



**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, June 10, 2008
3:00 pm
Work Session**

****2:30- OPTIONAL WALK THRU AT NEW RIVERWALK CENTER****

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.

3:00 – 3:15 pm	I. <u>PLANNING COMMISSION DECISIONS</u>	<i>Page 2</i>
3:15 – 3:45 pm	II. <u>LEGISLATIVE REVIEW</u> *	
	• Solar Panels	<i>Page 62</i>
	• Planning Commission Liaison Ordinance	<i>Page 67</i>
	• Trash Amendment Ordinance	<i>Page 73</i>
	• Sustainable Building Code	<i>Page 76</i>
	• Mercy Housing Agreement	<i>Page 87</i>
	• Tyrolean Tower	<i>Page 143</i>
	• Arts District Burn Permit	<i>Page 155</i>
3:45 – 4:15 pm	III. <u>MANAGERS REPORT</u>	
	• Public Projects Update	<i>Page 9</i>
	• Housing/Childcare Update	
	• Committee Reports	<i>Page 11</i>
4:15 – 5:30 pm	IV. <u>PLANNING MATTERS</u>	
	• Planning Commission Interviews	<i>Page 13</i>
	• Capacity Analysis Environment/Open Space	<i>Page 24</i>
	• Landscape Ordinance	<i>Page 42</i>
5:30 – 6:00 pm	V. <u>OTHER</u>	
	• Retreat Items- Marketing & Welcome Center	<i>Page 52</i>
6:00 – 7:15 pm	VI. <u>BRC JOINT MEETING</u>	

Dinner will be served to Town Council, BRC Board and Town Staff

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

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

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

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: June 4, 2008

Re: Town Council Consent Calendar from the Planning Commission Decisions of the June 3, 2008, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF June 3, 2008

CLASS C APPLICATIONS:

1. Beaver Run Conference Center Deck and Stair Roof (MM) PC#2008065; 620 Village Road
To rehabilitate and repair the deck, roof and stairs at the east facing access to Beaver Run by building an “over-roof” over a portion of the east building, adding a new roof over the existing stairs, rebuilding the existing stairs, adding French doors to the Conference Center lobby, and building a new raised deck over a portion of the existing deck to meet the lobby floor level. Approved.
2. Daries Residence (CK) PC#2008061; 835 Gold Run Road
Construct a new single-family residence with 4 bedrooms, 3.5 bathrooms, 8,067 sq. ft. of density and 9,286 sq. ft. of mass for a F.A.R. of 1:8.56. Approved.
3. Clubb Residence Exterior Remodel (MM) PC#2008062; 110 Windwood Circle
Remove existing exterior materials, then add natural stone wainscot, cedar horizontal siding, cedar shake shingles, new wood fascias, new composition shingle roof and a new wood garage door. Approved.
4. Nyberg Addition (CK) PC#2008060; 128 Gold King Way
Addition of 1,298 sq. ft. of living space and a 619 sq. ft. garage for a total of 4 bedrooms, 3 bathrooms, 3,258 sq. ft. of density and 3,876 sq. ft. of mass for a F.A.R. of 1:2.72. Approved.
5. Canfield Residence (MGT) PC#2008064; 120 Glenwood Circle
Construct a new single-family residence with 4 bedrooms, 7 bathrooms, 6,077 sq. ft. of density and 7,277 sq. ft. of mass for a F.A.R. of 1:22.50. Approved.

CLASS B APPLICATIONS:

1. Partridge Subdivision and Variance (CK) PC#2008059; 215 South Gold Flake Terrace
Resubdivide two single-family lots in Block 11 of the Yingling and Mickles Subdivision from one 75’ X 125’ lot and one 50’ X 125’ lot into two 62.5’ X 125’ lots and obtain a variance from policy 9A: and 9R: Placement of Structures as it pertains to the side setbacks for the proposed lots. Approved.
2. Shock Hill Tract E Re-Subdivision (CN) PC#2008063; 260 Shock Hill Drive
Subdivide Tract E into Tract E-1 (4.36 acres) and Tract E-2 (2.31 acres), in order to create a parcel of land (Tract E-2) to dedicate to the Town of Breckenridge as public open space. Approved.

CLASS A APPLICATIONS:

1. The Shores Lodge (MM) PC#2007155; Tract C, West Braddock Subdivision
Construct a 72-unit condo hotel (8 units are to have owner lock-off rooms) with conference space, lounge, fitness area, guest spa and surface parking. Approved.

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:01 P.M.

ROLL CALL

Michael Bertaux	Rodney Allen	Leigh Girvin
Mike Khavari	Eric Mamula	Dave Pringle
Sean McAllister – arrived @ 7:08		

APPROVAL OF MINUTES

With no changes, the minutes of the May 20, 2008 Planning Commission meetings were approved unanimously (5-0). Mr. Mamula abstained, as he did not attend the previous meeting.

APPROVAL OF AGENDA

With no changes, the Agenda for the June 3, 2008 Planning Commission meeting was approved unanimously (6-0).

CONSENT CALENDAR:

1. Beaver Run Conference Center Deck and Stair Roof (MM) PC#2008065; 620 Village Road

Mr. Pringle requested construction drawings and pictures to further illustrate the proposal. Lee Neely, Architect, reviewed plans and design concepts with the Commission. He further explained the safety benefits of the improvements. There were no further questions.

2. Daries Residence (CK) PC#2008061; 835 Gold Run Road
3. Clubb Residence Exterior Remodel (MM) PC#2008062; 110 Windwood Circle
4. Nyberg Addition (CK) PC#2008060; 128 Gold King Way
5. Canfield Residence (MGT) PC#2008064; 120 Glenwood Circle

With no motions, the consent calendar was approved unanimously (7-0).

WORKSESSIONS:

1. Gondola Parking Lots Master Plan (CN)

Mr. Neubecker presented a memo stating that the Planning Staff and Vail Resorts Development Company have been working together on developing a conceptual master plan for the development of the Vail Resorts properties surrounding the gondola, as well as Town owned properties in the vicinity. The Client Review Team (CRT) has narrowed their recommendations down to two options, which were called the “Breckenridge Station/Hotel” and the “Extend the Grid” plan. Based on input for the public and from the Town Council, these two options have been narrowed to one preferred concept, which was the “Breckenridge Station/Hotel” plan.

The Breckenridge Station/Hotel plan included an icon hotel, much like the grand hotels of Colorado resort and railroad history. This condo/hotel would use up a good portion of the allowed density on the property, and could incorporate a signature restaurant/bar as part of the “breadcrumb” to draw visitors toward downtown. This plan also includes less retail space, and is thus less competition to existing businesses.

The Extend the Grid plan would continue the downtown street pattern into the development site by extending a street west from Main Street and Wellington Road, with a new north/south street between Main Street and Park Avenue. This plan would result in some smaller buildings, but also resulted in more commercial development on the ground floor, and thus may have competed more with existing businesses. The layout of buildings also made “hot beds” more difficult.

Both plans incorporated two parking structures wrapped with residential or commercial uses, Riverwalk improvements, transit, and an enhanced gondola plaza. Each plan would also include a train park, where locomotive No. 9 would be placed, helping to attract more visitors to North Main Street, and also helping to attract more skiers to downtown.

The design team has made some modifications to the Breckenridge Station/Hotel plan based on the input received so far. The revisions were presented to the Commission, and staff requested Commissioner input on the direction of the project.

Mr. Campie (Consultant, DTJ Design) gave a power point presentation. He pointed out about 20% of the property is owned by the Town of Breckenridge, the rest owned by Vail Resorts.

Commissioner Questions/Comments:

- Mr. Bertaux: Abstained from discussion due to a conflict of interest.
- Mr. Allen: Would like to plant a seed to address the Gold Rush parking lot. Build the hotel as big as possible making it functional with a gradual transition, but not overwhelming. Architecture will need to be spectacular. He was concerned about aesthetics from Park Avenue. Suggested wrapping deed restricted commercial around parking structure.
- Ms. Girvin: Was concerned about the parking structures. Suggested the developer create office space or exhibit space for non profits for free or reduced costs around the parking structure to create life and vibrancy in that area. Move hotel closer to gondola and make a grand statement with the hotel. Worried about railroad and preferred it stay stationary. Make sure connections exist from project to Main Street. Watson Street may need to be realigned, and that's ok if necessary to make project work. Concerned about views from Park Avenue. Liked river enhancements with pedestrian feel. Hotel can be big, but not as big as St. Regis in Aspen. Affordable retail is an interesting idea.
- Mr. Pringle: This project will redefine Breckenridge as a world class destination. Make hotel grander and bigger; consider multiple stories. Hotel can be a wonderful architectural statement, but don't ignore other sites in the plan. Was not opposed to a big building. Sought clarification regarding a Condo Hotel as opposed to just a hotel. Wanted to ensure transit flows. Keep I-70 expansion in mind while planning this project. Think about how transit from I-70 could tie into this site.
- Mr. McAllister: Park Avenue entrance for Hotel should be considered. Ok with bigger but not enormous hotel. Energy conservation must be at the forefront. Make project green. River corridor improvements were good. Needed additional information on auxiliary buildings. Affordable housing would warrant density. Agreed with Ms. Girvin on moving hotel closer to gondola. It's critical to have good connections to skiway and Gold Rush lot. Not so important that train operates.
- Mr. Mamula: Spoke about density issues. Extra density for employee housing was consultants, idea, not Vail's. Stated he's already made many comments at other venues.
- Mr. Khavari: Asked about the future of town hall. Sought clarification regarding use of the train. If the hotel isn't that "grand", make the illusion that it is. Encouraged applicant to come to the Commission with questions and ideas prior to any formal application, if any clarification should be needed.

2. Historic Period of Significance (CN)

Mr. Neubecker presented a memo stating that the Town Council recently directed staff to reconsider a change to the Period of Significance for determining if a structure is "historic". The staff and Commission looked into this issue in 2006, and decided not to change the date, since there was no evident theme or pattern of architecture at the time to protect. Currently, historic structures in Breckenridge are those that were built prior to 1943, which was the end of gold dredge mining in Breckenridge. However, many communities, including the National Trust for Historic Preservation and the Department of the Interior, use a 50-year rule: properties 50 years and older are eligible for historic designation.

The idea behind this change is that many structures associated with the dawn of skiing in Breckenridge would become eligible for "historic" designation, and would therefore garner greater protection from demolition or significant alteration. Staff previously prepared a list of affected structures; can provide the list again with photos if desired. Staff asked the Commission if they found there was an architectural character or theme than we need to protect.

Commissioner Questions/Comments:

- Mr. Bertaux: Anything over 50 years old should undergo a cursory review. Otherwise if nothing significant is determined, 1943 is a good cutoff date.
- Ms. Girvin: Gave examples of different historic structures that look good and others that don't, illustrating her point that historic significance is site specific. On log houses, it was an "upgrade" when people

- could afford to add lap siding, and therefore may be significant (referring to a recent application where siding was determined to be non-historic.)
- Mr. Pringle: This could dilute our “period of significance”. Historic home owners assume an obligation. A-Frame owners do not anticipate this burden. Pointed out buildings that were within the historic period of significance. Develop a narrative that would guide applicants in determining the significance of their property. Get community buy-in and start talking about this with community members. Wanted the story to be told about the history of Breckenridge.
- Mr. McAllister: Pointed out A-Frame homes and buildings and their existence. The rolling 50 years thing is a bad idea. Let’s talk about what we are really trying to save. Nobody really wants to save A-Frames. Site specific seems to make more sense.
- Mr. Mamula: Pointed out council doesn’t want to miss the boat and eliminate any building that 100 years from now a future council would regret. “You may” attitude as opposed to “you must.” Preserve the jewels as determined by Planning Commission.
- Mr. Allen: Can buildings be hand picked to determine historic significance? Would support relative but not absolute. Agreed with Mr. McAllister. I would support a relative policy.

COMBINED HEARINGS:

1. Partridge Subdivision and Variance (CK) PC#2008059; 215 South Gold Flake Terrace

Mr. Kulick presented a proposal to resubdivide two single-family lots in Block 11 of the Yingling and Mickles Subdivision from one 75’ X 125’ lot and one 50’ X 125’ lot into two 62.5’ X 125’ lots and to request a variance from Policy 9A: and 9R: Placement of Structures as it pertains to the side setbacks for the proposed lots.

George Gruber, Agent: Not reinventing the mousetrap but creating two equal lots. Pointed out other properties on the street with variances. Discussed the difficulty of solutions on such a small spot.

Mr. Khavari opened the hearing to public comment.

Roger Christiansen, Neighbor: Reducing the setback reduces the development’s distance from his home. He sought clarification regarding standard setbacks. (Staff explained setback requirements per the code and pointed out front and rear setbacks would adhere to code.) Is there a potential for these two lots to be combined into one lot? (Staff pointed out pros and cons to this suggestion specific to proportions.) (Mr. Neubecker pointed out the current code would allow combining the lots.) Indicated to the Commission the size of the lots across the street, which would be comparable to combining these two lots. Please consider neighbors to these lots because it’s not beneficial for smaller lots.

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

Commissioner Questions/Comments:

Mr. Bertaux: Application made sense to him and he supported the variance.

Mr. Pringle: Pointed out this subdivision was unique compared to the others in the neighborhood or even across the street.

Mr. McAllister: Options are a small lot, a bigger lot, or one huge lot. This application was the best option for this unique property.

Mr. Allen: Agreed with both Mr. Pringle and Mr. McAllister.

Ms. Girvin: Appreciated applicants’ proposed setbacks which will allow for re-vegetation.

Mr. Mamula: Agreed.

Mr. Khavari: Supported the application and believed this was the best alternative for this property.

Mr. Pringle made a motion to approve the Partridge Subdivision and Variance, PC#2008059, 215 South Gold Flake Terrace, with the findings and conditions presented. Mr. Bertaux seconded and the motion was approved unanimously (7-0).

2. Shock Hill Tract E Re-Subdivision (CN) PC#2008063; 260 Shock Hill Drive

Mr. Neubecker presented a proposal to Subdivide Tract E into Tract E-1 (4.36 acres) and Tract E-2 (2.31 acres), in order to create a parcel of land (Tract E-2) to dedicate to the Town of Breckenridge as public open space. This dedication

was a requirement of the approval of a Development Agreement (dated March 13, 2007) for the construction of the Shock Hill Lodge, and condition of approval #19 of Development Permit PC#2007108.

Mr. Khavari opened the hearing for public comment. There was no public comment and the hearing was closed.

Commissioner Questions/Comments:

- Mr. Pringle: Is the town getting an obligation with this deal? Wanted to bring light to Mayor Warner's prior concerns regarding this application. Are we now assuming the liability for the trees?
Final Comments: Thanked applicant for land dedication to the town.
- Mr. McAllister: How will beetle kill and re-vegetation be dealt with? (Staff pointed out this wasn't a huge issue due to the layout and that such liability existing on all town owned land.)
- Mr. Mamula: Pointed out the town is better at maintaining its own land than it is at enforcing others. After Certificate of Occupancy it's difficult to enforce landscaping requirements.
- Mr. Khavari: Ready to move forward on this application but pointed out land dedication isn't always best.

Mr. McAllister made a motion to approve the Shock Hill Tract E Re-Subdivision, PC#2008063, 260 Shock Hill Drive, with the presented findings and conditions. Mr. Bertaux seconded, and the motion was approved unanimously (7-0).

FINAL HEARINGS:

1. The Shores Lodge (MM) PC#2007155; Tract C, West Braddock Subdivision

Mr. Mosher presented a proposal to Construct a 72-unit condo hotel (8 units are to have owner lock-off rooms) with conference space, lounge, fitness area, guest spa and surface parking.

Changes since the last submittal

1. An 812 square foot deed restricted employee unit has been added to the main level. The remaining square footage of proposed employee housing will be found off-site in the Upper Blue Basin.
2. The exterior elevations have been modified per suggestions from the Commission.
3. Geo-thermal assisted heating will be utilized for the snow-melt system.
4. A comprehensive landscaping/hardscaping plan is now included.
5. Staff has obtained data regarding the use of shuttle services for local lodges.

The applicant and agent responded to address concerns expressed at the last hearing. The only negative points incurred were for the height overage and the extensive snow melting system. Staff asked the Commission if they supported awarding positive three (+3) points for heating the public sidewalk. Staff also welcomed any additional comments about this proposal.

Staff noted that, in the report, positive points were awarded for providing 100% extra in required amenity space. However, this number was not reflected in the final point analysis. Therefore, the suggested total score would be positive eleven (+11) points rather than positive eight (+8) points.

Staff recommended the Commission support the Shores Lodge Point Analysis showing a passing score of positive eleven (+11) points. Staff also recommended approval of the Shores Lodge, PC#2007155, with the attached Findings and Conditions.

Steven Speers, Landscape Architect, Design Workshop: site conditions are bleak. There is no vegetation on the property. Objective of landscaping is to help scale the building and reclaim the landscaping along this corridor. Taking an environmental approach with storm water and site drainage. Character of river corridor and mining significance was emphasized in landscaping and hardscape.

Jeff Frahm, Architect, Craine-Frahm Architects: Discussed the changes to the architecture since the last review which included added density in the roof, changes to the windows sizes, enhanced entry features with additional stone, and the enhanced porte-cochere. Handed out samples of exterior materials for Commission's review.

Mr. Khavari opened the hearing for public comment. There was no public comment and the hearing was closed.

Commissioner Questions/Comments:

- Mr. Bertaux: Will this building have an elevator? (Mr. Frahm pointed out there will be three elevators.)
Final Comments: Appreciated changes, landscaping will be a challenge. Significant positive points show a good effort by applicant. Supported the project.
- Mr. Allen: How much of the public (as opposed to guests of the Lodge) will use this sidewalk? (Mr. Mosher: we anticipate very light traffic on this sidewalk compared to downtown.) Can the Commission award negative and positive points under one policy? (Mr. Mosher: yes under separate subsections of that policy.) Energy conservation is meeting this portion of Code but other areas don't. (Mr. Mosher: staff believed that the extensive snowmelt warranted negative points while the geothermal directly mitigated the impacts.) What ensured the longevity of the transit shuttle? Can a future owner abandon this service? (Mr. Neubecker: there will be a covenant recorded running with the land ensuring this. To remove the service would be in violation of the permit and could be punishable.) Is the employee housing being provided for Shock Hill on this site? (Mr. Frahm: no, besides the one unit in this Lodge all housing is being handled off-site.)
Final Comments: Changes are great. Don't support positive three (+3) points for heating public sidewalk. Supported the project.
- Ms. Girvin: Sought clarification of location of project; could not tell from the site map.
Final Comments: Nice job on designing large building. Landscaping is progressive. Questioned why the Town would allow a lodge this far out of Town in the first place.
- Mr. Pringle: Asked about any Condition of Approval regarding the transit covenant. (Mr. Mosher: staff failed to add this condition. Will correct this with the approval. Suggest a condition similar to: "Applicant shall execute and record with the Summit County Clerk and Recorder a covenant and agreement running with the land, in a form acceptable to the Town Attorney, that provides permanent non-auto shuttle service available every day for Shores Lodge guests and Shores Duplexes to and from Town. Covenant will be recorded guaranteeing this in perpetuity.")
Final Comments: Appreciated architectural changes. Supported application and changes to Point Analysis as suggested by the rest of the Commission.
- Mr. McAllister: Final Comments: Much better application after changes. Supported the project.
- Mr. Mamula: Is there a transit condition to ensure longevity of shuttle and geothermal? (Staff: yes, Condition number 12.) Sought location of heated public sidewalk.
Final Comments: Didn't support positive points for architecture. This building doesn't particularly stand out anymore than any other lodges in Town. Hoped the applicant can pull off landscaping plan. Had concerns about the wind and general exposure on the site. Supported the project.
- Mr. Khavari: Sought clarification regarding points for geothermal as the pond providing the water would be a future application. (Staff pointed out that the applicant would need to come back to the Commission if geothermal wasn't pursued and modify the point analysis.) (Mr. Frahm: pointed out geothermal for snow melt only, not for the building at this time. May modify to heat portions of the building.)
Final Comments: Thanked applicant for changes. Landscaping may be a challenge on this site, but looking forward to seeing it happen. Supported the application and agreed with positive three (+3) points for sidewalk should be eliminated.

Mr. Pringle made a motion to approve the point analysis for The Shores Lodge, PC#2007155, Tract C, West Braddock Subdivision with modifications to add positive three (+3) points under Policy 24/R and removing positive three (+3) points under Policy 16/R (for the public sidewalk). Mr. Mamula seconded, and the motion was approved unanimously (7-0).

Mr. Pringle made a motion to approve The Shores Lodge, PC#2007155, Tract C, West Braddock Subdivision, with the Findings and Conditions, noting the addition of a new condition #33 to address the shuttle service covenant: "Applicant shall execute and record with the Summit County Clerk and Recorder a covenant and agreement running with the land, in a form acceptable to the Town Attorney, requiring compliance in perpetuity with the requirements to operate a transit shuttle system for the owners and guests of The Shores Lodge and The Shores Duplex. Such transit shuttle system shall be adequately sized to serve these developments." Mr. Bertaux seconded, and the motion was approved unanimously (7-0).

TOWN COUNCIL REPORT:

Mr. Mamula discussed council's decision to move forward with the town council liaison and appoint a 7th citizen.

OTHER MATTERS:

Mr. Allen pointed out an application that the county reviewed that was denied.

ADJOURNMENT:

The meeting was adjourned at 10:15p.m.

Mike Khavari, Chair

Memorandum

TO: Town Council
FROM: Tom Daugherty, Town Engineer
DATE: June 5, 2008
RE: Public Projects Update

Main Street

The project is complete except for a few cleanup issues.

Riverwalk Center Roof

The certificate of occupancy is expected tomorrow (Thursday June 5). A little later than planned but the building will be ready to occupy. Some of the sound curtains were not produced when expected and will be placed on June 12 or 13. The completion of the boiler will also occur at that time.

Quandary Antiques Cabin

The building has moved and we are continuing to work on the bathroom and utility services.

Wellington Oro Water Treatment Plant

The project continues to move forward.

Wayfinding

The remaining vehicular signs will be going up within the next few weeks now that the snow has melted and the ground is drying up.

Staff is currently wrapping up the content and location information to put Phase II of the Wayfinding Plan out to bid. We hope to have a contractor on board by mid July. Fabrication of signs will happen shortly there after. Installation of signs will not take place until after Labor Day to avoid our busy season in Town.

