by the Town in connection with the Buy-Down
29 Program.
- 30 iii. Provide all required maintenance and upkeep of a Buy-Down Unit (with
31 funds provided by the Town) as and when directed by the Town.
- 32 iv. Obtain and maintain throughout SHDC's ownership of a Buy-Down Unit
33 property and casualty insurance in amounts and with insurers acceptable to
34 the Town.

- 1 v. Maintain accurate accounting records acceptable to the Town with respect
2 to each Buy-Down Unit, and make such records available for Town's
3 inspection and copying as provided in Section 2(A).
- 4 vi. Execute an Acceptable Deed Restriction for a Buy-Down Unit as and
5 when directed by the Town.
- 6 vii. Provide the Town with an annual written account summary of the Buy-
7 Down Program.
- 8 viii. Take such further action (with funds provided by the Town [except as
9 provided in Section 5]) as may be reasonably requested by the Town to
10 implement the Buy-Down Program.

11 **4. Term; Termination; Winding Up.**

- 12 A. The term of this Agreement commences as of the date of this Agreement and
13 continues until terminated as provided in this Agreement.
- 14 B. Either Party may terminate this Agreement:
 - 15 i. For cause as provided in Section 9(A); or
 - 16 ii. Without cause and without liability for breach of this Agreement, by
17 giving the other Party written notice of termination at least 60 days prior
18 to the effective date of termination.
- 19 C. Following termination, the Parties will continue to work cooperatively,
20 expeditiously, and in good faith to wind up all matters related to the Buy-Down
21 Program.
- 22 D. In connection with the winding up of this Agreement, SHDC will, upon Town's
23 request, convey to Town all Buy-Down Units then owned by SHDC in connection
24 with the Buy-Down Program. This obligation on the part of SHDC is specifically
25 enforceable by Town.

26 **5. Mutual Indemnification.**

- 27 A. **Indemnification by Town.** Subject to any applicable limits of the Act, the Town
28 will indemnify and defend SHDC, its officers, employees, and insurers, against all
29 liability, claims, and demands, on account of injury, loss, or damage, including,
30 without limitation, claims arising from bodily injury, personal injury, sickness,
31 disease, death, property loss or damage, or any other loss of any kind whatsoever,
32 that arise out of or are in any manner connected with this Agreement, to the extent
33 that such injury, loss, or damage is caused by:
 - 34 i. the negligence or intentional wrongful act of Town, or any officer,
35 employee, representative or agent of Town;

- 1 ii. Town’s breach of this Agreement; or
2 iii. that arise out of any worker’s compensation claim of any employee of
3 Town,

4 except to the extent such liability, claim or demand arises through the negligence
5 or intentional wrongful act of SHDC, its officers, employees, or agents, or
6 SHDC’s breach of this Agreement. To the extent indemnification is required
7 under this Agreement, Town will investigate, handle, respond to, and provide
8 defense for and defend against, any such liability, claims, or demands at its
9 expense with counsel acceptable to SHDC, and bear all other costs and expenses
10 related thereto, including court costs and attorney fees.

11
12 B. **Indemnification by SHDC.** SHDC will indemnify and defend the Town, its
13 officers, employees, insurers, and self-insurance pool, against all liability, claims,
14 and demands, on account of injury, loss, or damage, including, without limitation,
15 claims arising from bodily injury, personal injury, sickness, disease, death,
16 property loss or damage, or any other loss of any kind whatsoever, that arise out
17 of or are in any manner connected with this Agreement, to the extent that such
18 injury, loss, or damage is caused by:

19 i. the negligence or intentional wrongful act of SHDC, or any officer,
20 employee, representative or agent of SHDC;

21 ii. SHDC’s breach of this Agreement; or

22 iii. that arise out of any worker’s compensation claim of any employee of
23 SHDC,

24 except to the extent such liability, claim or demand arises through the negligence
25 or intentional wrongful act of the Town, its officers, employees, or agents, or
26 Town’s breach of this Agreement. To the extent indemnification is required under
27 this Agreement, SHDC will investigate, handle, respond to, and provide defense
28 for and defend against, any such liability, claims, or demands at its expense with
29 counsel acceptable to Town, and bear all other costs and expenses related thereto,
30 including court costs and attorney fees.

31
32 C. The indemnification provisions of this Agreement will survive the expiration or
33 termination of this Agreement, and will continue to be fully enforceable
34 thereafter.

35 **6. Insurance.**

36 A. **Town’s Required Insurance.**

37 i. Town will procure and maintain the following minimum insurance
38 coverages continuously throughout the term of this Agreement:

- 1 (1) worker's compensation insurance to cover obligations imposed by
2 applicable laws for any employee of Town engaged in the
3 performance of work under this Agreement.
- 4 (2) comprehensive general liability insurance with limits of liability
5 not less than the limits of liability for Colorado municipalities
6 provided in the Act. The policy must be applicable to all premises
7 and operations. The policy must include coverage for bodily
8 injury, broad form property damage (including completed
9 operations), personal injury (including coverage for contractual
10 and employee's acts), blanket contractual, products, and completed
11 operations.

12 Such insurance coverages will be procured and maintained with forms and
13 insurers acceptable to the Town. All coverages will be continuously
14 maintained to cover all liability, claims, demands, and other obligations
15 assumed by Town pursuant to Section 5(A) of this Agreement. In the case
16 of any claims-made policy, the necessary retroactive dates and extended
17 reporting periods will be procured to maintain such continuous coverages.

18 ii. Town's comprehensive general liability insurance policy will be endorsed
19 to include SHDC as an additional insured. Every policy required above
20 will be primary insurance, and any insurance carried by SHDC will be
21 excess and not contributory insurance to that provided by Town. Town
22 will be solely responsible for any deductible losses under any policy
23 required above.

24 iii. An ACORD Form 27, or other certificate of insurance form acceptable to
25 SHDC, will be completed by Town's insurance agent and provided to
26 SHDC as evidence that policies providing the required coverages,
27 conditions, and minimum limits are in full force and effect and must be
28 reviewed and approved by SHDC prior to commencement of this
29 Agreement, and again on each renewal or replacement of such policies
30 throughout the term of this Agreement. The certificate must identify this
31 Agreement and provide that the coverages afforded under the policies will
32 not be cancelled or terminated until at least 30 days' prior written notice
33 has been given to SHDC. The completed certificate of insurance will be
34 sent to:

35 Summit Housing Development Corporation
36 P.O. Box 188
37 Breckenridge, Colorado 80424
38

39 iv. Notwithstanding any other portion of this Agreement, the Town's failure
40 to procure or maintain policies providing the required coverages,
41 conditions, and minimum limits is a material breach of this Agreement for
42 which SHDC may immediately terminate this Agreement or, at its

1 discretion, SHDC may procure or renew any such policy or any extended
2 reporting period and pay any and all premiums in connection therewith,
3 and all monies so paid by the SHDC will be repaid by Town to SHDC
4 upon demand, together with interest on such monies so paid at legal rate,
5 or SHDC may offset the cost of the premiums against any monies due to
6 Town from SHDC.

7 **B. SHDC's Required Insurance.**

8 i. SHDC will procure and maintain the following minimum insurance
9 coverages continuously throughout the term of this Agreement:

- 10 (1) worker's compensation insurance to cover obligations imposed by
11 applicable laws for any employee of SHDC engaged in the
12 performance of work under this Agreement.
- 13 (2) comprehensive general liability insurance with limits of liability
14 not less than One Million Dollars (\$1,000,000) combined single
15 limits. The policy must be applicable to all premises and
16 operations. The policy must include coverage for bodily injury,
17 broad form property damage (including completed operations),
18 personal injury (including coverage for contractual and employee's
19 acts), blanket contractual, products, and completed operations.

20 Such insurance coverages will be procured and maintained with forms and
21 insurers acceptable to the Town. All coverages will be continuously
22 maintained to cover all liability, claims, demands, and other obligations
23 assumed by SHDC pursuant to Section 5(B) of this Agreement. In the case
24 of any claims-made policy, the necessary retroactive dates and extended
25 reporting periods will be procured to maintain such continuous coverages.
26 Town will reimburse SHDC for the cost of procuring the insurance
27 policies required by this Section (B).

28 ii. SHDC's comprehensive general liability insurance policy will be endorsed
29 to include the Town as an additional insured. Every policy required above
30 will be primary insurance, and any insurance carried by the Town, its
31 officers, or its employees, or carried by or provided through any insurance
32 pool of which the Town is a member, will be excess and not contributory
33 insurance to that provided by SHDC. SHDC will be solely responsible for
34 any deductible losses under any policy required above.

35 iii. An ACORD Form 27, or other certificate of insurance form acceptable to
36 the Town, will be completed by SHDC's insurance agent and provided to
37 the Town as evidence that policies providing the required coverages,
38 conditions, and minimum limits are in full force and effect and must be
39 reviewed and approved by the Town prior to commencement of this
40 Agreement, and again on each renewal or replacement of such policies

1 throughout the term of this Agreement. The certificate must identify this
2 Agreement and provide that the coverages afforded under the policies will
3 not be cancelled or terminated until at least 30 days' prior written notice
4 has been given to the Town. The completed certificate of insurance will be
5 sent to:

6 Mary Jean Loufek, CMC, Town Clerk
7 Town of Breckenridge
8 P.O. Box 168
9 Breckenridge, Colorado 80424
10

11 iv. Notwithstanding any other portion of this Agreement, SHDC's failure to
12 procure or maintain policies providing the required coverages, conditions,
13 and minimum limits is a material breach of this Agreement for which the
14 Town may immediately terminate this Agreement or, at its discretion, the
15 Town may procure or renew any such policy or any extended reporting
16 period and pay any and all premiums in connection therewith, and all
17 monies so paid by the Town will be repaid by SHDC to the Town upon
18 demand, together with interest on such monies so paid at the legal rate, or
19 the Town may offset the cost of the premiums against any monies due to
20 SHDC from the Town.