The Wayfinding Plan will be fully implemented for 2009

Childcare Facility

The utility lines have been placed and the contractor is trying to make up the time and open as anticipated. The full impact to the schedule has not been determined but we will be able to better determine the completion date in the next month.

Ice Rink Parking Lot

At the retreat in May we discussed altering the parking lot at the Ice Rink to reduce the danger for pedestrians, eliminate the need for snow fence and reduce our costs of maintenance. We estimate the cost to be \$40,000 to \$45,000 to move the parking and eliminate the sidewalk adjacent to the building on the north parking lot. We have spent \$35,000 in the last 3 years on repairs and shoveling snow. We still need to repair portions of the roof this year. We will have to replace the snow fence as well if the conditions remain as they are.

We would like to ask the Council if they would like to complete the project this year so that we could reduce or eliminate repair and maintenance costs for this up coming winter. If we complete this project this summer we will not have to replace the damaged snow fence which is estimated at \$10,000 to \$12,000 (pending insurance claim) and we will save shoveling costs this next winter.

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen
DATE: May 30, 2008
RE: Committee Reports

Summit Leadership Forum Tim Gagen May 29

Over the last year the group has struggled with its purpose and decided to undertake an exercise in an attempt to forecast what Summit County might look like in 2030. They tasked the County and Town Planners with this exercise and at the May 29 meeting we reviewed the results which will be provided to you under separate cover. Using this report the group decided on 3 tasks for the next year. The first is to review and discuss the report. The second is to have a discussion of the impacts of a possible high speed transit system from Denver into the mountains along I-70 and what that means to Summit County and the forecast of the future and the third is to discuss that with build out approaching Summit County in the not to distant future what does that mean to the future sustainability of the County and Town's particularly from an economic and social standpoint.

LLA MJ Loufek May 20

- New Authority member, Turk Montepare, was sworn into office.
- All Consent Calendar items were approved, including a transfer of ownership of the Briar Rose Restaurant to White Flame Concepts Inc. d/b/a Briar Rose Chop House & Saloon, 109 East Lincoln Avenue.
- A new Retail Liquor Store License was granted to Young - III LLC d/b/a Summit Wine & Liquors, located at 110 S. Park Avenue, in the former location of Discount Liquor Mart.
- Salt Creek Steakhouse/Napper Tandy's was cited for two liquor violations in May.

Summit Stage James Phelps May 28

On May 28th, the Summit Stage Board held its Annual Planning Retreat. Of note, this was the last meeting for Bob Starekow (Chair), the new Chair will be - Kent Willis. The annual retreat discussed many items including: Review of April Operations, Current Budget, Additional routes, future fee base, Van Pools, Review of Capital Program and Long Range Plan.

Director's report for April showed a small decrease (-2.1%) in ridership for the month. It was believed that weather played a role in this due to less folks traveling to the mountains.

An area of major concern/discussion is that of current Budget. Currently, the budget projects a \$677,281 overage. This is due to maintenance costs of busses and that of rising fuel costs. In an effort to have immediate impact the Stage has reduced idle time to no more than 5 minutes and replaced larger busses with smaller busses on certain routes. There was also discussion of "modifying" service routes in the future, as a means to reduce the projected budget deficit. If this took place it would be in the fall and could be a combination of changes (i.e. 1 hr service, 12

hr service modified to 10/8 hrs – during shoulder seasons). This is only discussion at this time and the Stage Board has asked John Jones to quantify what any modification or solutions could result in budget recovery.

The Board also discussed additional routes, mainly adding summer service to Copper Mtn as well as exploring the Swan Mtn Flyer. Due to current status of budget these requests will be examined in future. John Johns has committed that if proper notice is given, he may be able to assist in adding service for a special Event held at Copper Mtn.

Rising fuel/maintenance costs provided catalyst for a discussion of future fee based service. The Board was open to the discussions with final Board consensus of contacting Vail and the Roaring Fork Transit Authorities for providing framework of their fee based structures and discussion. Van Pools while recognized as an option for expanding service to remote areas did not receive much attention based on current budget. Summit Stage continues to be interested in how this is working for Breckenridge. Long Range Plan discussion was brief and including possible Express Routes, Bus Rapid Transit lanes, what will be needed in the future both here in the County and neighboring Counties.

Other Meetings

CML	Tim Gagen	No Meeting
Wildfire Council	Peter Grosshuesch	No Meeting
CAST	Tim Gagen	No Meeting
NWCCOG	Peter Grosshuesch	No Meeting
Public Art Commission	Jen Cram	No Meeting
I-70 Coalition	Tim Gagen	No Meeting
SCHA	Tim Gagen	No Meeting
Police Advisory Committee	Rick Holman	No Meeting
BEDAC	Julia Skurski	May 8



MEMORANDUM

TO: Mayor Warner and Town Council
FROM: Chris Neubecker, Senior Planner
DATE: June 4, 2008
SUBJECT: Planning Commission Applications

There are five applicants for the Planning Commission:

Applied for Planning Commission in March and interested in applying again:

Jim Lamb
Michael Raitman
John Rath

Applied in response to the ad that ran in the Summit Daily News on Monday and Tuesday, June 2 and 3:
Dan Schroder

Previously ran for the Town Council seat vacated by Dr. John Warner when he became Mayor:

John Ebright
Geoffrey Gempeler

In addition to the vacancy on the Planning Commission created by the elimination of the Town Council Representative (term through October, 2010), Sean McAllister recently communicated his willingness to resign his position. Mr. McAllister has missed several meetings and is finding his schedule to be extremely full. Should you find two qualified candidates for the Planning Commission through the interviews on June 10, Mr. McAllister is willing to step down. His appointment is through October, 2008.

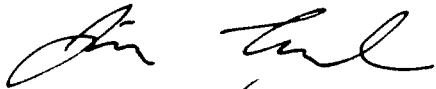
March 31, 2008

Dear Mayor and Council,

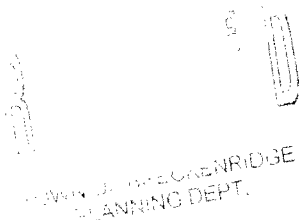
I would like to express interest in the upcoming Planning Commission opening. I feel that I would bring a strong background to the group and would really enjoy the chance to serve the community. My experience in the planning process includes considerable experience in historic renovation as well as sustainable building practices. In addition, I have a strong interest in the use of solar energy; both hot water systems as well as photovoltaic.

Designing, building and restoring structures has been a passion of mine for many years. I feel I would be an asset to the Planning Commission.

Thank you for your consideration.



Jim Lamb
jlamb@coloradomtn.edu
453-9132



PLANNING DEPT.

Michael Raitman
P.O. Box 1418
Breckenridge, CO 80424
240-215-5352
Email: foxhounds2@gmail.com

March 30, 2008

Breckenridge Planning Director
Town of Breckenridge

I saw an advertisement in the Summit Daily News indicating there were vacancies on the Town of Breckenridge Planning Commission. I would like to state my interest in filling one of those vacancies, as I would be pleased to contribute to the future planning and development of Breckenridge.

My wife and I are new to Breckenridge. We purchased a vacation property a year ago after visiting during the ski season and then spent late summer here as well. At that time we also decided to open our art gallery, Art on a Whim, here in Breckenridge at the Town Square Mall. We've been in business here since December 2007 and have since purchased another property up Ski Hill Rd. to use for our permanent residence here in Breckenridge. We love the town and all it has to offer and would like to help in any way we can to ensure that what attracted us here in the first place remains and continues to improve.

My background and education is in engineering. I had a long and successful career as an electrical and software engineer. My education includes both Bachelor's and Master's degrees in Electrical and Computer Engineering. In addition to running our art gallery business, I also ran a successful consulting business during part of my engineering career.

I served for three years on the Parks and Recreation Commission in Frederick, MD. We interacted frequently with the Planning Commission when determining required areas of open space and parks for new developments.

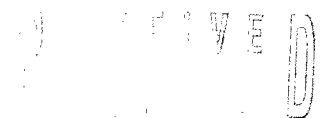
I believe that being a newcomer to the area I would add a fresh perspective to planning issues, from that of a resident, vacation rental property and business owner, each in three separate areas of the town. My business, government and technical expertise mix would be a great asset to the Planning Commission.

Please consider me for one of the open positions on the Town of Breckenridge Planning Commission.

Sincerely,



Michael Raitman



BRECKENRIDGE
3 SEPT

John Rath

April 1, 2008

Breckenridge Planning Director
150 Ski Hill Road
PO Box 168
Breckenridge, CO 80424

RECEIVED
APR 01 2008

TOWN OF BRECKENRIDGE
PLANNING DEPT.

Re: Planning Commission Position

To whom it may concern:

I have always been one to believe that the grass is greener on my side of the fence. It has always been important for me to take interest in, and cherish all that surrounds me. Never have I been happier then when I am home. My home is Breckenridge.

I have skied the hills, biked the trails, climbed the mountains and hiked with my friends and dog to the far reaches of all that is Breckenridge and beyond... While doing so, I have broken my neck, blown out my knee, injured my shoulder and lost my front teeth... with never a moment of regret. I love this place and feel that I have strong qualifications that will help the planning commission continue to make Breckenridge not only recognized as a world class resort but more importantly as a world class place to live.

I came to Breckenridge 10 years ago via New York City. In two months of experiencing an amazing Breckenridge summer, I went from a producer of movies to a producer of homes. Surprisingly, my work ethic, desire for challenge, financial background and management experience gained during my previous career translated quite well into my new chosen profession.

The company that I founded with my brother and sister, Trilogy Partners, has designed and built over 25 homes in many neighborhoods in Breckenridge as well as other areas in the county and state. From the first home we built, our interest and niche has been to build extremely comfortable, sustainable and energy efficient homes. As Managing Partner, I am responsible for running our company on a day to day basis. I manage our people running the projects and I work directly with our clients to help them achieve their dreams.

Over the past ten years, it has dawned on me that I have not only been a part of a growing Breckenridge but have also been a part of growing Breckenridge. As this understanding has taken shape, I have recognized the underlying responsibility that this entails. For this reason, I have become increasingly involved in organizations that will help our community to grow responsibly. My work with the SCBA and the independent task force to develop a sustainable building code are examples of this commitment to Breckenridge's and Summit County's future.

There are many challenges that face our community. A few of which follow:

- affordable housing and the growing shortage of developable land
- beetle kill
- balancing desired development by the few with the needs of the community
- the necessity to develop methods to implement sustainable building methods and alternative energy technologies...

The planning department is instrumental in addressing these issues. It is also instrumental in understanding that a part of solving these problems is finding unrecognized opportunities. It is my shared concern for these issues and my desire to address them in a fair, innovative and balanced way that drives my interest to be a member of the planning commission.

Thank you for your consideration.

Sincerely,


John Rath

John Rath

PO Box 3353, 265 Long Ridge Drive, Breckenridge, CO 80424

johnr@trilogybuilds.com

970-389-0763

Related Experience

Extensive experience in working with architects, landscape designers, engineers and town planners to develop site plans and architectural plans

Dedicated to the study, knowledge and implementation of energy efficient building methods and alternative energy options

Strong working relationship with building officials in the Town of Breckenridge and surrounding areas

Regularly manage several projects simultaneously in various stages of development

Extensive experience with the Breckenridge real estate market

Interests and Concerns:

Coming up with reasonable and equitable solutions to the affordable housing problem

Developing a comprehensive plan to address beetle kill

Balancing development with the needs of the community

Working with developers, architects, homeowners and builders to develop more responsible and sustainable building methods

Community Involvement:

Worked with architects, planners and building department officials to develop our first Sustainable Building Code

Active member of the Summit County Builders Association

Sponsor of Breckenridge Film Festival

Ran electrical installation for the Habitat for Humanity build in 2002

Participated as a volunteer in the BOEC – 2001-2002 – Volunteer of the Year

Awards in 2007

Summit County Builder of the Year as voted by the Summit County Home Builders Association

6 awards at the Summit County Parade of Homes – Including the Premier Award and The Builders Concept Award

Extracurricular Activities:

Skiing

Mountain Biking

Hiking and being in the back country

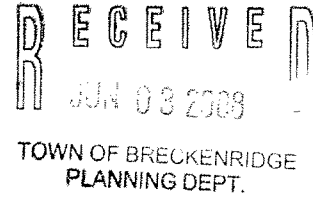
1989-1998 Freelance Film Producer – New York City

Line Producer, Production Manager, Location Manager, Location Scout – 23 Feature Films

Responsible for developing and maintaining budget and the hire of all crew and cast

June 3, 2008

Breckenridge Planning Director
Town Hall
150 Ski Hill Road
Breckenridge, CO 80424



Dear Breckenridge Planning Director,

I write to express my great interest in working with the Town of Breckenridge Planning Commission. Since moving to Summit County in 2000, my wife and I have embraced the community and have begun a family. We own our home in the Wellington neighborhood, are registered voters, attend various activities within the area, and love the community based experiences Summit County has to offer. My wife Amy teaches in the Summit School District and our four and a half year old daughter will attend Breckenridge Elementary School in the fall. Our two-year-old son will remain at Summit County Preschool until he is ready to move up.

Throughout my tenure with The Keystone Center (TKC) and Keystone Science School (KSS) I direct national professional development institutes for teachers. Every year I teach approximately 170 incredibly diverse interdisciplinary educators from geographies throughout North and Central America. In 8 years with KSS I have proactively worked with approximately 1,400 teachers to encourage critical thinking in their students, our future leaders. I know I have been a catalyst toward a bright future. I am very proud of the reach and impact I have made with KSS. While I intend to continue to work with teachers at a national level, I am at a point in my career where I want to focus my energy at the local level.

The Town of Breckenridge Planning Commission announcement is precisely what I have been looking for. By joining the Planning Commission I will engage and explore the possibilities with members of the Breckenridge community. The vacancy announcement recommends historic preservation experience. My experience stems from my youth as a Boy Scout. As I grew into a wilderness trip leader, bringing groups into the backcountry, I often encountered the living past. My training and wilderness ethic consistently leads me to encourage a historic preservation ethic. Currently, in my work with KSS, I engage teachers from across the country in a simulated environmental issue investigation here in Summit County. The curriculum I teach delves participants into the mining history of Summit County and, in particular, the Dredge history of Breckenridge. As a natural resource interpreter, one of the many hats I wear, I often lead discussions exploring how we can sustain the past while living in the present and engage in a sustainable future.

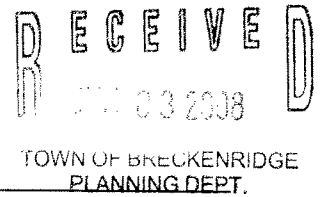
The skill set I bring as an applicant to the Town of Breckenridge Planning Commission is of high value. Please review my materials and consider me for a formal interview. I would truly enjoy having the opportunity to express my interest in this community appointment and share my commitment as a member of the Breckenridge community. I am excited about this opportunity with the Town of Breckenridge. I look forward to speaking with you about the possibilities.

Sincerely,

A handwritten signature in black ink that reads "Dan Schroder". The signature is fluid and cursive, with the first name "Dan" being particularly prominent.

Dan Schroder

Dan Schroder
Mailing: P.O. Box 983, Frisco, CO 80443
Physical: 14 Meadow Lark Green, Breckenridge, CO 80424
Cell: 970-389-5756; danjschroder@yahoo.com



Objective: Gain appointment with Town of Breckenridge Planning Commission

EDUCATION

Master of Education, Elementary Education
Regis University, Denver, Colorado

Bachelor of Science, Environmental Science

Minor, Appropriate Technology
Humboldt State University, Arcata, California

PROFESSIONAL EXPERIENCE

Senior Associate, Key Issues Program Director

The Keystone Center, Keystone, CO; June 2000-Present

- **National:** Train classroom teachers on various curricula aligned to national standards
- Teach critical thinking through sustainability, systems thinking, and consensus building concepts
- Present curriculum at national education institutes based in Summit County utilizing French Gulch
- Observe, interview, recruit, train, and manage up to 15 contract staff and multiple interns
- Plan, assign, and direct project work while administering ongoing program development
- Evaluate curricular goals, objectives, and outcomes through logic model approach
- Identify, develop, and maintain partnerships with multiple audiences
- Fundraise program budgets up to 600K and execute fiscal management of program budgets
- Provide ongoing education to institute attendees through electronic media and site visits
- Facilitate database management, strategic planning, marketing, and advertising

Keystone Science School

- **Local:** Teach water science to SSD 6th graders through hands-on monitoring of Blue and Snake Rivers
- Teach forest ecology to SSD 3rd graders
- Teach weather, climate, and chemistry to SSD students through interactive role play and video
- Teach interpersonal initiatives to aid 5th grade students in their transition to 6th grade

Substitute Teacher

Summit School District, RE-1, Frisco, CO, 2003 – 2005

- Teach all core subject areas, Kindergarten – 5th grade

Teacher, Yearbook Advisor, Supplies Manager

Joseph Academy, Niles, IL; school year 1999-2000

- Teach learning and behaviorally challenged students in alternative school
- Teach Psychology, Journalism, Art, and Bicycle Maintenance
- Empowered students to take responsibility for themselves through Boys Town philosophies
- Teach layout, design, copy, and editing while facilitating yearbook production
- Collaborate with the Dean of Students on supplies purchase, inventory, and budget management

Program Director

*AmeriCorps*VISTA Member: Recycling to Build Community*, Arcata, CA, Nov 1996 - Dec 1997

- Co-established and managed overall operation of The Order of the Dragon Kids Recycling Club
- Targeted school age residents in three section 8 housing complexes and the Town of Samoa, CA.
- Developed ongoing relationships with management and families and created volunteer recruitment strategies
- Implement weekly after school programs serving students aged 4-16
- Supervised up to twenty volunteers
- Identified and acquired support from corporate and non-profit communities
- Tracked goals and objectives to evaluate and report on program outcomes
- Responsible for 100% increase in program participation while serving as Program Director

ADDITIONAL PROFESSIONAL EXPERIENCE**Student Teacher**

Silverthorne Elementary School, Silverthorne, CO; Fall 2004

Observe, plan, design, implement and manage all aspects of the 5th grade curriculum. Participate in content planning, IEP, SST, parent teacher conferences, and duty. Teach Houghton-Mifflin language arts curricula, utilize Step-Up-To-Writing approach, participate in DIBELS assessment. Exposed to PYP and IB approaches. Present SmartBoard technology to faculty at staff meeting. Engage in all aspects of daily school activities.

On-Line Mentor

International Telementor Program (www.telementor.org) Keystone, CO. 2001 – 2002.

Mentor 3 students through on-line, e-mail format. Mentor program focused on project-based learning. Work with students to develop career action plans by investigating individual interests while researching opportunities.

Wilderness Trip Leader

Poulter Colorado Camps, Steamboat Springs, CO. Summer 1998

Responsible for up to 18 students per trip on month long outdoor courses. Work incorporated extensive map reading, logistics coordinating, and budgeting. Trained other leaders in map and compass techniques and Leave No Trace ethics and historic preservation. Intense involvement with group communication, dynamics, and leadership. Co-instructed activities including backpacking, spelunking, snow and ice applications, ropes techniques applied to climbing and Tyrolean traverse. Responded to wilderness medical emergencies.

Outdoor Educator, Co-Program Director

Poulter Colorado Camps, Steamboat Springs, CO. Summer 1993 - 1996

Introduced students (ages 8 - 15) to backpacking, hiking, horse packing, rock climbing, and natural history of the area during two-week sessions. Led students through interpersonal challenges, team building and problem solving. Taught camping techniques including campsite selection, site preservation, outdoor cooking, and personal safety.

CONFERENCE EXPERIENCE**Presenter**

National Science Teacher Association (NSTA) National Convention, Anaheim, CA 2006

Present hands-on, inquiry based, interdisciplinary, teacher-centered workshops. Workshop titles include: Bringing Environmental issues to the Classroom and Talkin' Trash with ABCs (Aluminum Beverage Cans).

Presenter

NSTA Regional Convention, Nashville, TN, December 2005

NSTA Regional Convention, Chicago, IL, November 2005

NSTA Regional Convention, Hartford, CT, October 2005

NSTA National Convention, Dallas, TX, April 2005

Presenter

National Recycling Coalition (NRC) Convention, Orlando, FL 1997

Attendee

National Science Teacher Association (NSTA) Convention, Atlanta, GA, 2004

Colorado Science Teacher Association (CSTA) Convention, Denver, CO, 2002, 2003

National Association for the Education of Young Children (NAEYC) Convention, Anaheim, CA 1997

PERSONAL ACCOMPLISHMENTS

Outstanding Staff Award, The Keystone Center 2005 recipient

Team Adoptex.com, Colorado Adoption Exchange Adventure Racing Team Member, 2004 – 2007

Finisher, Breckenridge Mountain Marathon, 2002; Chicago Marathon, 1998

Eagle Scout, Boy Scouts of America

COMPUTER EXPERIENCE

Microsoft Office – business applications

Adobe Photoshop – digital applications

Raiser's Edge; Vision; Access – database applications

Net Objects Fusion – web design application

Planning Commission Interviews--Suggested Questions

Applicants (Interview order)

- Jim Lamb
- Michael Raitman
- John Rath
- Dan Schroder
- John Ebright
- Geoffrey Gempeler

1. Why are you interested in serving on the Commission?
2. Please tell us a little bit about your qualifications/experiences/strengths to serve on the Commission.
3. Have you been to any Commission meetings, or any other Town meetings before? Are you familiar with the Town's Development Code and Comprehensive Plan?
4. The Commission meets the first and third Tuesday of each month, generally from 7:00 pm to 11:00 pm, with some site visits at 12:00 noon the day of the meeting. You are also expected to prepare for each meeting by reading 100-200 pages of staff reports. Do you have this much time to adequately serve on the Commission?
5. Do you have any ties to the development community that could be perceived as a "conflict of interest?"
6. Are there any particular topics that you believe the Commission should be addressing over the next couple of years?