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

26 8. **Annual Appropriation.** Financial obligations of the Town under this Agreement payable
27 after the current fiscal year are contingent upon funds for that purpose being
28 appropriated, budgeted, and otherwise made available by the Town Council of the Town
29 of Breckenridge, Colorado. If sufficient funds are not made available, this Agreement
30 may be terminated by either Party without penalty. The Town's obligations under this
31 Agreement are not a general obligation indebtedness or multiple year direct or indirect
32 debt or other financial obligation whatsoever within the meaning of the Constitution or
33 laws of the State of Colorado. Notwithstanding the preceding provisions, the Town states
34 that at the time of the execution of this Agreement it is its current intent to appropriate
35 and make available in future fiscal years sufficient funds to pay or reimburse SHDC for
36 any costs or expenses incurred by SHDC in the proper and lawful performance of this
37 Agreement.

38 9. **Default; Resolution Of Disputes.**

39 A. **Default.** Time is of the essence of this Agreement. A default exists under this
40 Agreement if either Party violates any covenant, condition, obligation required to
41 be performed by it under this Agreement. If a Party (**Defaulting Party**) fails to
42 cure such default within ten days after the other Party (**Non-Defaulting Party**)

1 gives written notice of the default to the Defaulting Party, then, at the Non-
2 Defaulting Party's option, the Non-Defaulting Party may terminate this
3 Agreement. Notwithstanding either Party's right to terminate this Agreement for
4 an uncured default, this Agreement is subject to the rights of either Party to
5 invoke the remaining provisions of this Section.

6 **B. Negotiation.** The Parties will attempt in good faith to resolve any dispute arising
7 out of or relating to this Agreement promptly by negotiations between persons
8 who have authority to settle the controversy (**Executives**). Either Party may give
9 the other Party written notice of any dispute not resolved in the normal course of
10 business. Within five days after receipt of the notice, Executives of the Parties to
11 the dispute will meet at a mutually acceptable time and place, and thereafter as
12 often as they reasonably determine to be necessary, to exchange relevant
13 information and to attempt to resolve the dispute. If the matter has not been
14 resolved within 30 days of the notice of dispute, or if the Parties fail to meet
15 within 20 days after the notice of dispute, either Party may initiate mediation of
16 the controversy as provided below.

17 **C. Mediation.** If the dispute has not been resolved by negotiation as provided above,
18 the Parties will endeavor to settle the dispute by mediation with a neutral third
19 party. If the Parties encounter difficulty in agreeing on a neutral third party, they
20 will each appoint a neutral third party, such third Parties to appoint a neutral third
21 party to mediate.

22 **D. Final Resolution of Disputes; Waiver of Right to Jury Trial.** If the dispute
23 between the Parties is not resolved through negotiation and mediation as provided
24 above, either Party may initiate such judicial action as it may determine to be
25 appropriate. Venue for any action arising out of this Agreement is proper only in
26 the state courts of Summit County, Colorado. Both Parties waive the right to a
27 jury trial in action to enforce or interpret this Agreement.

28 **E. Governing Law.** This Agreement is to be interpreted in accordance with the laws
29 of the State of Colorado

30 **F. Provisional Remedies.** The procedures specified in this Section are the sole and
31 exclusive procedures for the resolution of disputes among the Parties arising out
32 of or relating to this Agreement; provided, however, that a Party may seek a
33 preliminary injunction or other provisional judicial relief if, in its judgment, such
34 action is necessary to avoid irreparable damage or to preserve the status quo.
35 Despite such action, the Parties will continue to participate in good faith in the
36 procedures specified in this Section.

37 **G. Performance To Continue.** Each Party will continue to perform its obligations
38 under this Agreement pending final resolution of any dispute arising out of or
39 relating to this Agreement.

1 H. **Extension Of Deadlines.** All deadlines specified in this Section may be extended
2 by mutual agreement.

3 I. **Costs.** Each Party will pay its own costs with respect to negotiation and
4 mediation. The prevailing Party in any litigation or provisional judicial relief will
5 be entitled to reimbursement from the other Party for all reasonable costs and
6 expenses, including attorneys' fees and expert witness fees, in connection with
7 such litigation or provisional judicial relief.