MEMORANDUM

TO: Town Council

FROM: Chris Kulick, Planner I
Mark Truckey, Assistant Director of Community Development

DATE: February 14, 2008

SUBJECT: Capacity Analysis Chapters X.-XI. Parks and Open Space, Environmental Quality

Overview

Continuing with our fifth scheduled installment of our capacity analysis we are presenting information on our parks, open space and environmental components, chapters X-XI. These two chapters of Parks and Open Space, and Environmental components are the final two chapters of the capacity analysis and also provide benchmarks for our ability to meet the environmental needs of our residents and visitors. The presentation will be broken down as follows:

X. Parks and Open Space

- Number of acres of open space
- Acres/person of open space
- Number of acres of parks and open space
- Recommended Amount of Park Space



XI. Environmental Quality:

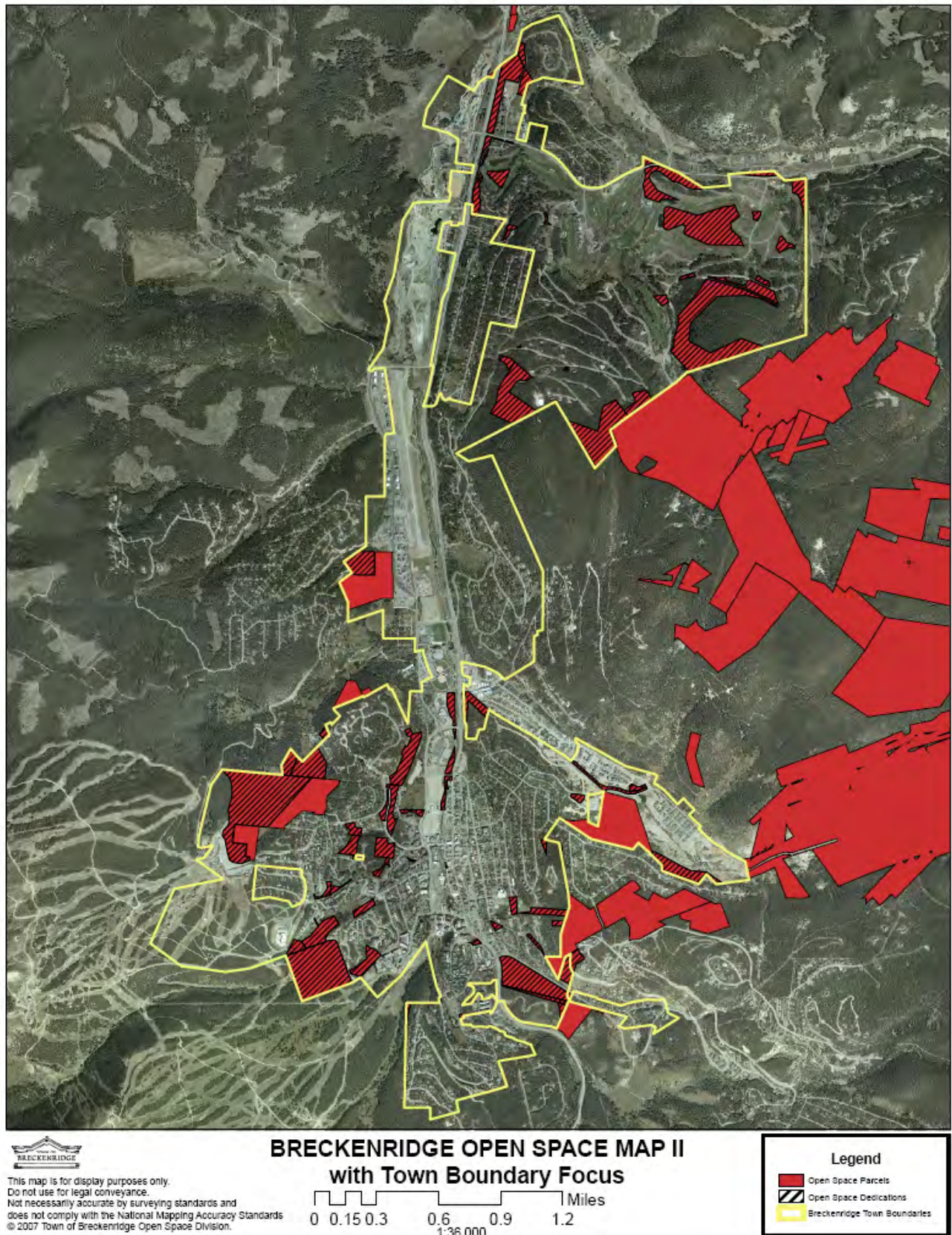
- Air Quality trends, based on Colorado Department of Health data collected
- Forest health
- Wetland health
- Wildlife habitat
- Water quality measurements in Cucumber Gulch & Goose Pasture Tarn
- Future Environmental Studies
 - Energy consumption trends in Town facilities
 - Overall carbon footprint



X. Parks and Open Space

The town takes pride in offering a high standard of amenities for both full time residents and visitors alike. Abundant Parks and Open Space managed by the Town contribute greatly to this high standard.

Town Managed Open Space



Total of Town Managed Open Space – The total amount of Town managed open space is 3934.38 Acres (547.68 acres located within Town boundaries), 3376.8 of these total acres were acquired through purchases with open space funds from the Town’s self imposed .05% open space sales tax. The

remaining 557.58 acres were acquired through formal land dedications. Shown above is a map of Town managed open space, below is chart describing where open space purchases have taken place.

Breckenridge Open Space Acquisitions

AREA	ACREAGE ¹
Cucumber Gulch	39.68
Golden Horseshoe	2614.86
Backcountry	563.60
Other	158.66
TOTAL	3376.80

¹Includes lands acquired jointly with Summit County

Amount of Open Space Per-Person

Breckenridge with a year round population of 3,406 residents and a total of 3,934 acres of Town managed open space which equals 1.16 acres of open space per permanent resident. With the Town’s maximum peak population of 36,157 is taken into account, the ratio of open space acreage per person is lowered to 0.109 acres of open space per person. Despite 0.109 acres of open space per person being a much lower number, it is significantly better than the recommended 0.0105 acres of open space per person that the National Parks and Recreation Association recommends.

Park Space located within Town

Within the Town there are six main parks for active recreation and sporting events. These parks host a diverse array of facilities for different types of activities such as softball, rugby, skateboarding, basketball, tennis, dog recreation, picnicking and sledding. Listed below are the names and sizes of those facilities.

- Blue River Plaza and Park: 8.7 Acres
- Vista Point Park 1.4 Acres
- Kingdom Park and Recreation Center: 29.5 Acres¹
- Carter Park: 4.8 Acres
- Total of Town Managed Park Space: 44.4 Acres**



Park Space Controlled by Other Entities Located in Town²

- Upper Blue Ball Fields: 3.9 Acres
- Breckenridge Elementary: 4.6 Acres
- Total of Other in Town Park Space 8.5 Acres**

Total of All Park Space Located in Town 52.9 Acres

Recommended Amount of Park Space

The Breckenridge Facilities Master Plan includes a section on recreational needs based on population. These projections were calculated on assuming a need of 5 acres per 1,000 persons - which is similar to what the National Parks and Recreation Association, recommends (5 - 8 acres per 1,000 people) – with an assumed 100% resident population and an assumed 50% vacation home population. Using this method, it is estimated that although the Town currently has 52.9 acres of park space, it is well below the recommended amount of 99 acres based off of the above mentioned formula.

¹ Area includes parking lot for Rec Center

² Ball field land is controlled by Summit County School District

Calculation for Recommended Park Space:

Breckenridge Residents: 3,406

Breckenridge Peak population: $36,157 - 3,406 = 32,751 \times 0.5 = 16,376 + 3,406 = 19,782$

$16,376 + 3,406 = 19,782/1,000 = 19.7 \times 5 \text{ acres} = \mathbf{99 \text{ acres needed}}$

Park Space versus Open Space Needs

Park space and open space serve different needs of the community. Park space is a contrived, built environment, constructed for a specific function compared with open space which is a fairly unmodified landscape that sometimes has limited improvements such as trails, which enable visitation and travel. Despite their differences it is often perceived that parks and open space serve the same purpose. According to the National Parks and Recreation Association “small cities surrounded by open space” sometimes “feel complacent about the need for additional park area” (NPRA). “While these open space resources may meet the community’s need for regional level open spaces, they do not meet all of a community’s recreational needs” (NPRA). There is still a need “for playgrounds, sports fields, community centers and other types of recreational facilities” which open space does not meet (NPRA). Due to the high quality and abundance of the Town’s open space and trails inventory, it can be easy to assume that there are ample opportunities provided in Town. However, as the above analysis indicates, there is a potential shortage of more developed in-Town parks. As the Town proceeds with planning of remaining vacant land (e.g., Block 11, McCain), these park and recreational needs will be incorporated into the plans.

XI. Environmental Quality:

The Town of Breckenridge is committed to protecting, preserving and restoring the natural environment. The Town’s Vision Plan indicates the preservation of natural resources to be a top priority, “where the actions of the community ensure that wildlife and its habitat are protected, that views from Town to the surrounding mountains are maintained, that both air and water quality are clean and improved, and that accessible open space, trails and backcountry are preserved” (Vision Statement). Additionally the Town through its policies and ordinances tries to maximize environmental benefits and reduce or eliminate negative environmental impacts locally, regionally and globally. In an effort to facilitate these goals the Town will lead by example and encourage community residents and visitors to make a similar commitment to the environment. As part of effort to further our environmental commitment the Town has researched baseline data on the seven environmental subjects below to gain a greater understanding of the current environmental well being of the community.

Air Quality Trends (PM 10)

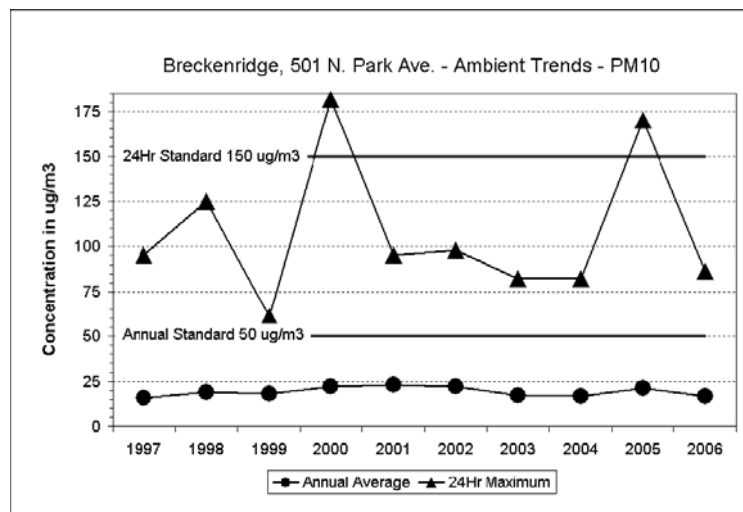
According to the Colorado Department of Public Health the primary air quality concern for mountain communities such as Breckenridge, is particle matter (PM10) pollution from wood burning and road sanding. In fact, particle matter is the only form of air quality that is regularly measured by the Colorado Department of Public Health in Breckenridge at the Departments air quality testing station located behind the Summit County Justice Center at 501 N. Park Avenue. “Particle pollution is a mixture of microscopic solids and liquid droplets suspended in air. This pollution, also known as particulate matter, is made up of a number of components, including acids (such as nitrates and sulfates), organic chemicals, metals, soil or dust particles, and allergens (such as fragments of pollen or mold spores). The size of particles is directly linked to their potential for causing health problems. Small particles, less than 10 micrometers in diameter, pose the greatest problems. The smallest particles can get deep into your lungs, and some may even get into your bloodstream. Exposure to such particles can affect both your lungs and your heart. Larger particles are of less concern, although they can irritate your eyes, nose, and throat. Small particles of concern include (PM 2.5) "fine particles" (such as those found

in smoke and haze), which are 2.5 micrometers in diameter or less; and "coarse particles" (such as those found in wind-blown dust), which have diameters between 2.5 and 10 micrometers" (Air Now).

In July 1987, EPA declared National Ambient Air Quality Standards for particulates with an aerodynamic diameter of 10 microns (vg) or less (PM_{10}). This is a size that can be inhaled into the bronchial and alveolar regions of the lungs. The standard has two forms, a 24-hour standard of $150 \mu\text{g}/\text{m}^3$ and an annual arithmetic mean standard of $50 \mu\text{g}/\text{m}^3$.

1. The 24-hour standard is attained when the expected number of exceedances for each calendar year, averaged over three years, is less than or equal to one. The estimated number of exceedances is computed quarterly using available data and adjusting for missing sample days.
2. The annual arithmetic mean standard is attained when the annual mean, averaged over three years is less than or equal to the level of the standard. Each annual mean is computed from the average of each quarter in the year, with adjustments made for missing sample days.
3. In both cases, a data recovery of 75 percent is needed for each calendar quarter to be considered a valid quarter of data.

Listed below are the ambient trends for PM_{10} from 1997-2006.



Town Initiated Air Quality Improvement Measures

In an effort to lower the Town's PM_{10} levels the Town instituted an absolute air quality policy in 2000 to curb the effects of unregulated wood burning appliances. The result of this policy limits the number of wood burning appliances in both residential and commercial applications. Additionally any newly installed wood burning appliances must meet applicable emission standards set by the United States Environmental Protection Agency.

Forest Health



Breckenridge is situated in the middle of the expansive White River National Forest and much of the Town's appeal can be directly tied to aesthetic quality of the surrounding forests. Because of the intrinsic value the surrounding forests have, forest health is important to the citizens of Breckenridge. Despite the appearance of aesthetic beauty, most of Breckenridge's forests are currently unhealthy, susceptible to disease, invasion of pests and fire.

Forest Health Definition

According to the Colorado State Forest Service (CSFS) “forest condition or health can be defined by the interaction between three components: 1) a forest’s resilience to disturbance; 2) its ability to sustain a natural range of biological diversity; and 3) its ability to meet the current and future needs of people in terms of values, products and services” (CSFS).

Breckenridge’s Forests

Forests surrounding Breckenridge are predominately lodgepole pine (except at higher elevations just below timberline), resulting in a monoculture of mature trees generally 80 years and older. Today’s forests are a result of heavy logging “during the mining era from 1870 to 1910, when many trees were removed, particularly Douglas-fir and Ponderosa Pine due to their superior lumber qualities. Other stands of trees were burned for a variety of reasons including carelessness, opening up forage for livestock or to expose mineral deposits” (USFS). The results of these previous actions and lack of recent large-scale disturbance have resulted in many forest health challenges. “The majority of Colorado’s and Breckenridge’s forested landscapes are considered disturbance driven, meaning they evolved with natural cycles of wildfire, insect and disease infestations, flooding, avalanches, or windstorms. Changes in human values and the resulting shift in land management practices interrupted these disturbance cycles, primarily through aggressive fire suppression and reduced harvesting activity on public lands. Without these disturbances to periodically rejuvenate forest stands and ensure a variety of forest types, ages, and densities, much of the Breckenridge area’s forests have become overly dense, stagnant and concentrated in older age classes of lodgepole pine trees. Lodgepole pine is not in and of itself a less-desirable tree species, however, when forests become an effective monoculture of lodgepole pine, as they have around Breckenridge, then wildlife habitats and wildlife use decrease, the risk of wildfire increases, and the resiliency of the forest to insects and disease decrease. This lack of diversity, along with intense competition for resources such as water and light, has left many forest stands vulnerable to insect and disease attack, catastrophic wildfire, and other types of disturbances, potentially at an inordinately large scale”(CSFS). In summary, Breckenridge’s surrounding forests are the very definition of an unhealthy forest according to the Colorado State Forrest Service. Below is a summary of current forest conditions on our National Forests surrounding Breckenridge in Summit County.

- National Forest Acres in Summit County: 315,000 acres
- Lodgepole forests: 105,000 acres
- Acres of mature lodgepole susceptible to beetles: 100,000
- Suitable for treatment (e.g., thinning, patchcuts): 35,000 acres³
- Accessible for aggressive treatment: 3,000 acres
- Acres treated in Summit County in 2007: 1,500
- Cost of treatment for 1,500 acres in 2007: \$1.3 million (Berwyn).

Town Initiated Forest Management Projects

Due to an overall deficiency in forest health and diversity the Town has initiated several projects to better facilitate forest health on Town owned properties. Below is a list and descriptions of those projects.

- **West Moonstone Forest Health and Management Plan** – In 2003 the Town contracted with Rocky Mountain Ecological Services to draft a forest health and management plan for the West

³ Suitable for treatment based on topography, accessibility, etc.

Moonstone area adjacent to the Town. The area covered in the plan is approximately 20 acres of evenly stocked mature lodgepole pine trees, with some areas of healthier and more diverse Engelmann spruce and subalpine fir trees. The goals of the plan were to actively manage the forest stands to maintain and enhance the health, beauty and productivity of this forest land through the use of sound silvicultural practices. To carry out this goal six main objectives were developed.

- Maintain or further diversify the size, age-class, structure and species composition of the tree stands present;
- create or maintain healthy, vigorous tree stands over the short and long term; and
- maintain an aesthetically pleasing environment;
- minimize the possibility of a wildfire by reducing fuel loading and breaking up fuel continuity; and
- Maintain or enhance wildlife habitat

Later in 2003 the plan was implemented by a logging contractor and the results of the project have been viewed as successful.

- **Cucumber Gulch Forest Health and Management Plan** – The Town is again partnering with Rocky Mountain Ecological Services to develop and implement a forest health and management plan for Cucumber Gulch. This plan has been produced and the Town will begin implementing it during spring and summer of 2008. In this area, the natural course of mountain pine beetles and forest succession are allowed to proceed with minimal management, which is part of the Preserves overall goals and objectives.
- **In-Town Open Space Forest Health and Management Plan** – Like the Cucumber Gulch Plan, this plan is currently in the production stage and will also be drafted by Rocky Mountain Ecological Services. The goal of this plan is to identify areas where active management of forests can benefit local residences, recreational amenities, and reduce the risk of wildfire. Another part of this plan is to identify areas where *No Action*, is in the best interest of forest health, and public benefit.
- **Stand Mapping and Analysis Report for the Golden Horseshoe Nordic Expansion Area** – This plan looked at the health and structure of the forest stands within the anticipated Nordic expansion area. The goal is to combine Nordic ski area planning and forest management goals through the implementation of the Nordic plan.
- **Wildfire Risk Analysis for Town of Breckenridge**- This project is currently analyzing high priority areas for immediate wildfire mitigation needs, and will provide recommendations to reduce the risk of catastrophic wildfires at the Breckenridge Area’s most at-risk communities. Another significant component of the plan will be protection of the Town’s water resources through reducing the risk of catastrophic wildfire. This project is a team effort with the Red, White & Blue Fire Protection District, the Town of Breckenridge, and the US Forest Service as active partners.
- **Town of Breckenridge Forest Health Long-Term Guidance Plan**- This project is currently looking at incorporating more long-term forest health and ecosystem management principles into everyday management of our forests in and around the Town of Breckenridge. The goals of the plan are to provide long-term aesthetic qualities to the town through forest management, while protecting our wildlife, fisheries, water quality standards, and ecosystem health.

Forest Service Initiated Forest Management Projects

- **Upper Blue Stewardship Project** - The Upper Blue Stewardship Project was originally proposed in 1999. Due to the revision of the Forest Plan and changed conditions, the Forest Supervisor decided

to withdraw the decision made on the project. After issuance of the Forest Plan in June 2002, it was determined that the project should be revisited. This Stewardship Project aims to:

- improve forest health and wildlife habitat effectiveness by increasing species and structural diversity;
- reduce the fire hazards to nearby private lands and improvements in the long-term by increasing species and structural diversity within the project area, and in the short-term by reducing dead fuels in old clearcuts and reducing tree crown density in the wildland/urban interface;
- protect elk calving habitat by assuring travelways open to motorized travel will not exceed an average travelway density of one-half mile per square mile during calving season;
- improve water quality and riparian areas by reducing runoff from roads and trails and promoting responsible recreation use; the draft USFS Travel Management Plan for the White River National Forest will focus on what types and levels of recreational use are allowed in this project area to sustain wildlife habitat and other forest functions.

Wetland Health

Wetlands are highly productive ecosystems that perform a variety of functions that are considered valuable to society. They are places where the soils are inundated or saturated with water long enough and frequently enough to significantly affect the plants and animals that live and grow there. Although current regulations and ordinances have been designed to conserve them, wetlands are still filled, drained, polluted and indirectly impacted as a result of both permitted and illegal activities. A combination of historical, current, and future impacts to wetlands results in a cumulative loss of wetlands habitat, acreage, and function. These cumulative losses are particularly evident in geographic areas where the rapid pace of development may result in irreplaceable loss of wetlands functions.

Summit County Wetlands

Summit County contains a diverse array of wetlands support a wide array of plants, animals, and plant communities. There are at least 12 plants, 4 birds, 1 amphibian, 1 fish and 21 major wetland/riparian plant communities that are found on the Colorado Natural Heritage Program's (CNHP) list of rare and imperiled species that are found occurring in Summit County wetlands. At the same time, Summit County is one of those areas that has experienced a rapid rate of growth that has resulted in cumulative loss of wetlands habitat.

To address the associated issues, the County has been trying to be proactive in evaluating its wetlands and their functional values. As part of the Countywide Comprehensive Plan in 1994, goals were established designed to protect wetlands and other important natural resources. In 1999, the Board of County Commissioners addressed a cumulative loss of wetlands in the County by adopting the *Conceptual Strategy for Enhancing the Management of Wetlands within Summit County*. Since then, the County has been working closely with local and federal agencies and private landowners to stem the loss of wetlands habitat. A Special Area Management Plan was initiated and developed for Summit County to assess and reduce the cumulative loss of wetlands resources in the County. A Summit County wetlands functional assessment method was produced that classifies wetlands in accordance with terminology from the Hydrogeomorphic (HGM) approach currently being implemented by a National Interagency Implementation Team. In 1999, Summit County hired SAIC to assess the functions of 41 wetlands, including 22 in the Upper Blue Basin. The resulting report included management recommendations and development guides intended to assist Summit County in the conservation of wetlands resources.