8 10. **Notices.** All notices required or permitted under this Agreement must be given by
9 registered or certified mail, return receipt requested, postage prepaid, or by hand or
10 commercial carrier delivery, or by telecopies, directed as follows:

11 If intended for the Town to:

12
13 Town of Breckenridge
14 P.O. Box 168
15 150 Ski Hill Road
16 Breckenridge, Colorado 80424
17 Attn: Town Manager
18 Telecopier number: (970)547-3104
19 Telephone number: (970)453-2251
20

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

22
23 Timothy H. Berry, Esq.
24 Timothy H. Berry, P.C.
25 131 West 5th Street
26 P. O. Box 2
27 Leadville, Colorado 80461
28 Telecopier number: (719)486-3039
29 Telephone number: (719)486-1889
30

31 If intended for SHDC, to:

32
33 Summit Housing Development Corporation
34 P.O. Box 188
35 110 Ski Hill Road
36 Breckenridge, Colorado 80424
37 Telecopier number: () **[TO BE INSERTED]**
38 Telephone number: () **[TO BE INSERTED]**
39

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

41
42 Jeffrey L. Huntley, Esq.
43 Summit County Attorney

1 P.O. Box 68
2 Breckenridge, Colorado 80424
3 Telecopier number: (970) 453-3535
4 Telephone number: (970) 453-
5

6 Any notice delivered by mail in accordance with this Section will be effective on
7 the third business day after it is deposited in any post office or postal box
8 regularly maintained by the United States postal service. Any notice delivered by
9 telecopier in accordance with this Section will be effective upon receipt if
10 concurrently with sending by telecopier receipt is confirmed orally by telephone.
11 Any notice delivered by hand or commercial carrier will be effective upon actual
12 receipt. Either Party, by notice given as provided above, may change the address
13 to which future notices may be sent.
14

15 **11. Miscellaneous Provisions.**

- 16 A. **Assignment.** Neither Party may assign this Agreement in whole or in part
17 without the prior written consent of the other Party, which consent may be
18 granted, withheld, or conditionally approved in the sole and absolute discretion of
19 the Party requested to give such consent.
- 20 B. **Incorporation of Exhibits.** The attached **Exhibit “A”** is incorporated into this
21 Agreement by reference.
- 22 C. **Agreement Not to be Recorded.** This Agreement will **NOT** be recorded in the
23 real property records of the Clerk and Recorder of Summit County, Colorado.
- 24 D. **Waiver.** The failure of either Party to exercise any of its rights under this
25 Agreement is not a waiver of those rights. A Party waives only those rights
26 specified in writing and signed by the Party waiving such rights.
- 27 E. **Modification.** This Agreement may be modified or amended only by a duly
28 authorized written instrument signed by the Parties. Oral modifications to this
29 Agreement are not permitted.
- 30 F. **“Will” and “Will Not” Defined.** The terms “will” and “will not” indicate a
31 mandatory obligation to act or to refrain from acting as indicated in the context of
32 the sentence in which such terms are used.
- 33 G. **Authority.** The individuals executing this Agreement on behalf of each of the
34 Parties represent that they have all requisite powers and authority to cause the
35 Party for whom they have signed to enter into this Agreement, and to bind such
36 Party to fully perform the obligations of such Party as set forth in this Agreement.
- 37 H. **Section Headings.** Section headings are inserted for convenience only and do not
38 limit or define the interpretation to be placed upon this Agreement.

- 1 I. **Fax or Scanned Copy Sufficient.** For all purposes contemplated in this
2 Agreement, including execution of this Agreement, facsimile or scanned
3 signatures are as valid as an original signature. Both Parties waive any claim or
4 defense that a facsimile or scanned signature is not valid, or is not the best
5 evidence of signature.
- 6 J. **No Partnership.** Town is not a partner, associate, or joint venturer of SHDC in
7 the conduct of SHDC's business, and SHDC is not a partner, associate, or joint
8 venturer of the Town in the conduct of Town's business. Each Party will at all
9 times have the status of an independent contractor without the right or authority to
10 impose tort or contractual liability upon the other Party, except as expressly
11 provided for in this Agreement.
- 12 K. **Third Parties.** There are no third party beneficiaries of this Agreement.
- 13 L. **Severability.** If any of the provisions of this Agreement are determined by a final,
14 non-appealable order of a court of competent jurisdiction to be invalid, illegal, or
15 unenforceable in any respect, the validity, legality, and enforceability of the
16 remaining provisions of this Agreement will not be affected by such
17 determination.
- 18 M. **Counterparts.** This Agreement may be executed in several counterparts and/or
19 signature pages, and all counterparts and signature pages so executed constitute
20 one agreement binding on the Parties, even though all of the Parties are not
21 signatories to the original or the same counterpart or signature page.
- 22 N. **No Adverse Construction.** Both Parties acknowledge having had the opportunity
23 to participate in the drafting of this Agreement. This Agreement is not to be
24 construed against either Party based upon authorship.
- 25 O. **Non-Discrimination; Compliance With Applicable Laws.** Each Party agrees
26 that it:
- 27 i. will not discriminate against any employee or applicant for employment
28 because of race, color, creed, sex, sexual orientation, religion, national
29 origin, or disability;
- 30 ii. will insure that applicants for employment are employed and that
31 employees are treated during employment without regard to their race,
32 color, creed, sex, sexual orientation, religion, national origin, or disability;
- 33 iii. will in all solicitations or advertisements for employees to be engaged in
34 the performance of work under this Agreement state that all qualified
35 applicants will receive consideration for employment without regard to
36 race, color, creed, sex, sexual orientation, religion, national origin, or
37 disability; and

1 iv. will comply with all applicable federal, state, and local laws, rules and
2 regulations. Without limiting the generality of the foregoing, each Party
3 will comply with the Americans With Disabilities Act, 42 U.S.C. §12101,
4 et seq. (Public Law 101-336), and all applicable regulations and rules
5 promulgated thereunder by any regulatory agency. The indemnification
6 and termination provisions of this Agreement will apply with respect a
7 Party's failure to comply with all applicable laws or regulations.

8 P. **Force Majeure.** Neither Party is liable to the other for any failure, delay, or
9 interruption in the performance of any of the terms, covenants or conditions of
10 this Agreement due to causes beyond the control of that Party, including, without
11 limitation, strikes, boycotts, labor dispute, embargoes, shortages of materials, acts
12 of God, acts of the public enemy, terrorism, acts of superior governmental
13 authority, weather conditions, floods, riots, rebellion, sabotage or any other
14 circumstance for which such Party is not responsible or which is not in its power
15 to control.

16 Q. **Entire Agreement.** This Agreement is the complete agreement and understanding
17 between the Parties concerning the Buy-Down Program, and supersedes any prior
18 agreement or understanding relating to the Buy-Down Program.

19 R. **Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the
20 Parties and their respective successors and permitted assigns.
21

TOWN OF BRECKENRIDGE

By: _____
Timothy J. Gagen, Town Manager

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

SUMMIT HOUSING DEVELOPMENT
CORPORATION, a Colorado nonprofit corporation

By: _____

Title: _____

MEMO

TO: Town Council

FROM: Town Attorney

RE: Request for Encroachment License Agreement

DATE: October 27, 2011 (for November 8th meeting)

I recently received the attached letter and survey from attorney Felice Huntley requesting that the Town grant her client, Rugrats Properties, LLC, a license agreement to use a small portion of the Town's F&D Placer property that abuts the Rugrats' property at 340 Westridge Road. As the letter and survey indicate, the license is needed because Rugrats' heated driveway encroaches by ± 63 square feet onto the Town's property.

Town ordinances authorize the granting of an encroachment license in certain instances, and upon certain terms and conditions. Sometimes the Town Manager or the Town Engineer can approve the license agreement on their own. This is not one of those situations; the decision whether to grant the license agreement requested by Rugrats must be made by the Town Council.

In addition to Ms. Huntley's letter and the survey, also enclosed with this memo is a proposed form of Encroachment License Agreement that meets the requirements of the Town Code, and a proposed resolution to approved the license agreement. Importantly, the license agreement is fully terminable by the Town upon notice (§9(a)). The agreement also contains the required insurance (§11) and indemnification (§14) provisions, as well as all other provisions required by the Town Code.

The Council should also note that pursuant to the Town Code, Rugrats is required to pay for all of my time spent in processing the request for the license agreement.

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

LAW OFFICES
WEST BROWN HUNTLEY & HUNTER, P.C.

100 SOUTH RIDGE STREET, SUITE 204
POST OFFICE BOX 588
BRECKENRIDGE, COLORADO 80424

TELEPHONE (970) 453-2901
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Special Counsel
JILL D. BLOCK
Paralegal

September 26, 2011

VIA EMAIL (timb@townofbreckenridge.com)

Timothy H. Berry, Esq.
Town of Breckenridge Attorney
P.O. Box 2
Leadville, CO 80461

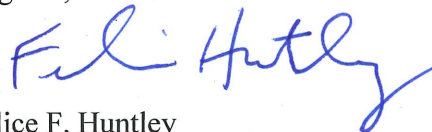
Re: Request for License Agreement
Lot 16, Westridge Subdivision, 340 Westridge Road

Dear Tim:

This firm represents Dr. and Mrs. Guzelian (collectively, the "Guzelians"), who are the owners of the entity which owns Lot 16 in the Westridge Subdivision (the "Guzelian Property"). The Guzelian Property is located immediately adjacent to F & D Placer MS #16786 owned by the Town of Breckenridge (the "Town Property") (schedule no. 4008233). As we have discussed recently by phone, there is a small encroachment of the Guzelians' driveway on the Town Property, as shown on the attached Encroachment Diagram. This was discovered recently when a survey was completed for another purpose. Because of the minimal dimensions of the encroachment and the current use of the Town Property, we are respectfully requesting that Town of Breckenridge grant a license for the Guzelians to use the Town Property for location of a portion of the driveway as shown on the Encroachment Diagram, underground pipes associated with the driveway heating system and a turn off valve for the system.

If there is additional paperwork that needs to be submitted for this request, please let me know. Otherwise, if the Town is willing to grant this request, it is my understanding that you will prepare the License Agreement for review using the Town's form for such agreements. Thank you in advance for your consideration and assistance.