Wetlands at risk

The CHNP documented those sites in Summit County (including the Upper Blue) that most merit conservation efforts, while recognizing that protecting only these sites in no way adequately protects all of the values associated with the county’s wetlands. The inventory done by CHNP was meant to advance efforts to evaluate and manage wetlands on state and regional levels. The following wetlands were identified through the CHNP as being “Summit County Sites of Biodiversity Significance” within the Upper Blue Basin:

Name	Biodiversity Rank and Justification	Protection Urgency Rank and Justification	Management Urgency Rank and Justification
Blue Lakes (Monte Cristo Creek)	B1 (Outstanding Significance): The Blue Lakes site supports ten CNHP elements of concern. Specifically, this site supports the only known occurrence of Weber whitlow-grass. Additionally, Weber saussurea and Porter feathergrass, both globally rare and located next to the spillway. The following state rare plants also occur within the site: Kotzebue grass-of-parnassus, northern rockcress, thick-leaf whitlow-grass, arctic draba, moonwort, stiff clubmoss, and mountain bladder fern.	P3: The majority of this site is privately owned with adjacent public lands. There is no threat known for the site in the foreseeable future. A conservation easement is recommended to ensure protection for the rare plants and rare plant habitat. Increased mining, expansion of the reservoir, and recreational activities could threaten current and potential rare plant habitat.	M3: Although current management appears to be adequate, actions may be needed in the future to maintain the current quality of element occurrences. Actions could include restoration of social trails to prevent further erosion and destruction of rare plant habitat. There is some recreational use of the area, but it is concentrated on the road. Although this site does not appear to be threatened at this time, this rank could change if recreational or mining impacts increase in the future. Should mining become active, management plans should be developed prior to on-ground activities. Monitoring activities should occur every 5-10 years unless there is a significant change in on-site activity. The hydrology of the site is important to the ecological processes which support the rare plants and the riparian communities. The

Name	Biodiversity Rank and Justification	Protection Urgency Rank and Justification	Management Urgency Rank and Justification
			water quality, quantity and timing should be maintained at its current status.
Cucumber Gulch	B2 (Very high significance): The Cucumber Gulch site [has supported] a breeding population of the globally imperiled Southern Rocky Mountain boreal toad.	P1: This site is immediately threatened by residential development, road maintenance, and activities associated with the downhill and nordic ski areas. There are specific plans for development of the surrounding area. The breeding population (if it still exists) of the boreal toad is located within the trail system of the nordic center. Recreational uses, including skiing and mountain biking, pose threats to this site. A conservation easement of open space designation is recommended.	M1: Management actions must be taken immediately to prevent further fragmentation of the willow communities and further degradation of the boreal toad. Actions could include: limiting access of mountain bikes and hikers during breeding season, and management of beaver to provide optimal water levels and habitat for the boreal toad. Management actions must be taken immediately due to the high threat of residential development, road improvements, and continual recreational use. Hydrological processes originating outside of the planning boundary, including water quality, quantity and timing, must be managed to maintain boreal toad population and community viability. These processes may be affected by the Peak 8 snowmaking operations.
Blue River at McCullough Gulch	B3 (High significance): This site contains excellent examples of common alpine willow and montane riparian scrub communities. The state rare Preble's shrew was documented within the site. It is one of the best examples of a	P3: This site is privately owned in an area that is being developed rapidly with residences. A conservation easement or open space designation is	M3: The site is bordered by Hwy 9, which impacts the wetland with road maintenance and improvement projects. Beaver are enhancing the wetland and their

Name	Biodiversity Rank and Justification	Protection Urgency Rank and Justification	Management Urgency Rank and Justification
	<p>riverine wetland observed on private lands in Summit County. The site provides excellent habitat for the boreal toad.</p>	<p>recommended to protect the site.</p>	<p>continued success relies on proper management.</p> <p>The presence of Preble's shrew, should be periodically sampled to determine changes in viability and overall quality of the riparian habitat. Further studies for boreal toad are recommended. Alterations in hydrology above this site could have profoundly negative impacts on the elements. The hydrology of this site is important to the ecological processes which support the boreal toad and the riparian communities. The water quality, quantity, and timing should be maintained at its current status.</p>
<p>Goose Pasture Wetland</p>	<p>B3 (High significance): The Goose Pasture wetland supports excellent examples of a common montane riparian willow carr and a common alpine willow scrub. It is the most extensive willow carr observed on private land in Summit County. Several kettle ponds with submerged vegetation are located in the adjacent uplands. There is also a historical record of the boreal toad from 1961.</p>	<p>P4: This wetland is privately owned by several owners. It is considered dedicated open space, but no official designation has been made. The site is located in a rapidly growing area of Summit County. A conservation easement or county open space designation is recommended to protect this wetland for the future.</p>	<p>M4: Although this site is not currently threatened, management may be needed in the future to maintain the current quality of element occurrences. Management actions could include monitoring water quality due to road maintenance and construction and controlling the spread of exotic plant species. Future surveys for boreal toad are recommended. Alterations in hydrology above this site would have profoundly negative impacts on the</p>

Name	Biodiversity Rank and Justification	Protection Urgency Rank and Justification	Management Urgency Rank and Justification elements.
Muggins Gulch	B3 (High significance): The Muggins Gulch site supports a good occurrence of a globally rare lower montane woodland and an excellent occurrence of a state rare alpine willow carr. There is also a good occurrence of a state rare subalpine riparian shrubland.	P1: The majority of the Muggins Gulch site is privately owned with adjacent public lands. This site is located in a rapidly developing area and the threats from residential development and road improvements are high. This site is an excellent candidate for either a conservation easement or open space designation.	M1: Management actions are required immediately or the riparian areas will be lost or degraded. Actions should also consider reintroducing beaver to maintain the viability of the occurrences. The hydrology of this site is important to the ecological processes which support the riparian communities. The water quality, quantity, and timing should be maintained at its current status.
Upper French Gulch	B3 (High significance): The Upper French Gulch site supports an excellent example (A-purity rank) of a Colorado River cutthroat trout occurrence. There is an extensive montane riparian willow carr that supports several beaver ponds. There is also a record of the globally rare Rocky Mountain columbine.	P2: The Upper French Gulch site is owned both privately and publicly. It is threatened by residential development, road improvements, and mining activities.	M2: New management actions will be needed within 5 years to prevent the loss of the elements. Such actions could include developing a management plan for cutthroat trout and beaver viability. The hydrology of this site is important to the ecological processes which support the trout and the riparian communities. The water quality, quantity and timing should be maintained at the current status.

Research and monitoring

Because most of these sites are outside of the jurisdiction of the Town of Breckenridge, we have not been involved in direct research and monitoring. The exception is Upper French Gulch, the area of which has been bought by the Town and the County since the above evaluation was made. It is known as the Cobb & Ebert Placer, and it was one of the B&B parcels that was purchased in 2005. There is now a conservation easement over the property, which is held by the Continental Divide Land Trust, and a management plan. The management plan does address monitoring needs.

Cucumber Gulch is the one site in this list that has been extensively researched and monitored. Beginning in 1997, the Town has contracted with consultants to develop baseline

conditions, research and monitor ecological elements of the Gulch. In 2003 a Recreation Master Plan was developed for the Gulch that addressed recreational uses and implications to the ecological health. Cucumber Gulch was recently renamed the Cucumber Gulch Preserve, to signify that the majority of the area is in public ownership and protected. Most ecological elements are studied on an annual (if not monthly) basis. This year the Town will begin a Visitor Experience Resource Protection study that will look at visitor use and preferences and the interface with the natural resources. The baseline work that has been done in the Preserve has been useful in looking at impacts over time from recreationalists and development. The Town plans to continue these research and monitoring efforts for the indefinite future.

Implications

The Town has been very diligent about its work in the Cucumber Preserve area, but research and monitoring should continue to be supported throughout build-out. The Town needs to continue to work with the developers and the residents of the properties surrounding the Preserve to ensure that the integrity of the surface and groundwater systems of the Preserve stay healthy and intact.

The other wetland sites indicated should be further evaluated together with Summit County. Attention should also be directed at other wetlands not directly specified in this report for the purposes of protection. The Town should look at joint management planning and acquisitions that can further the protection of particularly those wetlands with high biological values.

Wildlife Habitat

The Town of Breckenridge and the Upper Blue Basin are unique areas in that they are one of the few places where people can share space with most of the native, original wildlife. To many residents and visitors, this is one of the most enjoyable aspects of the area. However, as the population of the Town, and the surrounding areas, grows, the greatest threat to wildlife is loss of habitat through development and human disturbance.

The Town of Breckenridge is surrounded by public lands, with approximately 75% of the Upper Blue River Valley is USFS land. While many may think that this is enough to sustain the native wildlife populations and habitat, we need to think of the growth rate and future implications. The population projection in the Valley is projected to grow from its current 9,548 units to 13,762 units in twenty five years. The peak population is expected to reach 83,442 from its current 50,525 people. It is important to evaluate the potential impacts to wildlife as this growth occurs and to make accommodations whenever possible.

Resident wildlife populations



There is relatively little survey data for most wildlife species in our area. Based on the Upper Blue Stewardship Project Final EIS (May 2004), a crude estimate of mule deer summering in the project area (between Frisco and Breckenridge on the west side of the Blue River) was 150-175. There are an estimated 75-125 elk that winter in the area and 300-350 that will summer in the vicinity. One of the major migration corridors is in the Gold Hill area, crossing Highway 9 towards the Swan River drainage and

through Horseshoe Gulch. Occasionally small groups of mountain goats or bighorn sheep will wander into the Valley. In this same project area, there were estimated to be about 6-10 resident moose and 6-10 resident black bears, with perhaps three times as many transient black bears.

Threatened and endangered species

Canada lynx



The Upper Blue Stewardship Project FEIS noted that surveys suggested a 2001 population of up to approximately 200 snowshoe hares in the project area. Two-thirds of the pellet counts were found in mixed conifer or spruce/fir stands. Snowshoe hares are particularly important to monitor, as they are the primary food source for the Canada lynx. Individual lynx locations have been tracked in this area by the Colorado Division of Wildlife. Lynx have been located near the Town boundary in several areas. The USFS, USFWS, and the CDOW all have directives to maintain and improve conditions for lynx within key landscape linkage areas and to evaluate impacts of any proposed projects in this context.

Boreal Toad



It is not news to most people in our community that the boreal toad, a state-endangered species, is in decline in this area. Once abundant in wetlands of the Upper Blue, the last indications of breeding in Cucumber Gulch were in 1999. An intensive surveying effort was conducted by the Town of Breckenridge open space program in 2005 in Cucumber, and two adult toads were found. The decline of the toad has been attributed region-wide to a combination of habitat loss and death through the contraction of chytrid fungus (Bd).

Fortunately, the toads that were found in Cucumber Gulch were found to be Bd-negative. For this reason, and because of its habitat qualities, the Colorado Division of Wildlife is very interested in utilizing Cucumber as a translocation site for boreal toads to enhance their population. There is, however, concern over the development that is occurring in the vicinity and the impacts that this has had on the resident population and could have on the introduced population.

Colorado Cutthroat Trout

The most diverse trout species in North America, the historical distribution of cutthroat trout covers the broadest range of any stream dwelling trout in the Western Hemisphere. The rugged topography of their range has led to isolation, which in turn has given rise to fourteen recognized subspecies. Four of these evolved in Colorado: the Colorado River cutthroat trout in drainages west of the continental divide, Greenback cutthroat trout in the South Platte and Arkansas River drainages, and the Rio Grande cutthroat trout in streams that drain into the San Luis Valley. In addition, the yellowfin cutthroat trout was historically found in Twin Lakes at the headwaters of the Arkansas drainage. Unfortunately, this leviathan that grew to over 10 lbs, is now extinct. All three remaining species have either been petitioned to be listed or are currently listed under the Endangered Species Act. Dramatic reductions in their range have been precipitated primarily by the introduction of nonnative salmonids. Specifically rainbow trout that hybridize with cutthroat trout, and brook and brown trout that tend to replace them in streams and rivers (CDOW).

Colorado cutthroat trout are found in the upper reaches of French Creek. The Cobb and Ebert Placer, a portion of the B&B Mines property purchase, is home to some of this localized population. Because of its existence and the habitat encompassed within this parcel, the Town of Breckenridge and Summit County Government received a grant for its purchase from GOCO. Stipulations of this grant require that

a conservation easement be placed over the property that is held by a third party. This particularly conservation easement is held by the Continental Divide Land Trust and the property now in place a management plan that has been approved by both the Breckenridge Town Council and the Board of County Commissioners. The management strategies for this property include further protection of this threatened trout population.

Research and monitoring

The Town of Breckenridge began researching the wildlife and habitat resources of Cucumber Gulch in 1998. Shortly thereafter a baseline report was developed, upon which monitoring efforts are conducted continually. The results of these monitoring efforts have been instrumental in addressing development-related issues and impacts in and around Cucumber Gulch in subsequent years.

At the same time, very little research or monitoring has been done on any other Town property. Some citizen reports were pulled together from participants on the Golden Horseshoe Natural Resource Committee addressing specific areas of that particular project. Aside from this and isolated monitoring by the USFS, USFWS, and the CDOW, very little is known about the status of our resident wildlife species and impending threats.

Implications

Although we lack data on the presence and habitat use by wildlife in our area, we do know that the major impacts to resident populations, whether common or endangered, are habitat fragmentation and human-related disturbance. Habitat capability can be defined as the ability of a given area of land to support species of wildlife based upon specific characteristics. Habitat diversity (vegetation cover types and structural stages) and habitat effectiveness (road and development density) data are components of habitat capability. The best ways to ensure further habitat use of our area by native populations are to take their habitat use and breeding cycles into account during decisions related to road and building density, configuration, and location; seasonal construction timing; snow compaction; vegetation management; and recreational management. Some communities have wildlife codes, or wildlife protection elements within their development codes, that address such issues on a local level.

Water Quality

The water quality of the Town's streams, reservoirs, and groundwater influences our environmental well being. Water is used for domestic, recreational, commercial, and industrial uses. It also has intrinsic aesthetic qualities that are highly valued by our residents and visitors. Whether water is used for drinking, snowmaking, mining operations, or simply to be observed and marveled at, it is an extremely valuable commodity in this semi-arid mountain environment. Issues such as ensuring the maintenance of clean drinking water or stream flows adequate to support fish are important considerations, particularly as growth in the Town increases demands on our water resources.

Although the Town as a whole enjoys high quality water, there are nevertheless a number of human-related activities that have degraded waters within the Town and nearby. Historically, mining activities negatively impacted water quality, introducing high concentrations of trace elements (e.g., manganese, cadmium, zinc) into area streams. Other impacts come from stormwater runoff from highways (e.g., sediments, salts) and septic tank effluents. With that in mind, the State of Colorado classifies streams for certain uses (e.g., recreation) and establishes standards to protect those classified uses. With the exception of the stream segments listed below, the streams in and around Town are generally meeting state standards.

Impaired Segments in the Blue River Watershed ⁴		
Stream Segment Description	Status ¹	Impairment ²
Blue River, French Gulch to Swan River	Partially supporting	Cd, Zn
French Gulch, Wellington-Oro to mouth	Not supporting	pH, Cd, Zn

¹ Supports classified stream uses

² Does not meet state standards for specified uses.

Source: Draft Regional 208 Water Quality Management Plan

French Creek

According to the Northwest Colorado Council of Governments, “French Creek from the Wellington–Oro Mine complex to the Blue River exceeds the water supply standard for dissolved manganese, and the aquatic life standard for cadmium, copper, lead, mercury and zinc” (Wyatt). The major source of this pollution is from the Wellington-Oro Mine complex and the primary components of the pollution are metal toxicity from zinc and cadmium. Of these two pollutants, zinc exhibits the most serious and persistent downstream effects. “Seasonally, the greatest loading, potential toxicity, and furthest downstream effects occur during the spring snowmelt period” (Wyatt). As a result of metal toxicity, trout have been eliminated from the lower 2-3 miles of French Creek. Further evidence of the water quality and habitat degradation of French Creek is found through the study of the Blue River below its confluence with French Creek which “appears to have seriously reduced trout populations for an undetermined distance downstream” (Wyatt). “A report prepared by the Division of Wildlife in June of 2001 titled “Aquatic Habitat Analysis: French Gulch and Blue River, Summit County Colorado” for the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment documents the impacts to both French Gulch and the Blue River. The report states, “[t]he physical habitat of both the Blue River and French Gulch was highly modified by human actions in the last 100 years through a variety of activities including mining, road building, and urbanization of mountain terrain. As a consequence of these modifications, the amount of habitat available to support adult trout may have become compromised to the point where large numbers of fish will not be present.”” (Wyatt).

Blue River, French Gulch to Swan River

Following up on their analysis of French Creek the Colorado Division of Wildlife points out the Blue River from French Gulch to the Swan River would not be completely healthy independent of the negative discharges of French Creek, “[e]ven if metals loading from French Gulch were to be reduced the physical habitat of the stream would need to be altered for trout numbers to increase substantially.” Additionally, stream flow in Blue River stream segment 2 (French Gulch to Swan River) is highly controlled due to the Town of Breckenridge’s water supply from Goose Pasture Tarn and the ski area’s snow making water rights. This occurs in an area that was historically dredged for gold and destroyed the stream channel and its associated riparian habitat (Blue River Restoration Master Plan, February 14, 2000 by Tetra Tech, Inc. for the Blue River Restoration Steering Committee and Northwest Colorado Council of Governments). Under the existing water rights situation it is possible for the surface flows in this segment to be non-existent during late summer and winter conditions (Scott Hummer, Colorado State Engineer Division 5 Blue River Water Commissioner, personal communication)” (Wyatt).

Goose Pasture Tarn (Town’s Drinking Water)

⁴ Table courtesy of the Summit County Comprehensive Plan

“Water quality in Goose Pasture Tarn has been characterized as "good", by the Town of

Breckenridge, with no recent algal blooms. Goose Pasture Tarn serves as the water storage facility for the Town of

Breckenridge's water supply” (Wyatt). Recently the Town received the 2007 Source Water Assessment and Protection

(SWAP) summary report from the the Colorado Department of Public Health and Environment for the watershed above the drinking water intake for the Towns water system at Goose Pasture Tarn. In the report it stated the “system’s susceptibility

to potential sources of contamination as moderate” (SWAP). According to the document “moderate” “means there is little risk of contamination from the wastewater treatment facilities, the residential septic systems, the existing or abandoned mines, the potential commercial transport spills, and the animals that are known to exist in the watershed” (SWAP).



Watershed Improvement Projects

Town of Breckenridge Blue River Restoration

“The Town has completed a \$3.5 million restoration project on the Blue River through the core of town. This project re-channelized and lined 2000 lineal feet of the Blue River which was dredged for gold during the early 1900s. Previous Mining operations had left the river barren of vegetation and without surface flows for seven months of the year. A liner was installed to achieve year-round surface flows in a new channel designed for 100 year flood stability, fish habitat, and public accessibility” (Wyatt).

Town of Breckenridge Stormwater Quality Enhancement Project

“The Town of Breckenridge spent \$150,000 on storm sewer improvements within the river corridor adjacent to the core of Town. Thirty year old storm sewers which previously discharged directly to the river were retrofitted with sedimentation vaults and infiltration galleries to improve water quality. The vaults have a baffling system to trap larger sediments, while the infiltration galleries absorb low flows, reducing discharge to the river” (Wyatt).

Periodic Water Quality Testing in Cucumber Gulch & French Creek

The Town has been regularly monitoring water quality, in both Cucumber Gulch and French Creek for the last number of years.

Future Environmental Studies

Energy consumption in Town facilities

Town is presently working with an energy service company (esco) to investigate implementing energy savings projects for all Town facilities. As part of this project the esco company will study energy consumption trends in Town facilities and establish best management practices to reduce overall energy consumption. It is estimated baseline data, indicating current energy consumption levels, from this study will be available mid-summer 2008 and it which time it will be added to this chapter of the Town’s Capacity Analysis.

Overall carbon footprint

Members of Town staff are currently working on devising a means of accurately measuring the Town’s overall carbon footprint. This project is presently in a very preliminary design phase but is a priority to design to ensure accurate monitoring of the Town’s overall carbon footprint can be studied over time.

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Memo

To: Town Council
From: Jennifer Cram, Planner III, AICP
Date: May 4, 2008
Subject: **Landscaping Ordinance Updates**

Staff presented proposed changes to the Policy 22 - Landscaping to the Town Council on October 23rd and to the Planning Commission on February 19th, March 4th and May 20th. Changes were discussed to both Absolute and Relative policies.

Absolute Policies – Noxious Weeds, MPB, Fuels Reduction and Water Features

The Council and Commission were comfortable with the proposed changes to absolute policies to address Noxious Weeds, the removal of Mountain Pine Beetle (MPB) infested trees and Fuels Reduction to be consistent with existing Town Ordinances and Conditions of Approval.

A new absolute policy to address water features was also discussed. The Commission recommended that Water Features should not be allowed outside of disturbance envelopes, or in cases where no disturbance envelope is platted, prohibited where they would affect site buffers. The use of Glycol or other antifreeze fluids should be also be prohibited. The Commission also recommended that those water features that were excessive in size should receive negative points under Policy 7R- Site and Environmental Design, and if heated to run year round, receive negative points under Policy 33 – Energy Conservation.

Defensible Space – Relative or Absolute Policy?

Defensible Space - With the growing threat of forest fires in and around Breckenridge, we would like to develop a process for property owners to create defensible space around their homes. We understand the desire to maintain buffers and keep homes screened on the hillsides.

Staff believes that we could develop recommended guidelines that would allow property owners to create defensible space around their homes and maintain buffers by requiring the replanting of firewise trees. (Firewise trees are determined based on their moisture content, generally deciduous trees planted in an irrigated planting bed are considered firewise). We have included a diagram and descriptions from a Colorado State University Cooperative Extension publication to give the Council an idea of what defensible space might look like.

The Commission was comfortable with adding a new relative policy to address Defensible Space during the worksessions on February 19th and March 4th. With recent discussions about the alarming impacts from MPB infestations, staff believes that it may be important to not only encourage property owners to create defensible space, but to

require it through an absolute policy. The Commission supported this recommendation on May 20th.

- We would like to know if the Council supports creating a new absolute policy to require defensible space around structures.

Relative Policies – Forest Health and Species Diversity

Forest Health - We would like to encourage private property owners to improve the health of the trees on their properties. Forest management includes thinning trees starting with dead and diseased trees and replanting to encourage species diversity. The Council expressed the desire to update, or enhance existing relative policies to get better landscaping plans when mitigating negative points. Staff believes that the way Policy 22R is applied by staff and the Commission is important, as we have many existing tools in Policy 22R.

With this being said, staff believes that on forested sites positive points should only be awarded under Policy 22R for those projects that look at the health of existing trees along with the replanting of appropriate species in a variety of sizes, including larger trees according to industry standards. We believe that just planting new trees is no longer enough to receive positive points.

Staff believes that properties can be reviewed on a case-by-case basis and positive points awarded based on the amount of healthy existing vegetation that remains and the amount (based on mature growth) and sizes of new vegetation that can be planted. Where few or no trees currently exist, projects could still be eligible for positive points for above average landscaping plans based on proposed species, quantity and size. In reviewing a proposed landscape plan for positive points, staff will look at the health of existing trees, species diversity of new plantings (with native species being preferred), size of new plantings and location to provide buffers to public rights of way and neighboring structures for privacy. The Landscaping Guidelines will also be updated to provide information on recommended species, industry standards for sizes, planting details etc. The Commission was supportive of a holistic approach to awarding positive points for landscaping.