Regards,

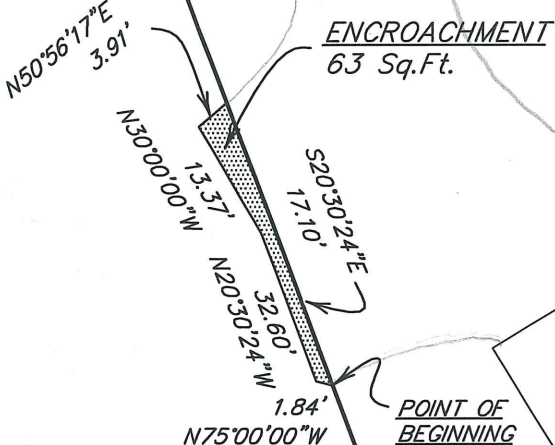


Felice F. Huntley

FFH/amw
Enclosure
6752.02

EXHIBIT "A"
ENCROACHMENT DIAGRAM
 F & D PLACER
 TOWN OF BRECKENRIDGE
 SUMMIT COUNTY, COLORADO

TO WESTRIDGE ROAD
 THE WESTRIDGE SUBDIVISION
 LOT 16
 AND DRAINAGE EASEMENT
 30' PRIVATE ACCESS, UTILITY



UNPLATTED
 (TOWN OF BRECKENRIDGE)
 F & D PLACER
 M.S. No. 16786

EXISTING HOUSE

N 20°30'24" W
 103.50'

324.50' O.D.

S 56°04'59" W
 126.10'

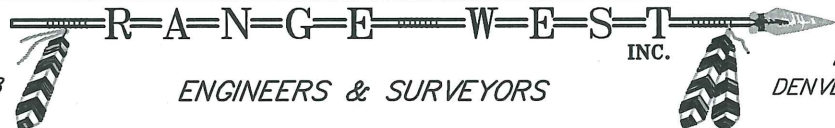
UNPLATTED
 U.S.F.S.



Scale: 1" = 20'

PROJECT NO. 18579-411 DWG: 18579LGL.DWG DRAWN BY: GAW DATE: 11/03/09

P.O. BOX 589
 SILVERTHORNE, CO 80498



PHONE 970-468-6281
 DENVER DIRECT 303-623-0426

FOR WORKSESSION/ADOPTION – NOV. 8

A RESOLUTION

SERIES 2011

A RESOLUTION APPROVING AN ENCROACHMENT LICENSE AGREEMENT WITH
RUGRATS PROPERTIES, LLC, A COLORADO LIMITED LIABILITY COMPANY

WHEREAS, Rugrats Properties, LLC, a Colorado limited liability company, has requested that the Town enter into an Encroachment License Agreement; and

WHEREAS, Section 11-6-3 of the Breckenridge Town Code authorizes the Town Council, in its discretion, to approve the granting of a license agreement for the non-public use of Town property; and

WHEREAS, the Town Attorney has prepared a proposed form of Encroachment License Agreement between the Town and Rugrats Properties, LLC, a Colorado limited liability company, a copy of which is marked **Exhibit “A”**, attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed Encroachment License Agreement, and finds and determines that the proposed agreement should be approved.

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

Section 1. The proposed Encroachment License Agreement between the Town and Rugrats Properties, LLC, a Colorado limited liability company (**Exhibit “A”**) is approved; and the Town Manager is authorized to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. This resolution is effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2011.

TOWN OF BRECKENRIDGE

By _____
John G. Warner, Mayor

1 ATTEST:

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Mary Jean Loufek,
CMC, Town Clerk

APPROVED IN FORM

Town Attorney Date

ENCROACHMENT LICENSE AGREEMENT

THIS ENCROACHMENT LICENSE AGREEMENT (“**Agreement**”) is dated _____, 2011 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and RUGRATS PROPERTIES, LLC, a Colorado limited liability company (“**Owner**”).

RECITALS

A. Owner owns the following real property located within the Town of Breckenridge, Summit County, Colorado:

Lot 16, The Westridge Subdivision, according to the plat thereof filed June 27, 1997 at Reception No. 541537 in the records of the Clerk and Recorder of Summit County, Colorado (“**Owner’s Property**”).

B. Town owns the F& D Placer, U.S. Survey No. 16786, Town of Breckenridge, Summit County, Colorado (“**Town’s Property**”).

C. A portion of the improvements located upon Owner’s Property encroaches into and on the Town’s Property as shown on the attached **Exhibit “A”**, which is incorporated herein by reference (the “**Encroachment**”).

D. The Town has agreed to grant to Owner a personal privilege to maintain the Encroachment on the Town’s Property, all in accordance with, and subject to the terms, conditions and limitations of, this Agreement.

1. **Grant Of License.** The Town grants to the Owner the personal privilege and permission to enter upon the Town’s Property and to maintain the Encroachment on the Town’s Property subject, however, to the terms, conditions, and limitations of this Agreement. The license is subject to all existing easements and other property interests, if any, located within the Town’s Property.