- We would appreciate the Councils' input on this new holistic approach to awarding positive points for landscaping based on forest health and species diversity.

Point Multipliers for Policy 22 - Landscaping

Currently a development permit application can obtain up to +8 positive points under Policy 22R – Landscaping for proposed landscape improvements that provide exceptional buffers and aesthetics. Many projects are able to mitigate significant negative impacts using this policy. It has been suggested that the point multiplier could be reduced to +2, +4, +6... to encourage better design of projects, or mitigation through other policies.

During the October worksession the Council did not believe that the point multiplier

should be reduced. The Commission recommended that the point allocations should be changed to allow the ability to award fewer points for projects that do an above average job, but that have smaller lots, or lots with few existing trees, such as in the Conservation District. Changing the point multipliers to +2, +4, +6 and +8 was recommended by the Commission. The Commission also thought it would be helpful to give examples of projects that would be eligible for +2, +4, +6, or +8 points.

- Does the Council support changing the point multiplier to allow for +2, +4, +6 and +8 or keeping the point multiplier as is?

Summary

With the goal of trying to improve forest health, reduce wildfire risk and maintain buffers within Town it is important to look at updating our existing landscaping policy. We have noted several areas to be considered. We welcome any additional thoughts that the Council may have with regard to landscaping.

Staff has included an updated copy of Policy 22 – Landscaping for review and will be available during the worksession on June 10th to answer questions and receive feedback.

22. (ABSOLUTE) LANDSCAPING (22/A):

General Statement: The Town hereby finds that it is in the public interest for all developments to maintain healthy trees and to provide landscape improvements for the purposes of; complimenting 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.

To ensure that landscaping is provided and maintained, the following requirements for the installation, maintenance, and protection of landscaping areas are required to be met for every project issued a permit under this Chapter:

A. Maintenance:

(1) All plantings shall be maintained in a healthy and attractive condition. Maintenance shall include, but not be limited to, watering, fertilizing, weeding, cleaning, pruning, trimming, spraying, and cultivating.

(2) Properties shall be kept free of noxious weeds as designated in the Town's Noxious Weed Management Plan as updated from time to time.

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(3) Landscaping structural features such as fencing, planter boxes, etc., shall be maintained in a sound structural and attractive condition.

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(4) Mountain Pine Beetle infested trees shall be cut as close to the ground as possible and chipped, or removed from the property and disposed of properly, so as not to spread infestation to other properties prior to Beetle flight (approximately June 30th) on an annual basis.

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(5) Whenever plants are removed or die, they shall be replaced by planting materials as soon as possible that meet the original intent of the approved landscaping design. Mountain Pine Beetle infested trees shall be replaced on a case-by-case basis in a manner to provide sufficient buffers within 5 years between properties for privacy and to screen properties from public right of ways. Property owners will not be required to replace trees on a per caliper inch basis.

Deleted: (5) Properties shall be kept free of leaf clutter and dead standing trees. Dead branches on living trees shall be trimmed to a minimum height of six-feet (6') and a maximum height height of ten-feet above ground level.

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B. Requirements:

(1) All open industrial or commercial storage areas shall be screened from all public rights of way or adjacent property by use of landscaping, berms,

or a combination of landscaping and other structural features to a height of six feet (6') minimum.

(2) When a parking lot and public right of way are contiguous, a landscaped area a minimum of five feet (5') in width, separating the parking lot from the right of way, and which also effectively screens the lot shall be provided.

(3) All planting materials proposed for areas also designated as snow stacking areas shall be of a size or type that will not be adversely affected by the proposed snow storage.

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(4) Any site contiguous to or facing any other residential uses or future residential uses shall screen its parking lots, loading docks, or similar uses through the use of landscaping elements to a height of four feet (4').

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(5) All surface areas designed on the approved landscaping plan that will not be a hard surface shall be planted with adequate ground cover as approved by the Town and shall be top-dressed with a minimum of two inches (2") of top soil prior to planting. In addition, irrigation systems shall be provided in those instances where required to guarantee the proper growth of the landscaping being provided.

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(6) Not less than six percent (6%) of the interior areas of all parking lots and drive-in establishments shall be placed in landscaping.

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(7) At least fifty percent (50%) of all tree stock shall be of a size equal to or greater than six feet (6') in height for evergreen trees and one and one-half (1 1/2") caliper for deciduous trees, measured six inches (6") above ground level. Said tree shall be in a minimum of five (5) gallon containers, if container stock; or a minimum of twelve inch (12") root spread, if bare root stock; or a minimum of fourteen inch (14") ball diameter if balled and burlapped with the ball depth not less than seventy five percent (75%) of diameter or three-quarters (3/4) of width. Size adjustments which reflect the growth habits of particular species may be made at the discretion of the Town.

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(8) At least fifty percent (50%) of all shrub stock shall be of a size equal to or greater than Type 2, four (4) cans or more, two feet (2') and up, if deciduous; Type 1, twelve inch (12") spread, if creeping or prostrate evergreens; or Type 2, twelve inch (12") spread and height, if semi-spreading evergreens. Size adjustments which reflect the growth habits of a particular species may be made at the discretion of the Town.

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(9) All plant materials shall be specified and provided according to the American Standard for Nursery Stock and adapted to a high alpine

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environment, or an elevation appropriate for the site. Additional information beyond the minimum requirements stated therein which provide a more definitive indication of size, quality, shape, confirmation, condition, and/or the method of transplanting is encouraged.

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(10) Large trees shall be staked as per American Nursery Standards. (Ord. 19, Series 1988)

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C. Wildfire Mitigation

(1) Properties shall be kept free of leaf clutter and dead standing trees. Dead branches on living trees shall be trimmed to a minimum height of six-feet (6') and a maximum height height of ten-feet (10') above ground level.

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(2) The creation of defensible space around structures is required outside of the conservation district. Zone 1 extends 15-feet from the edge of a structures or eaves. Zone 1 should be removed of all flammable vegetation. Zone 2 is generally 75 to 125 feet from the structure. Vegetation in Zone 2 should be thinned to remove dead and diseased trees first and then healthy trees to provide approximately ten-feet between crowns. Zones 1 and 2 should be planted with fire-wise plant materials as specified in the Town of Breckenridge Landscaping Guide to maintain site buffers. Zone 3 is of no particular size and extends from the edge of Zone 2 to the property boundary. This area should be removed of dead and diseased trees. Where site buffering is impacted from the removal of trees for defensible space, new fire-wise plantings of average size will be required to be planted within Zones 1 and 2 to provide screening from adjacent properties and the right of way.

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D. Water Features

(1) Water features shall not be permitted outside of disturbance envelopes, nor shall they be permitted on properties that do not have platted disturbance envelopes when the construction of said feature results in the removal of existing trees that provide required site buffers. Water features constructed within disturbance envelopes shall not negatively impact site buffers.

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(2) The use of Glycol, or other anti-freezing additives within water features is prohibited.

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(3) Water features that are excessive in size shall receive negative points under Policy 7 – Site and Environmental Design.

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(4) Water features that are heated for year round use shall receive negative points under Policy 33 – Energy Conservation.

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22. (RELATIVE) LANDSCAPING (22/R):

2x(-2/+4)

A. All developments are strongly encouraged to make landscaping improvements which contribute to the objective of maintaining healthy tree stands and a more beautiful, safe, and environmentally sound community. To meet this goal, all projects will be evaluated on how well they implement the following suggested criteria:

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(1) It is encouraged that at least one tree a minimum of eight-foot (8') in height, or three inch (3") caliper be planted at least every fifteen feet (15') along public rights of way.

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(2) It is encouraged that all landscaping areas have a minimum dimension of five feet (5').

(3) Development permits should identify and preserve specimen trees, significant tree stands, and tree clusters. Trees considered as highest priority for preservation are those that are disease-free, have a full form, and are effective in softening building heights and creating natural buffers. Buildings shall be placed in locations that result in adequate setbacks to preserve these priority trees. Measures shall be taken to prevent site work around these tree areas. Applicants are encouraged to seek professional advise on these issues from experts in the field.

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(4) Selective tree cutting/thinning to maintain the health of the tree stand, provide solar access, or to allow for greater species diversity, is appropriate, provided that an effective buffer of vegetation is maintained to help blend the development into the site. Clustering trees and creating natural openings is preferred over randomly leaving single trees throughout the site.

Deleted: (5) The creation of defensible space around structures is strongly encouraged. Zone 1 extends 15-feet from the edge of structures or eaves. Zone 1 should be removed of all flammable vegetation. Zone 2 is generally 75 to 125 feet from the structure. Vegetation in Zone 2 should be thinned to remove dead and diseased trees first and then healthy trees to provide approximately ten-foot between crowns. Zones 1 and 2 should be planted with fire-wise plant materials as specified in the Town of Breckenridge Landscaping Guide to maintain site buffers. Zone 3 is of no particular size and extends from the edge of Zone 2 to the property boundary. This area should remove dead and diseased trees.¶

(5) It is encouraged that the landscaping materials utilized are those species that are native to Breckenridge, or appropriate for the high alpine altitude climate found in Breckenridge. The Town of Breckenridge Landscaping Guide shall be used to evaluate this particular criteria.

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(6) Installation, use and maintenance of irrigation systems to insure survival of landscaping in the long-term is strongly encouraged until plant material is established.

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(7) Revegetation measures, including but not limited to,

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seeding, netting, mulching, and irrigation for disturbed areas and cut/fill slopes are strongly encouraged. Cut and fill slopes should not exceed a 2:1 gradient.

(8) It is encouraged that the landscaping materials utilized are those species that need little additional water to survive, or that the applicants provide for an irrigation system that is based on the recycling of water. In general native species are the most drought tolerant after establishment.

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(9) It is encouraged that wheel retention devices be utilized for parking areas adjacent to landscaping in those instances where the devices will not interfere with propose snow plowing operations.

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(10) It is encouraged that plant materials be provided in sufficient quantity, of acceptable species, and placed in such arrangement so as to create a landscape which is appropriate to the Breckenridge setting and which subscribes to the Historic District Guidelines.

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(11) It is encouraged that the remaining fifty percent (50%) of the tree stock include a variety of larger sizes ranging up to the largest sizes for each species which are possible according to accepted landscaping practices at maturity which recognize the Breckenridge environment, transplant feasibility, and plant material availability. Interrelationships of height, caliper, container size and shape shall be in general compliance with the American standard for nursery stock. 50% of all deciduous trees should be multi-stem.

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(12) It is encouraged that the remaining fifty percent (50%) of the shrub stock include a variety of larger sizes ranging up to the largest sizes for each species which are possible according to accepted landscaping practices which recognize the Breckenridge environment, transplant feasibility, and plant material availability. Interrelationships of height, caliper, container size, root spread, and ball size and shape shall be in general compliance with the American standard for nursery stock.

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(13) It is encouraged that landscaping be provided in a sufficient variety of species to ensure the continued appeal of a project in those instances where a particular species is killed through disease.

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(14) It is encouraged that at least fifty percent (50%) of the area of a project that is not being utilized for buildings or other impervious surfaces shall be kept in a natural state, or if not naturally forested, that it be planted with landscaping materials other than ground cover such as trees and shrubs.

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(15) In all areas where grading and tree removal is a concern, planting of new landscaping materials beyond the requirements of policy 22 "Landscaping" of this policy is strongly encouraged. New trees and landscaping should be concentrated where they will have the greatest effect on softening disturbed areas and buffering off site views of the property. (Ord. 19, Series 1995)

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Deleted:) It is encouraged that all planting materials proposed for areas also designated as snow stacking areas be of a size or type that will not be adversely affected by the proposed snow storage.¶

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Positive points will be awarded according to the following point schedule for on site forest health improvements and new landscaping plan proposals, in direct relation to the scope of the project, subject to approval by the planning commission.

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+2 Proposals that are on smaller lots, or those lots that have little or no existing vegetation, that incorporate an above average landscape plans or improvements to existing tree health.

+4 Proposals that include forest health improvements and above average landscaping plans.

+6 Proposals on larger forested lots that improve existing forest health and provide exceptional landscape plans with larger sizes and quantities that are appropriate at mature growth for the site.

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+8 Proposals on larger forested lots that improve existing forest health, reforestation to diversify species and exceptional landscape plans with the largest sizes possible for the species and the maximum number of trees that are appropriate at mature growth for the site.

¹: Examples set forth in this policy are for purpose of illustration only, and are not binding upon the planning commission. The ultimate allocation of points shall be made by the planning commission pursuant to section 9-1-17-3 of this title.

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Defensible Space Management Zones

Zone 1 is the area of maximum modification and treatment. It consists of an area of 15 feet around the structure in which all flammable vegetation is removed. This 15 feet is measured from the outside edge of the home's eaves and any attached structures, such as decks.

Zone 2 is an area of fuel reduction. It is a transitional area between Zones 1 and 3. The size of Zone 2 depends on the slope of the ground where the structure is built. Typically, the defensible space should extend *at least* 75 to 125 feet from the structure. See Figure 2 for the appropriate distance for your home's defensible space. Within this zone, the continuity and arrangement of vegetation is modified. Remove stressed, diseased, dead or dying trees and shrubs. Thin and prune the remaining larger trees and shrubs. Be sure to extend thinning along either side of your driveway all the way to your main access road. These actions help eliminate the continuous fuel surrounding a structure while enhancing homesite safety and the aesthetics of the property.

Zone 3 is an area of traditional forest management and is of no particular size. It extends from the edge of your defensible space to your property boundaries.

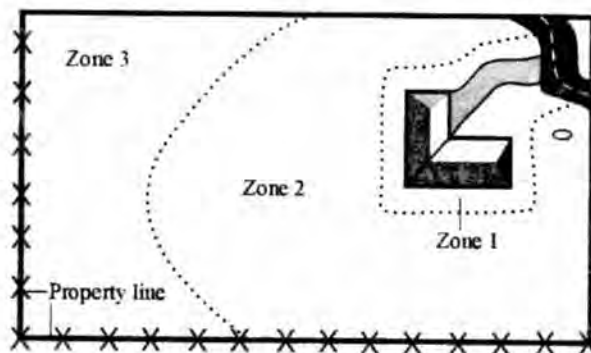


Figure 1: Forested property showing the three fire-defensible zones around a home or other structure.

MEMO

TO: Mayor and Town Council
CC: Town Manager & Assistant Town Manager
FROM: Kim DiLallo, Director of Communications
DATE: May 9, 2008
RE: Marketing Fund

History:

In 1992 the Town established a Marketing Fund for the purpose of marketing the town as a whole, and to level the playing field so all entities benefiting from doing business in Breckenridge would support these efforts. It is funded through a business license fee (BOLT), a portion of the Accommodations Tax (\$.40) and a portion of the Sales Tax (\$.07). The majority of this fund is granted to the Breckenridge Resort Chamber (BRC) as the Town's marketing 'agency', and the remaining (7 - 10% of annual budget) is granted to various nonprofits that fulfill 'niche' marketing (classical music, film, theatre, etc.).

In 2003, the Town, the BRC and the Breckenridge Ski Resort (BSR) commissioned the Leeds School of Business at C.U. to conduct a Strategic Marketing review. The full report is located on the Town's website (www.townofbreckenridge.com) under Downloads / Non-Governing Documents, and click on *Strategic Marketing review*.

In 2004, a steering committee comprised of members from Town Council, BSR, and BRC undertook the Marketing Vision Project. RRC facilitated this process which included approximately 30 members from our community meeting over a five month period. RRC's report is also located on the Town's website under Downloads / Non-Governing Documents, and titled *Marketing Vision Project*.

Attached are two spreadsheets of the Town's Marketing Fund history in actual dollars and in 1993 dollars, as well as CAST survey results on Chamber Services.

Information/Activities/Welcome Centers – The BRC has operated the various centers (Skelly Station, Daniels Cabin and Activities Center in Blue River Plaza) since the mid 1980s with the Town's role being the landlord. The Town purchased the Bailey Building in 2003 and renovated it into the current Breckenridge Welcome Center for the purpose of consolidating information and activities bookings into one facility, as well as providing an interpretive center to tell the 'Breckenridge story.' The Main Street (or Info Center) portion opened in January 2006, and the remaining (interpretive) portion opened in June 2006.

Current Situation:

The BOLT revenues have seen relatively flat growth due to the inability to increase the fee structure, which was set in 1992. In November 2006, Breckenridge voters did not approve an adjustment to the fee structure, which would have included a free membership to the BRC and the ability for the fees to increase for inflation.

In 2007, the BRC developed a metric to measure the success of the various marketing programs and work continues to fine tune this tool. Marketing costs continue to rise, and the market has become increasingly more competitive. In response, the BRC requested, and was granted, an increase to the funds granted for 2008 (\$197,678 for marketing and \$185,000 for event enhancements).

The BRC increased the staffing levels and operating hours for the Welcome Center, and the Town provides roughly 55% of the staffing expenses as well as operational expenses (maintenance, utilities, capital, etc.). These figures are included in the Marketing Fund spreadsheets.

With the Welcome Center being a much larger facility with greater operating costs, the Council and the BRC Board had numerous discussions about additional funding sources, to which the BRC committed to exploring in order to lessen the Town's financial burden of staffing costs. While various ideas have been explored, no additional funds have been secured to date. However, Town staff met with BRC staff early May to discuss a sponsorship possibility.

The BRC Board has discussed the possibility of increasing the hourly wage for the Welcome Center staff in order to remain competitive and retain quality employees. Currently the staff is paid an hourly wage and a 3% commission on the activities they book.

Current Issues:

As noted above, the Marketing Fund revenues are relatively flat; however, expenses are rising and the market continues to be more competitive. Staff anticipates the request for increasing marketing dollars, including event enhancements, to continue.

The BRC funds their support of the staff at the Welcome Center through membership dues and therefore, only BRC members are able to display and distribute materials in the Welcome Center.

The purpose of this memo and attachments are to give Council members an overview of the reports that relate to this topic to aid in your discussion during the May 20th Retreat.

MARKETING FUND HISTORY SINCE INCEPTION (In 1993 Dollars)												
Annual CPI		BASE	2.9%	4.0%	4.7%	1.9%	1.1%	0.1%	2.1%	3.6%	2.2%	2.7%
Accumulative CPI		BASE	22.7%	27.5%	33.5%	36.1%	37.6%	37.7%	40.6%	45.7%	48.9%	53.2%
	1992	1993	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Budget
Business License		382,913	452,462	420,475	367,709	411,944	438,768	412,651	395,248	402,201	399,480	381,754
Accommodations Tax	29,512	186,530	204,356	204,663	185,340	176,579	168,751	183,057	196,235	216,321	242,270	221,874
Sales Tax	18,356	110,778	127,348	131,165	126,521	120,367	119,028	122,851	138,899	150,366	161,072	150,936
Interest Income		228	1,597	1,127	2,735	31	193	1,127	2,046	2,036	12,014	653
Transfer from Excise Fund			0	0	0	68,810	36,340	50,835	14,225	13,732	87,295	195,771
TOTAL REVENUE	47,868	680,449	785,764	757,429	682,305	777,731	763,081	770,522	746,654	784,656	902,131	950,989
Charges for Services	0	455,528	667,302	681,396	674,742	670,206	667,956	650,412	640,255	692,799	786,965	995,180
Grants	0	88,956	92,910	89,412	84,270	71,650	77,616	77,705	84,637	79,300	81,436	83,203
TOTAL EXPENDITURES	0	544,484	760,212	770,808	759,012	741,856	745,573	728,117	724,893	772,099	868,402	1,078,383
BRC Support	0	?	667,302	681,396	674,742	678,396	667,956	650,412	636,489	692,915	783,868	983,434
BRC Breakout: in Real Dollars												
Marketing				818,780	818,780	837,150	809,688	830,000	830,000	896,400	966,336	1,164,014
Friends Welcome				50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
Main Street Performances						11,147	14,708	15,617	14,904	19,120	21,000	21,000
Community Branding									4,240	50,558	13,000	87,000
Special Mktng. Funds:												
Special Events Appropriation					32,000						80,000	185,000
Miners/Tailings Lots signage						25,000						
\$39k Gnd Jnctn & Bldr Mtkng + \$5,712 Mktng Study								44,712				
Film Location Conference									1,000			
\$50k Heritage event + \$30k NBS												
Breck Welcome Cntr Ops										43,710	48,793	55,000
Welcome Cntr Ops support (PW, IT, CIP) from ToB										62,549	68,904	136,315
NOTE: these figures DO NOT include the Town's 'in-kind' support of events												
5.9.08 DiLallo/Hillis												

MARKETING FUND HISTORY SINCE INCEPTION (In 1993 Dollars)												
Annual CPI		BASE	2.9%	4.0%	4.7%	1.9%	1.1%	0.1%	2.1%	3.6%	2.2%	2.7%
Accumulative CPI		BASE	22.7%	27.5%	33.5%	36.1%	37.6%	37.7%	40.6%	45.7%	48.9%	53.2%
	1992	1993	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Budget
Business License		382,913	452,462	420,475	367,709	411,944	438,768	412,651	395,248	402,201	399,480	381,754
Accommodations Tax	29,512	186,530	204,356	204,663	185,340	176,579	168,751	183,057	196,235	216,321	242,270	221,874
Sales Tax	18,356	110,778	127,348	131,165	126,521	120,367	119,028	122,851	138,899	150,366	161,072	150,936
Interest Income		228	1,597	1,127	2,735	31	193	1,127	2,046	2,036	12,014	653
Transfer from Excise Fund			0	0	0	68,810	36,340	50,835	14,225	13,732	87,295	195,771
TOTAL REVENUE	47,868	680,449	785,764	757,429	682,305	777,731	763,081	770,522	746,654	784,656	902,131	950,989
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<i>Friends Welcome</i>				50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
<i>Main Street Performances</i>						11,147	14,708	15,617	14,904	19,120	21,000	21,000
<i>Community Branding</i>									4,240	50,558	13,000	87,000
<i>Special Mktn. Funds:</i>												
<i>Special Events Appropriation</i>					32,000						80,000	185,000
<i>Miners/Tailings Lots signage</i>						25,000						
<i>\$39k Gnd Jcnctn & Bldr Mtkng + \$5,712 Mktng Study</i>							44,712					
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NOTE: these figures DO NOT include the Town's 'in-kind' support of events												
5.9.08 DiLallo/Hillis												

MARKETING FUND HISTORY SINCE INCEPTION

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actual	Budget
Business License		382,913	410,248	433,342	467,853	469,567	541,317	555,171	536,105	490,892	560,656	603,745	568,221	555,719	585,806	594,905	585,000
Accommodations Tax	29,512	186,530	204,685	211,246	223,905	240,910	243,733	250,745	260,945	247,429	240,324	232,202	252,070	275,907	315,072	360,789	340,000
Sales Tax	18,356	110,778	121,649	124,809	139,859	161,781	155,566	156,256	167,235	168,905	163,820	163,783	169,166	195,292	219,008	239,868	231,295
Interest Income		228	5,917	5,000	2,041	385	1,295	1,960	1,437	3,651	42	266	1,552	2,877	2,966	17,891	1,000
Transfer from Excise Fund											93,650	50,004	70,000	20,000	20,000	130,000	300,000
TOTAL REVENUE	47,868	680,449	742,499	774,397	833,658	872,643	941,911	964,132	965,722	910,877	1,058,492	1,050,000	1,061,009	1,049,795	1,142,852	1,343,453	1,457,295
Charges for Services	0	455,528	749,948	663,250	731,030	736,000	783,672	818,780	868,780	900,781	912,150	919,108	895,617	900,199	1,009,062	1,171,949	1,525,014
Grants	0	88,956	99,370	106,450	121,200	118,800	109,950	114,000	114,000	112,500	97,516	106,800	107,000	119,000	115,500	121,275	127,500
TOTAL EXPENDITURES	0	544,484	849,318	769,700	852,230	854,800	893,622	932,780	982,780	1,013,281	1,009,666	1,025,908	1,002,617	1,019,199	1,124,562	1,293,224	1,652,514
BRC Support	0	?	446,116	749,949	726,030	736,000	783,672	818,780	868,780	900,780	923,297	919,108	895,617	894,904	1,009,230	1,167,336	1,507,014
BRC Breakout:																	
Marketing									818,780	818,780	837,150	809,688	830,000	830,000	896,400	966,336	1,164,014
Friends Welcome									50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
Main Street Performances											11,147	14,708	15,617	14,904	19,120	21,000	21,000
Community Branding														4,240	50,558	13,000	87,000
Special Mktng. Funds:																	
Special Events Appropriation										32,000						80,000	185,000
Miners/Tailings Lots signage											25,000						
\$39k Gnd Jcnctn & Bldr Mtkng + \$5,712 Mktng Study												44,712					
Film Location Conference														1,000			
Welcome Cntr Staffing															43,710	\$ 48,793	55,000
Welcome Cntr Ops support (PW, IT, CIP) from ToB															62,549	68,904	136,315
NOTE: these figures DO NOT include the Town's 'in-kind' support of event																	
5.9.08 DiLallo/Hillis																	



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA
Tuesday, June 10, 2008 (Regular Meeting); 7:30 p.m.

- I CALL TO ORDER and ROLL CALL**
- II APPROVAL OF MINUTES** – May 27, 2008 Regular Meeting *Page 58*
- III APPROVAL OF AGENDA**
- IV COMMUNICATIONS TO COUNCIL**
- A. Citizens Comment - (Non-Agenda Items ONLY; 3 minute limit please)
- B. BRC Director’s Report
- V CONTINUED BUSINESS**
- A. SECOND READING OF COUNCIL BILL, SERIES 2008 – PUBLIC HEARINGS****
- 1. Council Bill No. 22, Series 2008-** AN ORDINANCE AMENDING POLICY 5 (ABSOLUTE) (“ARCHITECTURAL COMPATIBILITY”) OF SECTION 9-1-19 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY ADOPTING PROVISIONS CONCERNING SOLAR PANELS; AND MAKING CONFORMING AMENDMENTS TO THE BRECKENRIDGE DEVELOPMENT CODE *Page 62*
- 2. Council Bill No. 23, Series 2008-** AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 2 OF THE BRECKENRIDGE TOWN CODE BY ELIMINATING THE REQUIREMENT THAT ONE MEMBER OF THE TOWN OF BRECKENRIDGE PLANNING COMMISSION BE A MEMBER OF THE TOWN COUNCIL; CREATING THE POSITION OF TOWN COUNCIL LIAISON TO THE PLANNING COMMISSION; AND PROVIDING OTHER MATTERS RELATED TO THE TOWN COUNCIL LIAISON TO THE PLANNING COMMISSION *Page 67*
- VI NEW BUSINESS**
- A. FIRST READING OF COUNCIL BILL, SERIES 2008-**
- 1. Council Bill No. 24, Series 2008-** AN ORDINANCE AMENDING SECTION 5-2-3-1 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE PLACEMENT AND REMOVAL OF GARBAGE CANS AND RECEPTACLES *Page 73*
- 2. Council Bill No. 25, Series 2008-** AN ORDINANCE ADOPTING A SUSTAINABLE BUILDING CODE FOR THE TOWN OF BRECKENRIDGE *Page 76*
- B. RESOLUTIONS, SERIES 2008-**
- 1.** A RESOLUTION APPROVING A DEVELOPMENT AND CHARITABLE CONTRIBUTION AGREEMENT WITH MERCY HOUSING COLORADO CONCERNING THE DEVELOPMENT OF AN ATTAINABLE HOUSING PROJECT ON TOWN-OWNED REAL PROPERTY; AND MAKING CERTAIN LEGISLATIVE FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH *Page 87*
- 2.** A RESOLUTION APPROVING A LICENSE AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (Tyrolean Radio Tower) *Page 143*
- C. OTHER**
- 1.** Arts District Burn Permit *Page 155*
- 2.** Planning Commission Appointment *Page 13*
- VII PLANNING MATTERS** *Page 2*
- A. Planning Commission Decisions of June 3, 2008
- B. Town Council Representative Report (Mr. Mamula)
- VIII REPORT OF TOWN MANAGER AND STAFF***
- IX REPORT OF MAYOR AND COUNCILMEMBERS***
- A. CAST/MMC (Mayor Warner)
- B. Breckenridge Open Space Advisory Commission (Mr. Rossi)
- C. BRC (Mr. Bergeron)
- D. Summit Combined Housing Authority (Ms. McAtamney)
- E. Breckenridge Heritage Alliance (Mr. Joyce)
- X OTHER MATTERS**
- XI SCHEDULED MEETINGS** *Page 157*
- XII ADJOURNMENT**

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

CALL TO ORDER AND ROLL CALL

Mayor Warner called the May 27, 2008 Town Council Meeting to order at 7:41 p.m. The following members answered roll call: Mr. Bergeron, Mr. Joyce, Mr. Mamula, Ms. McAtamney, Mr. Rossi, and Mayor Warner. Mr. Millisor was absent.

APPROVAL OF MINUTES – May 13, 2008 Regular Meeting

Several minor corrections to the minutes were noted as follows: Page 55, Executive Session Certificate-change Mayor’s name from Ernie Blake to John Warner; Page 53, Other Matters-correct the spelling of Rick Sramek’s last name; Page 53, Breckenridge Heritage Alliance-change from Ms. to Mr. Joyce. With those changes, Mayor Warner declared the minutes were approved.

APPROVAL OF AGENDA

Town Manager, Tim Gagen, requested that Resolution No. 1 under “New Business” be removed from the agenda, and that an Executive Session concerning property acquisition be added under “Other Matters”.

COMMUNICATIONS TO COUNCIL

A. Citizens Comment - (Non-Agenda Items ONLY; 3 minute limit please) Sandro Del Rosario from Italy and the current artist in residence at the Tin Shop, thanked the Town Council and Jennifer Cram for the opportunity to be here a second time. He commented that what the Town is doing with the art district is extraordinary and unique, and believes that it benefits the Town and artists. He particularly enjoyed meeting the people who visited, and was very impressed with Ms. Cram’s dedication to arts district.

B. BRC Director’s Report- Corry Mihm reported on the Board meeting tomorrow; attendance at Territory Days in Colorado Springs; distributed posters for Kingdom Days; reminded that Friends Welcome employee and business of the year awards would take place at the Town Party; new concierge binder coming out soon; and joint meeting of the BRC Board and Town Council at the next Council meeting. In answer to a question, Ms. Mihm responded that the BRC would be doing some work to promote the upcoming Film Festival.

CONTINUED BUSINESS

A. ***SECOND READING OF COUNCIL BILLS, SERIES 2007 & 2008 – PUBLIC HEARINGS*****
NONE

NEW BUSINESS

A. ***FIRST READING OF COUNCIL BILLS, SERIES 2008***

1. Council Bill No. 22, Series 2008- AN ORDINANCE AMENDING POLICY 5 (ABSOLUTE) (“ARCHITECTURAL COMPATIBILITY”) OF SECTION 9-1-19 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY ADOPTING PROVISIONS CONCERNING SOLAR PANELS; AND MAKING CONFORMING AMENDMENTS TO THE BRECKENRIDGE DEVELOPMENT CODE

Town Attorney Tim Berry explained that this ordinance proposes to adopt regulations concerning the placement of solar panels in the Town.

Mr. Mamula moved to approve Council Bill No. 22, Series 2008. Ms. McAtamney seconded. Motion passed 6-0.

2. Council Bill No. 23, Series 2008- AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 2 OF THE BRECKENRIDGE TOWN CODE, BY ELIMINATING THE REQUIREMENT THAT ONE MEMBER OF THE TOWN OF BRECKENRIDGE PLANNING COMMISSION BE A MEMBER OF THE TOWN COUNCIL; CREATING THE POSITION OF TOWN COUNCIL LIAISON TO THE PLANNING COMMISSION; AND PROVIDING OTHER MATTERS RELATED TO THE TOWN COUNCIL LIAISON TO THE PLANNING COMMISSION

Mr. Berry explained that several years ago, the Town Charter was amended to allow the Town Council to decide by ordinance if there should be a Town Council member serving on the Planning Commission. This ordinance will create a new position of Town Council liaison to the Planning Commission and eliminates the requirement that a Council member serve on the Commission. The ordinance also addresses how the vacancy on the Commission should be filled.

The Council then discussed how to fill the position, and decided to advertise the vacancy, to invite the previous Planning Commission and Town Council applicants, and to conduct interviews at the June 10 Town Council work session and make the appointment at the evening meeting.

Mr. Bergeron moved to approve Council Bill No. 23, Series 2008. Mr. Mamula seconded. The motion passed 6-0.

B. RESOLUTIONS, SERIES 2008

1. A RESOLUTION APPROVING A DEVELOPMENT AND CHARITABLE CONTRIBUTION AGREEMENT WITH MERCY HOUSING COLORADO CONCERNING THE DEVELOPMENT OF AN ATTAINABLE HOUSING PROJECT ON TOWN-OWNED REAL PROPERTY; AND MAKING CERTAIN LEGISLATIVE FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH

This resolution was removed from the agenda.

2. A RESOLUTION APPROVING A "LICENSE AGREEMENT FOR TOWN-OWNED HISTORICAL PROPERTIES" WITH BRECKENRIDGE HERITAGE ALLIANCE

Mr. Berry explained that over the past several years, the Town has entered into agreements with the Heritage Alliance to manage several Town-owned properties. This license agreement condenses all the separate agreements into one master agreement, and sets forth terms and conditions for management of the properties.

Mr. Bergeron moved to approve A Resolution Approving a License Agreement for Town-Owned Historical Properties with the Breckenridge Heritage Alliance. Mr. Mamula seconded. Motion passed 6-0.

D. OTHER

None.

PLANNING MATTERS

• **Planning Commission Decisions of May 20, 2008.**

With no requests for call up, Mayor Warner stated the Planning Commission decisions of the May 20, 2008 meeting would stand as presented.

• **Town Council Representative Report.**

Mr. Mamula had no report.

REPORT OF TOWN MANAGER AND STAFF

Town Manager, Tim Gagen, reported that the Volunteers of Outdoor Colorado will be in Breckenridge to conduct trail work on July 19-20, with the same camping arrangement as last year.

REPORT OF MAYOR AND COUNCILMEMBERS

A. Report of Mayor (CAST/MMC)

Mayor Warner reported that he is on the agenda to discuss sustainability issues at the next Mayor's and Manager's meeting.

B. Breckenridge Open Space Advisory Commission (Mr. Rossi)

No meeting.

C. BRC (Mr. Bergeron)

Meeting tomorrow.

D. Multi-Jurisdictional Housing Authority (Ms. McAtamney)

Meeting tomorrow.

E. Breckenridge Heritage Alliance (Mr. Joyce)

Mr. Joyce reported on the meeting two weeks ago. Discussion items included Engine No 9; Carter Museum and a presentation for displays; new oral history project on Breckenridge's last 150 years; and Breckenridge 150.

OTHER MATTERS

Mr. Mamula brought up parking issues at the trailhead at the ice rink, and also on Adams near the Riverwalk Center. He asked if the Town would be doing anything for the Town of Windsor.

Mr. Bergeron noted that cars were speeding through the Tiger Dredge parking lot, from Adams to W. Washington.

Mr. Rossi and Mayor Warner thought it would be a good idea to revisit the 50-year mark on historic guidelines. Currently the code identifies 1942 and earlier as historic.

Mr. Rossi suggested that the Town should monitor increased land acquisition activity on mining claims and slivers of property that could have potential future impacts on the Town.

Mayor Warner questioned about striping in the roundabout.

At 8:23 p.m. Mr. Mamula moved to go into executive session pursuant to Paragraph 4(a) of Section 24-6-402, C.R.S., relating to the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest. Mr. Rossi seconded. Mayor Warner stated that a motion had been made for the Town Council to go into executive session pursuant to Paragraph 4(a) of Section 24-6-402, C.R.S., relating to the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest. The motion passed 6-0.

At 9:04 p.m., Mr. Rossi moved to adjourn the executive session. Mr. Mamula seconded. The motion passed unanimously.

ADJOURNMENT

With no further business to discuss the regular meeting was adjourned at 9:04 pm.

Submitted by Mary Jean Loufek, CMC, Town Clerk

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

EXECUTIVE SESSION CERTIFICATE

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

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

As part of the Town Council meeting on Tuesday, May 27, 2008 at 3:42 p.m., Mr. Rossi moved to convene in Executive Session pursuant to Paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for the purposes of receiving legal advice on specific legal questions.

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

Mr. Mamula moved to adjourn the Executive Session at 4:00 pm. Ms. McAtamney made the second. All were in favor of the motion.

This certificate shall be included after the minutes of the regular Town Council meeting of Tuesday, May 27, 2008.

John Warner, Mayor

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 22 (Solar Panel Ordinance)
DATE: June 3, 2008 (for June 10th meeting)

The second reading of the Solar Panel Ordinance is scheduled for your meeting on June 10th. There are no changes proposed to ordinance from first reading.

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

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

2
3 **NO CHANGES FROM FIRST READING**

4
5 In Sections 1-3, Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

7
8 In Section 4, Additions To The Draft Ordinance Reviewed On May 13th Are
9 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

10
11 COUNCIL BILL NO. 22

12
13 Series 2008

14
15 AN ORDINANCE AMENDING POLICY 5 (ABSOLUTE) (“ARCHITECTURAL
16 COMPATIBILITY”) OF SECTION 9-1-19 OF THE BRECKENRIDGE TOWN CODE,
17 KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY ADOPTING
18 PROVISIONS CONCERNING SOLAR PANELS; AND MAKING CONFORMING
19 AMENDMENTS TO THE BRECKENRIDGE DEVELOPMENT CODE

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

23
24 Section 1. Section 9-1-5 of the Breckenridge Town Code is hereby amended by the
25 addition of the following definitions:
26

NON-PRIMARY ELEVATION:

The portion of a structure which does not front on a public street or other public right of way. If a corner lot, the primary elevation is the elevation where the primary entrance is located.

SOLAR PANEL:

An electrical device consisting of an array of connected solar cells which converts solar energy into electricity or hot water/liquid for space heating or domestic hot water production. Also referred to as photovoltaic (PV) panel or solar array.

SOLAR DEVICE:

Solar membranes, solar shingles, solar in glass, non-PV technology, and solar hot water systems, and similar solar technology.

1 Section 2. The definition of “Class C - Minor Development” set forth in Section 9-1-5 of
2 the Breckenridge Town Code is hereby amended by the addition of the following item:

3
4 — **Installation of solar panel or solar device within the Conservation District**

5
6 Section 3. The definition of “Class D Development” set forth in Section 9-1-5 of the
7 Breckenridge Town Code is hereby amended by the addition of the following item:

8
9 — **Installation of solar panel or solar device outside the Conservation District**

10
11 Section 4. Policy 5 (Absolute)(“Architectural Compatibility”) of Section 9-1-19 of the
12 Breckenridge Town Code is hereby amended by the addition of a new subsection D, to be
13 entitled “Solar Panels and Solar Devices”, which shall read in its entirety as follows:

14
15 D. Solar Panels and Solar Devices

16
17 (1) Within the Conservation District: The preservation of the character of the
18 Conservation District and the historic structures and sites **within the**
19 **Conservation District** are of the utmost importance. ~~While the Town does not~~
20 ~~prohibit~~ **encourages** the installation of solar panels ~~or other~~ **and** solar devices ~~on~~
21 ~~historic structures or sites~~ as an alternative energy source. **However**, there may
22 be ~~some~~ instances where solar **panels or solar** devices are not appropriate on a
23 particular building or site if such a device is determined to be detrimental to the
24 character of the **Conservation** District. ~~The following regulations shall apply to~~
25 ~~the installation of solar panels or devices within the Conservation District.~~

26
27 (2) Within the Conservation District, no solar devices shall be installed on a
28 structure or site without first obtaining a Class C minor development permit ~~from~~
29 ~~the Town~~. Solar panels and **solar** devices are encouraged to be installed on a non-
30 historic building or building addition, ~~if available~~, and integrated into the building
31 design. To ensure that the character of the Conservation District and its historic
32 structures and sites are protected, **an** applications **for a development permit to**
33 **install a solar panel or solar device within the Conservation District** will be
34 reviewed under the following requirements:

35
36 (a) Solar panels or other solar devices on roofs shall be placed on a non-character
37 defining roofline of a non-primary elevation (not readily visible from public
38 streets), ~~not to exceed 50% of the roof surface per roof plane~~. Solar panels **and**
39 **solar devices** shall be setback from the edge of a flat roof to minimize visibility
40 and may be set at a pitch and elevated if not ~~readily~~ **highly** visible from public
41 streets. On all other roof types, solar panels **and solar devices** shall be located so
42 as not to alter a historic roofline or character defining features such as dormers or
43 chimneys. All **solar** panels **and solar devices** shall run ~~closely~~ parallel the
44 original roofline, **and shall** not ~~to~~ exceed nine inches (9”) above the roofline.

1 Applications for new structures within the Conservation District are encouraged
2 to include building integrated solar panels ~~or~~ **and** other **solar** devices ~~on the~~
3 ~~building~~ into the initial design, including a similar roof color, rather than as a later
4 addition. Solar **panels and solar** devices which contrast with the color of the roof
5 ~~for~~ **of** new or historic structures are inappropriate if found to be detrimental to the
6 character of the Conservation District.

7
8 (b) Detached solar arrays **of solar panels and solar devices** at a historic site may
9 be located in the rear or side yard if the arrays are not highly visible from the
10 public streets and do not detract from other major character defining aspects of
11 the site. The location of detached solar arrays shall also consider visibility from
12 adjacent properties, which shall be reduced to the extent possible while still
13 maintaining solar access.

14
15 (c) Character defining elements such as historic windows, walls, siding or
16 shutters, which face public streets or contribute to the character of the building,
17 shall not be altered or ~~replaced for the purpose of installing~~ **in connection with**
18 **the installation of solar panels or solar devices**. Solar devices in non-historic
19 windows, walls, siding or shutters which do not face public streets are
20 encouraged.

21
22 (2) Outside the Conservation District: The Town encourages the installation of
23 solar panels ~~or other~~ **and** solar devices on structures or sites **located** outside the
24 Conservation District as an alternative energy source. The following regulations
25 shall apply to the installation of ~~all~~ solar panels or **solar** devices outside the
26 Conservation District:

27
28 (a) No solar **panel or solar** devices shall be installed on a structure or site
29 without first obtaining a Class D development permit ~~from the Town~~. The
30 director shall have the right to ~~move~~ **reclassify** project to an **application as** a
31 Class C minor ~~development permit~~ application, and **to** require review by the
32 Planning Commission, if he feels the purpose of this code would be best served
33 by the reclassification. **Reclassification shall be done pursuant to the definition**
34 **of "Classification" in Section 9-1-5 of this chapter.**

35
36 (b) Solar panels ~~or other~~ **and solar** devices shall run closely parallel to the
37 roofline, **and shall** not ~~to~~ exceed nine inches (9") above the roofline.
38 ~~Applications for n~~New structures ~~should~~ **are encouraged to** include building
39 integrated solar panels ~~or other~~ **and solar** devices ~~on the building~~ into the initial
40 design, rather than as a later addition.

41
42 (c) Detached solar arrays **of solar panels and solar devices** may be located in the
43 rear or side yard, **if** not highly visible from the public streets. The location of
44 detached solar arrays shall also consider visibility from adjacent properties, which
45 shall be reduced to the extent possible while still maintaining solar access.
46 **Detached solar arrays which serve the residence on the site may be located**

1 **outside of the building or disturbance envelope if no significant existing**
2 **vegetation must be removed for the installation and an adequate buffer is**
3 **provided to adjacent properties.**
4

5 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the
6 various secondary codes adopted by reference therein, shall continue in full force and effect.
7

8 Section 6. The Town Council hereby finds, determines and declares that this ordinance is
9 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
10 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
11 thereof.
12

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

21 Section 8. This ordinance shall be published and become effective as provided by
22 Section 5.9 of the Breckenridge Town Charter.
23

24 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
25 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
26 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
27 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
28 Town.
29

30 TOWN OF BRECKENRIDGE, a Colorado
31 municipal corporation
32
33
34

35 By _____
36 John G. Warner, Mayor
37

38 ATTEST:
39
40
41

42 _____
43 Mary Jean Loufek, CMC,
44 Town Clerk
45
46
47

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 23 (Planning Commission Liaison Ordinance)

DATE: June 3, 2008 (for June 10th meeting)

The second reading of the Planning Commission Liaison Ordinance is scheduled for your meeting on June 10th. There are no changes proposed to ordinance from first reading.