2. **Term.** This Agreement and the license granted to Owner hereunder commences as of the date of this Agreement and continues until it is terminated in the manner provided in this Agreement.

3. **Consideration.** The consideration to be paid by the Owner to the Town for the privilege granted by this Agreement is \$10.00, receipt of which is hereby acknowledged by the Town, and other good and valuable consideration as provided in this Agreement.

4. **No Interest In Land.** Owner understands, acknowledges, and agrees that this Agreement does not create an interest or estate in Owner’s favor in the Town’s Property. The Town retains legal possession of the full boundaries of its property, and this Agreement merely grants to the Owner the personal privilege to maintain the Encroachment throughout the term of this Agreement.

Notwithstanding the expenditure of time, money, or labor by the Owner on the improvements that constitute the Encroachment, this Agreement will never be construed to create an assignment coupled with an interest in favor of the Owner. If Owner expends any time, money or labor it will be at Owner's own risk and peril.

5. **Limited Scope Of License.** The license granted to the Owner by this Agreement may only be used for the improvement, location, and maintenance of:

- A. Owner's driveway as shown on **Exhibit "A"**;
- B. the underground pipes associated with the driveway's heating system; and
- C. the turn off valve for the driveway's heating system.

Owner may not expand the Encroachment or Owner's use of the Town's Property, or alter or change the Owner's use of the Town's Property.

6. **Use Of Licensed Premises By Others.** Owner may permit Owner's employees, business invitees, contractors, subcontractors, lessees, agents, guests, family members, and others to use the portion of the Town's Property for which this Agreement has been executed.

7. **Transferability Of License.** The license granted to the Owner by this Agreement may be transferred to subsequent owner(s) of Owner's Property; provided, however, that such subsequent owner(s) must assume in writing all of Owner's obligations hereunder (in a form acceptable to Town) and such subsequent owner(s) will acquire nothing more than the personal privilege granted to Owner by this Agreement. Further, the rights of any subsequent owner(s) are subject to termination in accordance with the termination provisions of this Agreement.

8. **Default.** If either party materially defaults in the performance of any of the material covenants or agreements to be kept, done, or performed by it under the terms of this Agreement, the non-defaulting party may notify the defaulting party in writing of the nature of such default. Within 15 days following receipt of such notice the defaulting party will correct the default or, in the event of a default not capable of being corrected within 15 days, the defaulting party will commence correcting the default within five days of receipt of notification of the default and then correct the default with due diligence. If the defaulting party fails to correct the default as required in this Paragraph 8 the non-defaulting party, without further notice, may lawfully declare that this Agreement is terminated pursuant to Paragraph 9 effective upon such date as the non-defaulting party designates. The rights and remedies provided in this Paragraph 8 may be exercised singly or in combination.

9. **Termination.** This Agreement and the license granted to Owner is fully terminable in accordance with the following terms and conditions:

- a. **Termination Upon Notice To Owner.** This Agreement and the license herein granted to Owner will terminate 180 days after written notification of termination is provided by the Town to Owner at Owner's address as

set forth in this Agreement. Such notice may be given by Town at any time. The 180 day notice provision established by this Paragraph 9(a) is acknowledged by Owner to be reasonable.

- b. **Destruction Or Removal Of Improvements.** If Owner's improvements that encroach into the Town's Property are destroyed or are permanently removed, this Agreement, and the license herein granted to Owner, automatically terminates.
- c. **Termination Upon Default.** This Agreement and the license granted to Owner may be terminated by either party upon the material default of the other party in the performance of the material covenants or agreements of this Agreement in accordance with the provisions of Paragraph 8.
- d. **Recording Of Notice Of Termination.** Upon termination of this Agreement the Town may cause to be recorded with the Clerk and Recorder of Summit County, Colorado a written Notice of Termination.
- e. **No Compensation To Owner.** If this Agreement is lawfully terminated Owner is not entitled to receive a refund of any portion of the consideration paid for this Agreement, nor will Owner be compensated for any improvements that must be removed from the Town's Property.

10. **Permanent Removal Of Encroachment Upon Termination.** At such time as this Agreement and the license granted to Owner are terminated the Owner will, at its expense: (i) promptly remove the Encroachment from the Town's Property, and (ii) restore the Town's Property to a natural condition that substantially matches the Town's Property immediately adjacent to where the Encroachment was located .