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

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

2
3 **NO CHANGES FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 23

9
10 Series 2008

11
12 AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 2 OF THE BRECKENRIDGE
13 TOWN CODE BY ELIMINATING THE REQUIREMENT THAT ONE MEMBER OF THE
14 TOWN OF BRECKENRIDGE PLANNING COMMISSION BE A MEMBER OF THE TOWN
15 COUNCIL; CREATING THE POSITION OF TOWN COUNCIL LIAISON TO THE
16 PLANNING COMMISSION; AND PROVIDING OTHER MATTERS RELATED TO THE
17 TOWN COUNCIL LIAISON TO THE PLANNING COMMISSION

18
19 WHEREAS, Section 9.3 of the Breckenridge Town Charter provides that the Town
20 Council may determine by ordinance whether one member of the Town Council is to serve as a
21 member of the Town of Breckenridge Planning Commission; and

22
23 WHEREAS, Chapter 2 of Title 2 of the Breckenridge Town Code currently provides that
24 one member of the Town Council is to serve as a member of the Planning Commission; and

25
26 WHEREAS, the Town Council finds and determines that Chapter 2 of Title 2 of the
27 Breckenridge Town Code should be amended to no longer require that one member of the Town
28 Council serve on the Planning Commission; and

29
30 WHEREAS, the Town Council further finds and determines that one of its members
31 should serve as the Town Council liaison to the Planning Commission; and

32
33 WHEREAS, it is necessary and appropriate to amend the Breckenridge Town Code to
34 eliminate the requirement that one member of the Town Council serve on the Planning
35 Commission, and to create and describe the position of Town Council liaison to the Planning
36 Commission.

37
38 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
39 BRECKENRIDGE, COLORADO:

40
41 Section 1. Section 2-2-2 of the Breckenridge Town Code is hereby amended so as to
42 read in its entirety as follows:

43
44 2-2-2: MEMBERSHIP REQUIREMENTS, APPOINTMENT:

1
2 The planning commission shall consist of seven (7) members who are residents
3 and electors of the town of Breckenridge, ~~one (and only 1) of whom shall be a~~
4 ~~member of the town council. Commission members shall be appointed by a~~
5 ~~majority vote of the town council.~~
6

7 Section 2. Section 2-2-3 of the Breckenridge Town Code is hereby amended so as to
8 read in its entirety as follows:
9

10 2-2-3: TERM OF OFFICE:

11
12 The term of office for all members of the planning commission shall be four (4)
13 years, or until a successor takes office. **Each term of office shall commence on**
14 **November 1 of the year of appointment and shall end on October 31 of the**
15 **final year of the term. The terms of office shall be staggered. The terms of**
16 **office of four (4) members of the commission shall expire in 2010 (and every**
17 **fourth year thereafter), and the terms of office of the other three (3)**
18 **members expire in 2012 (and every fourth year thereafter).** The terms of the
19 three (3) commission members appointed in 1988 shall expire October 31, 1992;
20 and the terms of the three (3) commission members appointed in 1990 shall expire
21 October 31, 1994. The town council shall appoint one of its members to serve on
22 the planning commission as provided in Section 2-2-2-1. The term of the town
23 council member on the planning commission shall commence on the second
24 Tuesday of April in the year the appointment is made, and shall expire, subject to
25 the right of the council to remove the town council representative as provided in
26 section 2-2-5 of this chapter, on the second Tuesday of April the following year.
27

28 Section 3. Section 2-2-5 of the Breckenridge Town Code is hereby amended so as to
29 read in its entirety as follows:
30

31 2-2-5: REMOVAL:

32
33 After six (6) months of service, any ~~noncouncil~~ member of the planning
34 commission may be removed by an affirmative vote by five (5) members of the
35 town council; provided, however, that the council may not remove more than
36 three (3) ~~non town council~~ members in any twelve (12) month period, except the
37 council may remove additional ~~noncouncil~~ members upon a finding of
38 misconduct in office.
39

40 If removed under this section, the planning commissioner shall be given written
41 notice of such action within a three (3) day period. The removed planning
42 commission member may appeal the council's decision in writing within five (5)
43 days after said notice, and if appealed, the council shall set a hearing within
44 fourteen (14) days of written notice of the appeal, at which time the issue shall be
45 heard and a decision rendered.
46

1 ~~The town council representative to the planning commission may be removed at~~
2 ~~any time by a majority vote of the entire council.~~

3
4 Section 4. Subsection 2-2-9(B) of the Breckenridge Town Code is hereby amended so as
5 to read in its entirety as follows:
6

7 B. Notwithstanding the provisions of subsection A of this section, the town
8 council ~~member who serves on~~ liaison to the planning commission shall only
9 receive the compensation provided by section 1-7-1 of this code, and shall not
10 receive the additional compensation provided by subsection A of this section.
11

12 Section 5. Chapter 2 of Title 2 of the Breckenridge Town Code is hereby amended by the
13 addition of a new Section 2-2-10, to be entitled “Town Council Liaison To the Planning
14 Commission”, which shall read in its entirety as follows:
15

16 **2-2-10: TOWN COUNCIL LIAISON TO THE PLANNING COMMISSION:**
17

- 18 A. **The town council shall appoint one of its members to act as a liaison between the**
19 **town council and the planning commission. Such person is referred to in this**
20 **section as the “town council liaison.”**
21
- 22 B. **The town council liaison is a means of direct communication between the town**
23 **council and the planning commission on matters of common interest and**
24 **concern to the town council and the planning commission including, but not**
25 **limited to, general land use matters, proposed amendments to this code**
26 **concerning land use matters, proposed town projects, and general policy**
27 **discussions. The town council may further define the role of the town council**
28 **liaison; provided, however, that the town council liaison may never be**
29 **authorized to hear and decide specific land use applications coming before the**
30 **planning commission.**
31
- 32 C. **The term of the town council liaison commences on the second Tuesday of April**
33 **in the year the appointment is made, and expires on the second Tuesday of April**
34 **the following year; provided, however, that the term of the first town council**
35 **liaison appointed after the adoption of this section ends on the second Tuesday of**
36 **April in 2009. A member of the town council may be reappointed as the town**
37 **council liaison, and there is no limit to the number of successive terms as town**
38 **council liaison that may be served by any town council member.**
39
- 40 D. **The town council liaison is not a member of the planning commission, and has**
41 **no right to participate in the planning commission’s discussions or decision with**
42 **respect to any land use application.**
43
- 44 E. **The town council liaison may not participate in or attend any preliminary, final,**
45 **or combined preliminary and final hearing held by the planning commission**
46 **with respect to any land use application. If the town council liaison does**

1 participate in or attend any such hearing, he or she may not participate in the
2 town council's discussion or decision with respect to the possible call up of the
3 planning commission's decision on such application, or in any call up hearing
4 held by the town council with respect to such application.

5
6 F. Except as provided in subsection E, the town council liaison is not disqualified
7 from participating in the town council's discussion and decision with respect to
8 the possible call up of any decision of the planning commission, or any call up
9 hearing conducted by the town council with respect to a specific decision of the
10 planning commission, solely as a result of serving as the town council liaison.

11
12 G. The town council liaison serves at the pleasure of the town council, and may be
13 removed at any time by a majority vote of the entire council.

14
15 Section 6. Subsection 9-1-18-5(A)(1)(f) of the Breckenridge Town Code is hereby
16 repealed.

17
18 Section 7. Subsection 9-2-3-4(B)(5) of the Breckenridge Town Code is hereby repealed.

19
20 Section 8. The term of office of the member of the planning commission appointed in
21 2008 to fill the vacancy created by the elimination of the requirement that one member of the
22 planning commission also be a member of the town council shall end October 31, 2010. At that
23 time, a successor shall be appointed for a full four (4) year term.

24
25 Section 9. Except as specifically amended hereby, the Breckenridge Town Code, and the
26 various secondary codes adopted by reference therein, shall continue in full force and effect.

27
28 Section 10. The Town Council hereby finds, determines and declares that it has the power
29 to adopt this ordinance pursuant to: (i) Section 9.3 of the Breckenridge Town Charter; (ii)
30 the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (iii) Part 3
31 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iv) Section 31-15-103,
32 C.R.S. (concerning municipal police powers); (v) Section 31-15-401, C.R.S.(concerning
33 municipal police powers); and (vi) the authority granted to home rule municipalities by Article
34 XX of the Colorado Constitution.

35
36 Section 11. This ordinance shall be published as provided by Section 5.9 of the
37 Breckenridge Town Charter, and shall become effective July 1, 2008.

38
39 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
40 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
41 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
42 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
43 Town.

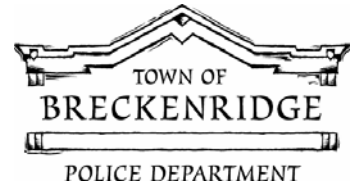
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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk



MEMORANDUM

To: Mayor and Town Council
From: Rick Holman, Chief of Police
Date: June 2, 2008
Subject: Amendment to Town Code Concerning Placement of Garbage Cans

Under the current Town Ordinance, all trash cans that are stored outside are required to have a latching mechanism that holds the lid securely to the container. The current ordinance is in conflict with all the Town trash containers on Main Street and some other containers in front of businesses. We are asking the Town Council to amend this ordinance so the secured lid section only applies to a "residential structure." Staff does not feel this will be problematic because all of the Town Trash cans and other cans located at the front of businesses (i.e. City Market) are emptied on a daily basis.

In addition we are asking to amend the ordinance to state "residential refuse receptacles can only be placed at curbside after 6:00 am on the day of pickup". The existing ordinance was creating problems because it states containers can only be placed at curbside on the day of pickup, which technically permitted a container to be outside at 12:01 am. This allowed wildlife to get into the trash throughout the night.

Remember, this ordinance as amended, only deals with residential structures and does not change any of our rules pertaining to dumpsters.

1 ***DRAFT May 27, 2008 DRAFT***

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2008

9
10 AN ORDINANCE AMENDING SECTION 5-2-3-1 OF THE BRECKENRIDGE TOWN CODE
11 CONCERNING THE PLACEMENT AND REMOVAL OF GARBAGE CANS AND
12 RECEPTACLES

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

16
17 Section 1. Section 5-2-3-1 of the Breckenridge Town Code is hereby amended so as to
18 read in its entirety as follows:

19
20 5-2-3-1: PLACEMENT AND REMOVAL OF GARBAGE CANS AND
21 RECEPTACLES:

22
23 A. Except as provided in subsection B of this section, all garbage cans and similar
24 refuse receptacles **for use at a residential structure** that do not have a latching
25 mechanism which keeps the lid tightly closed against the can or receptacle and
26 ~~which~~ prevents access to the contents of the can or receptacle by wildlife shall be
27 stored inside a home, garage, building or shed.

28
29 B. Residents, tenants, renters, lessors, or occupiers of residential property within
30 the town with curbside garbage pickup shall place their garbage cans and similar
31 refuse receptacles at the curb only **after 6 A.M.** on the day of pickup. After
32 pickup, the garbage cans and similar refuse receptacles must be resecured in
33 accordance with subsection A of this section, by ten o'clock (10:00) P.M.

34
35 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
36 various secondary codes adopted by reference therein, shall continue in full force and effect.

37
38 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
39 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
40 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
41 thereof.

42
43 Section 4. The Town Council hereby finds, determines and declares that it has the power
44 to adopt this ordinance pursuant to the provisions of Section 31-15-401, C.R.S., and the powers
45 possessed by home rule municipalities in Colorado.



MEMORANDUM

TO: Town Council

FROM: Glen Morgan, Chief Building Official

DATE: June 2008 for meeting of June 10, 2008

SUBJECT: First Reading Sustainable, (Green) Building Code Ordinance

Updated information

The content of attached Ordinance document is substantially the same as the draft Ordinance that was reviewed by Council at the May 27 work session, with the following changes:

1. The Town Attorney has revised the Ordinance in accordance with the Town's legal language and format for ordinance documents.
2. The following Sections have been added,
 - Section 8-4-4: Resource Guide Adopted by Reference; Authority of Building Official to Adopt Updated Versions.
 - Section 8-4-11: Unlawful to modify premises. (After certificate of Occupancy)
 - Section 8-4-12: Conflict with Building Codes
 - Section 8-4-13: Enforcement and Penalties
 - Section 8-4-14: Liabilities
 - Section 8-4-15: Effective Dates

The effective date of January 1, 2009 reflects Council's comments at the last work session.

Please refer to the May 27 staff memo for more background on the Sustainable code. Staff will be available at the work session to answer any questions regarding the proposed code.

A copy of the ordinance is attached; the compliance check list and the Resource Guide which is 44 pages and can be found at the High Country conservation Center web site under Green Building, @ www.highcountryconservation.org, or copies can be made available if requested.

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

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2008

9
10 AN ORDINANCE ADOPTING A SUSTAINABLE BUILDING CODE FOR THE TOWN OF
11 BRECKENRIDGE

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

15
16 Section 1. The Breckenridge Town Code is amended by the adoption of a new Chapter 4
17 of Title 8, to be entitled “Sustainable Building Code”, which shall read in its entirety as follows:

18
19 **CHAPTER 4**

20
21 **SUSTAINABLE BUILDING CODE**

22
23 **SECTION:**

24
25 **8-4-1: Title**

26 **8-4-2: Intent**

27 **8-4-3: Authority of Chief Building Official**

28 **8-4-4: Resource Guide Adopted By Reference; Authority of Building Official to**
29 **Adopt Updated Version**

30 **8-4-5: Description Of Sustainable Building Code—Generally.**

31 **8-4-6: Applicability**

32 **8-4-7: Determination of Compliance**

33 **8-4-8: Mandatory Measures**

34 **8-4-9: Secondary Measures**

35 **8-4-10: Intensive Energy Use Amenities**

36 **8-4-11: Unlawful To Modify Premises**

37 **8-4-12: Conflict With Building Codes**

38 **8-4-13: Enforcement and Penalties**

39 **8-4-14: Liability**

40 **8-4-15: Effective Date; Transition**

41
42 **8-4-1: TITLE: This Chapter shall be known and may be cited as the “Town of**
43 **Breckenridge Sustainable Building Code.”**

1 **8-4-2: INTENT:** The intent of this Chapter is to encourage cost effective and sustainable
2 **building methods to conserve fossil fuels, water, and other natural resources; to promote**
3 **the reuse and recycling of building materials and a reduction in solid waste; and to**
4 **promote enhanced indoor health and amenity in residential buildings.**
5

6 **8-4-3: AUTHORITY OF CHIEF BUILDING OFFICIAL:** The Chief Building Official has
7 **the authority to interpret this Code, and to adopt policies and procedures to clarify the**
8 **application of its provisions. The Chief Building Official has the authority to adopt and**
9 **enforce administrative rules and regulations as may be necessary for the proper**
10 **administration of this Chapter. Such rules and regulations shall be adopted in accordance**
11 **with the procedures established by Chapter 1 of Title 1 of this Code.**
12

13 **8-4-4: RESOURCE GUIDE ADOPTED BY REFERENCE; AUTHORITY OF BUILDING**
14 **OFFICIAL TO ADOPT UPDATED VERSION:** The Summit Sustainable Building
15 **Resource Guide Version 1.0, dated March 2008, issued by the High County Conservation**
16 **Center, is adopted and made a part of this Chapter by reference. If the Summit**
17 **Sustainable Building Resource Guide is amended or revised after the effective date of this**
18 **Chapter, such amended or revised version may be adopted by the building official as a**
19 **building code policy pursuant to the authority granted to the building official by Section**
20 **B104.1 of the International Building Code and Section R104.1 of the International**
21 **Residential Code. The provisions of Chapter 18 of Title 1 of this Code shall not apply to the**
22 **building official’s adoption of an amended or revised version of the Summit Sustainable**
23 **Building Resource Guide. All references in this Chapter to the “Resource Guide” are to**
24 **Summit Sustainable Building Resource Guide Version 1.0, dated March 2008, as well as to**
25 **any amended or revised version of the Summit Sustainable Building Resource Guide**
26 **adopted by the building official as a building code policy.**
27

28 **8-4-5: DESCRIPTION OF SUSTAINABLE BUILDING CODE—GENERALLY.**
29

30 **The Town’s Sustainable Building Code adopted by this Chapter uses a combination of**
31 **mandatory requirements (called “Mandatory Measures”) and secondary (or elective)**
32 **provisions (called “Secondary Measures”). Secondary Measures must either be met or**
33 **offset by measures of equal value from the Resource Guide. The Mandatory Measures and**
34 **Secondary Measures are combined with a points-based system to ensure that all residential**
35 **buildings that are constructed within the Town achieve or exceed a minimum level of**
36 **efficiency without limiting or restricting the size, design, and type of construction of the**
37 **buildings or the amenity level provided. The Mandatory Measures, Secondary Measures**
38 **and Resource Guide are intended to be interrelated.**
39

40 **8-4-6: APPLICABILITY:**
41

42 **A. The provisions of this Chapter shall apply to all new residential occupancy construction**
43 **including, but not limited to, one and two family dwellings, and multi-family buildings (a**
44 **building containing three or more dwelling units). The provisions of this Chapter shall also**
45 **apply to all residential dwelling units constructed within a mixed-use development.**

1
2 **B. Alterations and additions to residential structures existing at the time of the adoption of**
3 **this Chapter shall comply with the provisions of this Chapter.**
4

5 **C. For the purposes of calculating building size the entire building, existing and proposed**
6 **shall be used.**
7

8 **8-4-7: DETERMINATION OF COMPLIANCE:**
9

10 **A. A completed Sustainable Building Checklist shall be submitted to the Town along with**
11 **the appropriate building permit application.**
12

13 **B. Compliance with each measure described in this Chapter or found in the Resource**
14 **Guide shall be demonstrated by one of two methods. If compliance is “Inspected,” Town**
15 **staff will inspect these measures during typical inspections and shall require the submission**
16 **of appropriate documentation to establish compliance. All materials and/or methods**
17 **selected on the submitted Sustainable Building Checklist must be identified on the plans. If**
18 **a measure is indicated as “Self-Certified,” the applicant’s signature on the Sustainable**
19 **Building Checklist serves as certification that a measure will be complied with as described**
20 **in each section. The Town may conduct follow-up inspections or compliance audits of self-**
21 **certified measures prior to the issuance of a certificate of occupancy. If for any reason an**
22 **inspection or compliance audit fails, no certificate of occupancy will be issued until such**
23 **time as those self-certified measures are corrected.**
24

25 **C. Buildings that meet the mandatory measures required by Section 8-4-8 and the**
26 **secondary measures in Sections 8-4-9 and 8-4-10, as applicable to the project type, shall be**
27 **deemed to comply with this Chapter.**
28

29 **D. Buildings that meet the mandatory measures in Section 8-4-8 but do not meet the**
30 **secondary measures in Sections 8-4-9 and 8-4-10, as applicable to the project type, must off**
31 **set the level of non compliance by undertaking alternative measures and achieving points**
32 **of equal value as identified in the Resource Guide.**
33

34 **E. Buildings that meet and receive certification under L.E.E.D, Green Globes, or other**
35 **approved Nationally recognized Green Building Programs may be deemed to meet the**
36 **requirements of this Chapter Project specific approval is required for an alternate green**
37 **building program certification.**
38

39 **G. No certificate of occupancy for a residential project that is subject to the requirements**
40 **of this Chapter shall be issued unless compliance with all of the requirements of this**
41 **Chapter is demonstrated.**
42

43 **8-4-8: MANDATORY MEASURES: The following measures are mandatory for all**
44 **projects:**
45

1 **A. Insulation:**

2
3 **Exterior wall insulation R-21**

4 **Roof ceiling insulation R- 49**

5 **Basement wall insulation R-10 (continuous) R13 (framing cavity)**

6 **Conditioned crawl space wall (below grade) R-10 (continuous) R-13 (framing**
7 **cavity)**

8 **Conditioned crawl space wall (above grade) R-19**

9 **Under slab insulation R- 10**

10 **Slab edge insulation R- 10, R-15 for heated slabs**

11 **Floor (over crawl) insulation R-30**

12 **Cantilever floor R-30**

13
14 **A reduction of the above minimum values that is permitted by the**
15 **International Energy Conservation Code will be permitted by this Chapter.**

16
17 **Compliance: Inspected (Insulation)**

18
19 **B. Fenestrations, (windows and doors):**

20
21 **Windows, maximum U- value of .35**

22 **Doors, maximum U- value of .35**

23 **Skylights and other fenestrations, maximum U- value .60**

24
25 **Compliance: Inspected (Plan Check and Final). Inspector must be able to**
26 **clearly identify the U-value and the window type.**

27
28 **C. Exterior opaque doors:**

29
30 **One exterior opaque door assembly to the house and one to the garage are**
31 **exempt from the fenestrations U-Factor requirement. Over head garage**
32 **doors are also exempt.**

33
34 **Compliance: Inspected (Final)**

35
36 **D. Energy efficient boiler or furnace:**

37
38 **When a boiler is installed, it must meet a minimum 87% efficiency rating.**
39 **For a forced air system, an 88% efficient system must be installed.**

40
41 **Compliance: Inspected (Final)**

42
43 **E. Water Heater:**

1 Any conventional (storage) water heater installed must meet a minimum .63
2 energy factor (EF) rating for gas and a minimum .93 energy factor (EF)
3 rating for electric. If a tankless, indirect, solar, or heat pump water heater is
4 installed, this mandatory requirement shall be deemed to be met.

5
6 Compliance: Inspected (Final)

7
8 F. Owners Manual:

9
10 An owner’s manual including the operational instructions for all mechanical
11 systems and energy saving systems installed in the residential structure shall
12 be provided to the homeowner. Not required for Multi Family.

13
14 Compliance: Inspected (Final)

15
16 8-4-9: SECONDARY MEASURES: Secondary measures for a sustainable building must
17 be provided according to the specific units types and unit sizes outlined within this Section.
18 In order to provide the designer and builder with flexibility, each secondary measure listed
19 is also accompanied by an “offset value.” This offset value refers to the alternative
20 methods and materials found in the Resource Guide which may be used instead of the
21 listed secondary measure.

22
23 A. Building size

24
25 1. Single Family (Attached and Detached)

26
27 For every 50 square feet of conditioned space (including heated garage) over 3,000
28 square feet, a dwelling unit shall be required to earn one point which must be offset
29 by applicable measures listed in the Resource Guide. Dwelling units 3000 square
30 feet or less will be credited with one point for every 50 square feet less than 3000
31 square feet.