11. **Insurance.** Owner will obtain and maintain at all times during the term of this Agreement, at Owner's sole cost, a policy of comprehensive general liability insurance with limits of liability not less than the limits of liability for municipalities established from time to time by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. ("**Act**"), which limits are, as of the effective date of this Agreement, \$150,000 for injuries or damages sustained to one person in any single occurrence and \$600,000 for injuries or damages sustained to two or more persons in any single occurrence. The Town must be named as an additional insured on such insurance policy, and Owner must furnish the Town with proof of the required insurance prior to the effective date of this Agreement, and on each renewal or replacement of such policy throughout the term of this Agreement. The Owner's insurance information must be sent to: Town Clerk, Town of Breckenridge, P.O. Box, 168, Breckenridge, Colorado 80424. At Owner's option, the Owner's insurance information may be sent to Town electronically. Notwithstanding anything contained herein to the contrary, Town may terminate this Agreement, and the license herein granted to Owner, in accordance with the provisions of Paragraphs 8 and 9 of this Agreement, if Owner fails to procure and maintain the insurance required by this Paragraph 11. If at any time while this Agreement is in effect, the limits of liability for local governments under the Act are raised above the limits of liability provided above, upon notice to

Owner given in accordance with Paragraph 17 Owner's insurance requirement under this Paragraph 11 will be amended accordingly.

12. **Maintenance.** During the term of this Agreement the Owner will, at Owner's expense, maintain the improvements that encroach into the Town's Property in good condition.

13. **Owner's Waiver Of Claims Against Town.** As a part of the consideration paid by Owner to Town for this Agreement, Owner waives any and all claims that it may or might hereafter have or acquire against Town for loss or damage to the Owner's improvements that encroach into the Town's Property arising from the use by the Town, or the public, of the Town's Property for any lawful purpose including, but not limited to, the construction, maintenance, or repair of any Town improvements within the Town's Property.

14. **Indemnification.** Owner will indemnify, defend, and hold harmless the Town, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with the Owner's use of the Town's Property pursuant to this Agreement, except to the extent such liability, claim or demand arises through the gross negligence of Town, its officers, employees or agents. Owner will investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of the Owner. Owner will also bear all other costs and expenses related thereto, including court costs and attorney fees.

15. **Mechanics' Liens.** Owner will not allow any mechanics' or similar liens to be filed against the Town's Property arising from any work done by Owner in the Town's Property, and Owner will indemnify, defend, and hold the Town harmless with respect thereto, including any attorney's fees incurred by Town in connection with any such lien or claim. If any mechanics' or other liens are created or filed against the Town's Property by reason of labor performed or materials furnished for the Owner, the Owner will, within 30 days thereafter, at the Owner's own cost and expense, cause such lien or liens to be satisfied and discharged of record. The Town may terminate this Agreement in accordance with the provisions of Paragraphs 8 and 9 of this Agreement if Owner fails to comply with the requirements of this Paragraph 15..

16. **Survival of Indemnity Obligations.** All indemnification obligations described in this Agreement will survive termination of this Agreement, and will continue to be fully enforceable after termination.

17. **Notices.** Any notice required or permitted under this Agreement must be in writing and will be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following:

If To The Town:

Town Manager
Town of Breckenridge
P. O. Box 168
Breckenridge, CO 80424

If To The Owner:

Rugrats Properties, LLC
P.O. Box 9434
Breckenridge, CO 80424

Notices mailed in accordance with the provisions of this Paragraph are effective upon mailing. Notices personally delivered are effective upon delivery. Either party may change their address by giving notice thereof to the other party in the manner provided in this Paragraph.

18. **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation, or construction of this Agreement, the prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

19. **Waiver.** The failure of either party to exercise any of its rights under this Agreement is a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

20. **Governmental Immunity.** The Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,00 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Act, as from time to time amended, or any other law or limitation otherwise available to Town, its officers, or its employees.

21. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.

22. **Modification.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Agreement are not permitted.

23. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

24. **Terminology.** Wherever applicable, the pronouns in this Agreement designating the masculine or neuter apply equally to the feminine, neuter, and masculine genders. Furthermore, wherever applicable within this Agreement, the singular includes the plural, and the plural includes the singular.

25. **No Adverse Construction.** Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement will not be construed against either party based upon authorship.

26. **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory obligation to act or to refrain from acting as specifically indicated in the context of the sentence in which such word is used.

27. **Payment of Cost of Preparing Agreement.** At this time of signing this Agreement Owner will pay the Town’s attorney for the reasonable cost of preparing this Agreement, and the Breckenridge Town Council resolution used to approve this Agreement.

TOWN OF BRECKENRIDGE, a
Colorado municipal corporation

By: _____
Timothy J. Gagen, Town Manager

(AFFIX TOWN
SEAL HERE)

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

OWNER:

RUGRATS PROPERTIES, LLC, a
Colorado limited liability company

By: _____

Title: _____

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 _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, as _____, of Rugrats Properties, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public



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.

NOVEMBER 2011

Table with 2 columns: Date/Time and Event Name. Includes entries for November 8, 9, 10, 11, and 22.

DECEMBER 2011

Table with 2 columns: Date/Event and Event Name. Includes entries for December 9 and 13.

OTHER MEETINGS

Table with 2 columns: Meeting Frequency/Time and Meeting Name. Lists various recurring meetings like Planning Commission, Public Art Commission, etc.

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