32
33 2. Multi Family (3 or more units) or Residential units in mixed use
34 developments.

35
36 For every 50 square feet of conditioned space within a dwelling unit over 1200
37 square feet, a building shall be required to earn one point, which must be offset by
38 applicable measures listed in the Resource Guide.

39
40 C. Additions

41
42 For the purpose of calculating total building size the existing plus the proposed
43 building/unit size will be used.

1 A single-family building that has a total building size of more than 3000 square feet
2 shall be required to earn one point for every additional 50 square feet of new
3 conditioned space, which must be offset according to applicable measures listed in
4 the Resource Guide. The amount of new conditioned space between the existing
5 home size and 3000 square feet will not need to be offset.

6
7 A multi family unit that has a total unit size of more than 1200 square feet shall be
8 required to earn one point for every 50 square feet of new living space which must
9 be off set by applicable measures listed in the Resource Guide. The amount of new
10 living space between the existing living space and 1200 square feet will not need to
11 be offset.

12
13 **B. Renewable or Engineered Lumber**

14
15 Install the following quantities of renewable/engineered lumber in each building: Multi
16 Family and Mixed Use Buildings of non- combustible construction as defined by the
17 Building Code are deemed to comply with this requirement.

18
19 Minimum 60% of wood roof framing to be renewable or engineered lumber
20 Minimum 80% of wood floor framing to be renewable or engineered lumber
21 Minimum 80% of wood beams and headers to be of renewable or engineered lumber.

22
23 The percentage area for floors and roofs will be measured as a percentage of the
24 floor/roof area in plan view.

25
26 The percentage of beams and headers will be measured as a percentage of the total
27 lineal length of all wood beams and headers.

28
29 Off set value: 1 point for every 10% less than required and 1point credit for every 10%
30 more than required.

31
32 Compliance: Inspected (Plan Review/ Framing)

33
34 **C. Day Lighting**

35
36 Bathrooms, laundry rooms, and garages shall have windows and/or skylights to the
37 outside or transoms to adjoining rooms meeting natural light requirements of the
38 Building Code. Separate toilet compartments within a bathroom are exempt from this
39 requirement.

40
41 Offset value: 2 points for every bathroom/powder room/laundry room without exterior
42 windows.

43
44 Compliance: Inspected (Plan Review/Final)

1 **D. Air Stratification**

2
3 **All vaulted/raised ceiling areas greater than fifteen feet above the finished floor level are**
4 **to include an air destratification fan or vent system.**

5
6 **Off set value: 5 points**

7
8 **Compliance: Inspected (Final)**

9
10 **E. Recycling**

11
12 **Install a recycling center in all kitchen areas. Provide a dedicated space in all garages**
13 **for the storage of recycling bins.**

14
15 **Off set value: 3 points**

16
17 **Compliance: Inspected (Final)**

18
19 **F. Energy Star® rated appliances**

20
21 **Install an energy efficient dishwasher, refrigerator / freezer, and clothes washer. Energy**
22 **efficient appliance designation is indicated on the required Department of Energy**
23 **“Energy Star®” label.**

24
25 **Off set value: 1 point for each appliance not rated or not provided.**

26
27 **Compliance: Inspected (Plan Review / Final)**

28
29 **8-4-10: INTENSIVE ENERGY USE AMENITIES:**

30
31 **A. Any new residential occupancy construction, alterations and additions, and new**
32 **construction, including but not limited to, one and two family dwellings, and multi-family**
33 **dwellings that propose any of the following amenities must offset the energy usage in the**
34 **following amounts:**

35
36 **1. Outdoor, gas fire pits/fire places and stoves, (excluding grills)**

37
38 **Off set value: 5 points for appliance.**

39
40 **Compliance: Inspected (Plan Review / Final)**

41
42 **2. Hot tubs, spa pools and swimming pools.**

43
44 **Off set value: 5 points for every 50 square feet, or portion thereof, of hot tub, spa, or**
45 **pool water surface area.**

1
2 Compliance: Inspected (Plan Review/Final)

3
4 **3. Outdoors heated surfaces, including exterior drives, pathways patios, and garage**
5 **aprons, etc.**

6
7 Off set value: 2 points for every 100 sq/ft, or potion thereof, of out door heated
8 surface

9
10 Compliance: Inspected (Plan Review/Final)

11
12 **4. Air Conditioning**

13
14 Off set value: 1 point for every 200 sq/ft. , or portion thereof, of air conditioned
15 space

16
17 Compliance: Inspected (Plan Review/Final)

18
19 **B. Points awarded under this section in excess of those points required for project**
20 **approval are available for future use in connection with additions to or the remodeling of**
21 **the property, but only if the addition or remodel involves one or more of the intensive use**
22 **amenities described in this section. Such retained points shall run with the land, and may**
23 **not be transferred separately from the land or retained by the seller of the property.**

24
25 **8-4-11: UNLAWFUL TO MODIFY PREMISES: For a residential construction project**
26 **that is subject to the provisions of this Chapter, once a certificate of occupancy for such**
27 **project has been issued it shall be unlawful for any person to do the following without the**
28 **prior written approval of the Town:**

29
30 **A. modify the premises for which the certificate of occupancy was issued in a manner that**
31 **makes the premises noncompliant with the mandatory measures of Section 8-4-8 of this**
32 **Chapter; or**

33
34 **B. modify the premises for which the certificate of occupancy was issued in a manner that**
35 **reduces the net number of points awarded for the project under Section 8-4-9 or 8-4-10 of**
36 **this Chapter.**

37
38 **8-4-12: CONFLICT WITH BUILDING CODES: In the event of any conflict between the**
39 **provisions of this Chapter and the Town's building codes adopted by Chapter 1 of this**
40 **Title, the provisions of this Chapter shall control.**

41
42 **8-4-13: ENFORCEMENT AND PENALTIES:**

43
44 **A. General: It is an "infraction", as defined in Section 1-3-2 of this code, for any person to**
45 **violate any of the provisions of this Chapter. Any person who violates any provision of this**

1 Chapter shall, upon a determination of liability, be punished as provided in Title 1,
2 Chapter 4 of this Code. Each such person shall be liable for a separate offense for each and
3 every day during any portion of which any violation of any of the provisions of this
4 Chapter is committed, continued or permitted by such person, and such person shall be
5 punished accordingly.

6
7 B. Injunctive Relief: In addition to other remedies available to the town, the Town may
8 commence an action pursuant to Section 1-8-10 of this Code to enjoin the alleged violation
9 of any provision of this Chapter; to authorize and compel the removal, termination or
10 abatement of such violation; or if a property that is subject to the requirements of this
11 Chapter has been modified in violation of Section 8-4-11 of this Chapter, to require that the
12 property cease being used until it is restored to the condition that existed when the
13 certificate of occupancy was issued.

14
15 C. Additional Remedies: Any remedies provided for in this Chapter shall be cumulative
16 and not exclusive, and shall be in addition to any other remedies provided by law.

17
18 8-4-14: LIABILITY:

19
20 The adoption of this Chapter and the codes provided for herein shall not create any duty to
21 any person with regard to the enforcement or nonenforcement of this Chapter or said
22 codes. No person shall have any civil liability remedy against the town or its officers,
23 employees or agents, for any damage arising out of or in any way connected with the
24 adoption, enforcement or nonenforcement of this Chapter of said codes. Nothing in this
25 Chapter or in said codes shall be construed to create any liability or to waive any of the
26 immunities, limitations on liability or other provisions of the Colorado governmental
27 immunity act, section 24-10-101 et seq., C.R.S, or to waive any immunities or limitations on
28 liability otherwise available to the town, or its officers, employees or agents.

29
30 8-4-15: EFFECTIVE DATE; TRANSITION:

31
32 This ordinance shall become effective January 1, 2009 and shall apply to all construction
33 projects for which development permit applications are submitted to the Town on or after
34 such date. This ordinance shall not apply to: (i) any construction project for which a
35 development permit application was submitted to the Town prior to January 1, 2009; (ii)
36 any construction project for which a development permit was approved by the Town prior
37 to January 1, 2009; and (iii) any construction project for which a building permit was
38 issued prior to January 1, 2009.

39
40 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the various
41 secondary codes adopted by reference therein, shall continue in full force and effect.

42
43 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
44 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and

1 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
2 thereof.

3
4 Section 4. The Town Council hereby finds, determines and declares that it has the power
5 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
6 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

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

10
11 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
12 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
13 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
14 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
15 Town.

16
17 TOWN OF BRECKENRIDGE, a Colorado
18 municipal corporation

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

24
25 ATTEST:

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

MEMO

TO: Town Council
FROM: Laurie Best, Community Development Department
DATE: June 10, 2008
RE: Mercy Housing Development Agreement-Valley Brook Site

At the Council work session on May 27th, staff presented the first draft of an agreement between the Town and Mercy Housing for the development of 40 to 60 affordable workforce units on the Valley Brook site. Since then we have worked with Mercy and modified the agreement to address the issues that were previously unresolved, specifically the issues of tax rebate, subordination, and completion guarantee. Staff believes the issues have been resolved as follows:

- Tax rebate. Mercy's request for a tax rebate has been modified to a request for tax exemption. This is a standard practice and staff has no objection to tax exemption for Mercy since they are a Colorado non-profit, and as such, eligible for tax exemption.
- Subordination. Mercy was concerned that the deed restriction and the subordination clause would not be acceptable to FHA and felt that FHA financing would be very important to this project given the lower AMIs that will be targeted. In the past the Town included a *FHA Exception* in the Gibson Heights covenant that terminates the covenant in the event of a FHA foreclosure. Staff is very concerned about the potential for termination of the covenant as a result of foreclosure but also feels that FHA financing is important to this project. Since we have included this exemption in other covenants, and have not lost any units to date, we support a similar exception for the Valley Brook site.
- Completion Guarantee. Staff had asked Mercy to provide some assurance that the project would be completed, because once the property is conveyed to Mercy the Town may not be able to reacquire the property. Mercy has proposed a completion guarantee which staff believes is a reasonable solution. The Town also retains rights to cure a default as outlined in the agreement.

The final draft of the agreement that addresses these issues is included in your packet. Mercy Housing is completing their review of the final draft and we hope to have their approval before the meeting on June 10th. Staff supports the agreement as presented but would like Council feedback. If the Council agrees that the issues are adequately addressed we would recommend approval of the resolution/ agreement that have been included in your packet. Once the agreement is in place Mercy can move forward with design and development. The project schedule still anticipates a construction start in late 2008, but this will depend on fall weather and on the design process. A summary of the key elements of the agreement and the process follows:

Mercy's Key Obligations:

- Mercy Housing Colorado (the "Developer") is to construct or cause to be constructed between 40 and 60 affordable 'for sale' units on the property;

- Mercy Housing Colorado (the “Developer”) is to construct (at the Town’s expense) a Community Park within the project;
- Mercy Housing Colorado (the “Developer”) is to sell the units to Qualified Buyers with at least 50% of the units targeted to households up to 80% AMI and the remainder targeted to households up to 120% AMI;
- Mercy Housing Colorado (the “Developer”) is to select consultants and to coordinate, manage, and oversee the plans, specification, and drawings for the project, it being understood that all such plans are subject to the Town’s approval;
- Mercy Housing Colorado (the “Developer”) will prepare and submit project budget and project proforma to the Town for approval;
- Mercy Housing Colorado (the “Developer”) is to obtain all licenses and permits for the financing, construction, marketing, sale, operation of the project;
- Mercy Housing Colorado (the “Developer”) is to monitor and take reasonable action to require all consultants comply with the terms of their contracts and agrees to perform the services with due diligence at least equivalent in quality and efficiency to the manner in which other experienced reputable developers and construction managers perform similar services;
- Mercy Housing Colorado (the “Developer”) will prepare project schedule, HOA documents, deed restriction (acceptable to the Town), sales contracts, owners manuals, etc.; and
- Mercy Housing Colorado (the “Developer”) will retain DTJ at the Town’s expense to provide architectural consultation for the project on the Town’s behalf

Process:

- During a Feasibility Review Period the Developer will perform inspections and analysis of the property. The Feasibility Period extends until the property is conveyed by the Town to the Developer;
- Developer shall deliver written notice to the Town of Developer’s readiness to proceed with the development and construction of the project. The notice will include final project budget, final program, approved plans, and the amount of the Town subsidy;
- Upon 60 days of the Towns receipt of the notice the Town shall exercises its discretion to adopt an ordinance to donate the property for development and construction of the project;
- Prior to the conveyance of the land the developer may terminate the agreement in which case the developer shall pay all costs and expenses incurred;
- In addition to its right to terminate for cause, prior to the conveyance of the land if the Town desires to terminate the agreement it shall provide the developer with written notice, the developer shall submit a detailed itemization of costs incurred, and the Town shall pay the developer’s reimbursable costs.

The applicant has prepared a timeline that identifies the schedule and milestones. While the Town Project process will be used for formal entitlements, the project process that is outlined includes six design sessions with the Housing Committee, a community open house, two work sessions with the Planning Commission, and two work sessions with the

Council to complete an acceptable design prior to submittal of the development permit application to Planning Commission. In its role as a non-regulator collaborator and in its role as a regulator the Town has the ultimate ability to control the project. The intent is to create a project that meets the needs of the community, satisfies the quality and design expectation of the Town, and represents a fiscally responsible public investment.

Key TOB Obligations:

- The Town agrees to waive fees and to cooperate with the Developer in requesting Breckenridge Sanitation District fees.
- The Town agrees to cooperate in obtaining project financing.
- The Town will provide a subsidy for the project-the amount is yet to be determined, but must be acceptable and approved by the Town prior to conveying the land to Mercy

We look forward to your comments on the agreement and on the project in general. Thank you.

1 ***FOR WORKSESSION/ADOPTION – June 10, 2008***

2
3 A RESOLUTION

4
5 SERIES 2008

6
7 A RESOLUTION APPROVING A DEVELOPMENT AND CHARITABLE CONTRIBUTION
8 AGREEMENT WITH MERCY HOUSING COLORADO CONCERNING THE
9 DEVELOPMENT OF AN ATTAINABLE HOUSING PROJECT ON TOWN-OWNED REAL
10 PROPERTY; AND MAKING CERTAIN LEGISLATIVE FINDINGS AND
11 DETERMINATIONS IN CONNECTION THEREWITH

12
13 WHEREAS, the Town of Breckenridge (“Town”) through a request for qualifications and
14 request for proposal process has identified and selected Mercy Housing Colorado, a Colorado
15 non-profit corporation (“Mercy”), as a responsible party to develop and sell between 40 and 60
16 attainable housing units on a portion of the Town’s real property currently known as Tract D,
17 Final Plat, A Replat of Block 11, An Amended Replat of Breckenridge Airport Subdivision,
18 according to the plat recorded August 3, 2005 under Reception No. 797050 of the records of the
19 Clerk and Recorder of Summit County, Colorado (the “Attainable Housing Project”); and

20
21 WHEREAS, a proposed form of Development and Charitable Contribution Agreement
22 between the Town and Mercy concerning the Attainable Housing Project has been prepared, a
23 copy of which is marked Exhibit “A”, attached hereto and incorporated herein by reference (

24 “Agreement”); and
25
26 WHEREAS, if the Agreement is approved, the Town will be obligated to convey to
27 Mercy at no cost the Town-owned real property upon which the Attainable Housing Project is to
28 be developed, and the Town will further be obligated to provide a cash subsidy to Mercy related
29 to the development of the Attainable Housing Project, all as more fully described in the
30 Agreement; and

31
32 WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed
33 Agreement, and finds and determines that it would be in the best interests of the Town and its
34 residents for the Town to enter into the proposed Agreement; and

35
36 WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a
37 resolution may be used to approve a contract.

38
39 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
40 BRECKENRIDGE, COLORADO, as follows:

41
42 Section 1. The Town Council finds, determines, and declares as follows:

43
44 1. In Section 29-26-101(1), C.R.S., the Colorado legislature has found and declared that:

1 A. "(i)t is in the public interest to maintain a diverse housing stock in order to
2 preserve some diversity of housing opportunities for the state's residents and
3 people of low-and moderate-income.
4

5 B. A housing shortage for persons of low- and moderate-income is detrimental to
6 the public health, safety and welfare. In particular, the inability of such persons to
7 reside near where they work negatively affects the balance between jobs and
8 housing in many regions of state and has serious detrimental transportation and
9 environmental consequences.
10

11 2. The determinations made by the Colorado legislature in Section 29-26-101(1),
12 C.R.S., are applicable to affordable housing within the Town of Breckenridge.
13

14 3. In *Town of Telluride v. Lot 34 Venture, LLC*, 3 P.3d 30, 38 (Colo. 2000) the
15 Colorado Supreme Court found that the a municipality (along with the state) has a "significant
16 interest in maintaining the quality and quantity of affordable housing."
17

18 4. The Town of Breckenridge lacks sufficient affordable housing (also referred to as
19 "attainable housing") for the citizens of the Town.
20

21 5. The development of an adequate supply of attainable housing within the Town of
22 Breckenridge is a top priority of the Town Council.
23

24 6. In an effort to address the lack of sufficient attainable housing within the Town the
25 Town Council has adopted a housing plan, and has committed significant amounts of public
26 resources, in the form of both public funds and the expenditure of substantial amounts of Town
27 staff time, to the development and implementation of a housing strategy designed to make more
28 attainable housing available to the citizens of the Town.
29

30 7. The development of the Attainable Housing Project described in the proposed
31 Development and Charitable Contribution Agreement (Exhibit "A" hereto) will provide 40-60
32 affordable "for sale" housing units that will significantly assist in the provision of attainable
33 housing for people who work within the Town and desire to live near where they work.
34

35 8. The development of the Attainable Housing Project in the proposed Development and
36 Charitable Contribution Agreement will serve a substantial public purpose.
37

38 Section 2. For the reasons set forth in Section 1 of this resolution, the Town Council
39 finds, determines, and declares that the approval of the proposed Development and Charitable
40 Contribution Agreement with Mercy Housing Colorado, a Colorado non-profit corporation
41 (Exhibit "A" hereto), and the conveyance of the Town-owned real property and the provision of
42 funds by the Town for the development of the Attainable Housing Project as more fully set forth
43 in the proposed Development and Charitable Contribution Agreement, will provide a public
44 benefit and further a public purpose within the meaning of Article 11, Section 2 of the Colorado
45 Constitution. The Town Council further finds, determines and declares that the Town will
46 receive adequate consideration in return for its financial contribution to the development of the

1 Attainable Housing Project as required by the proposed Development and Charitable
2 Contribution Agreement.

3
4 Section 3. The proposed Development and Charitable Contribution Agreement with
5 Mercy Housing Colorado, a Colorado non-profit corporation (Exhibit "A" hereto) is approved,
6 and the Town Manager is hereby authorized, empowered, and directed to execute such
7 agreement for and on behalf of the Town of Breckenridge.

8
9 Section 4. Prior to signing the Agreement, and with the concurrence of the Town
10 Attorney, the Town Manager is authorized, empowered, and directed to fill in any blanks in the
11 approved agreement or to attach any missing or omitted exhibits to the agreement.

12
13 Section 5. Minor changes to or amendments of the approved agreement may be made by
14 the Town Manager if the Town Attorney certifies in writing that the proposed changes or
15 amendments do not substantially affect the consideration to be received or paid by the Town
16 pursuant to the approved agreement, or the essential elements of the approved agreement.

17
18 Section 6. This resolution shall become effective upon its adoption.

19
20 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2008.

21
22 TOWN OF BRECKENRIDGE

23
24
25
26 By _____
27 John G. Warner, Mayor

28
29 ATTEST:

30
31
32
33 _____
34 Mary Jean Loufek,
35 CMC, Town Clerk

36
37 APPROVED IN FORM

38
39
40
41 _____
42 Town Attorney Date

**DEVELOPMENT
AND
CHARITABLE CONTRIBUTION
AGREEMENT**

THIS DEVELOPMENT AND CHARITABLE CONTRIBUTION AGREEMENT ("Agreement") is made and entered into this ____ day of ~~May~~June, 2008 (the "Effective Date"), by and between MERCY HOUSING COLORADO, a Colorado non-profit corporation (the "Developer"), the TOWN OF BRECKENRIDGE, a municipal corporation (the "Town") ~~and the "Town Committee" (hereinafter defined).~~

RECITALS:

A. The Town owns certain real property located in Summit County, Colorado, described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. The Town, through a request for qualifications and request for proposal process (collectively, the "Selection Process"), has identified and selected Developer as a responsible party to develop, construct and sell Units within the Project (as the terms "Units" and "Project" are defined below). The proposal to develop, construct and sell the Project submitted by Developer to Town as part of the Selection Process is attached hereto as Annex I.

C. The Town intends to make a charitable contribution of the Property to Developer and Developer intends to develop and construct a 40-60-unit affordable "for-sale" housing project on the Property (the "Project"). Each unit to be developed and constructed by Developer within the Project is hereinafter referred to as a "Unit" and collectively as the "Units."

D. Developer is securing all financing necessary for development and construction of the Project, including hard and soft costs associated with construction of the Units (hereinafter the "Project Financing"). ~~The Project Financing will include, but not be limited to, waiver of certain land, building permit, water tap, and other development impact fees ordinarily charged by the Town.~~

E. Developer intends to retain such architects, engineers, contractors and other similar consultants, agents and professionals as may be necessary for the design, approval, permitting, development, construction, marketing and sale of the Units (any such persons or entities retained from time to time by Developer are referred to herein as the "Consultants", and the contracts and agreements entered into by Developer with such Consultants are referred to herein as the "Consulting Agreements").

F. Developer intends to retain ~~{DTJ Design}, Inc.~~, at Town's sole cost and expense, to provide architectural design consultation for the Project on the Town's behalf ("Town Consultant") subject to Town approval. Town shall pay all of DTJ Design Inc.'s fees and costs pursuant to a separate contract between these parties.

G. The Town desires to retain Developer to perform pre-development management services with respect to the preparation of a conceptual design and feasibility analysis for the Project and, following completion of such design and feasibility analysis and approval of the same by Town and Developer, desires Developer to : (a) implement and coordinate the design, approval, permitting, financing, financial analysis, and other similar services required for development and construction of the Project; and (b) acquire title to the Project and ~~commence development and develop the Project including~~ construction of the Project for ~~eventual~~ sale of the Units to Qualified Buyers (as hereinafter defined).

H. Developer desires to provide such pre-development, development and construction management services to the Town and acquire title to the Property for development and construction of the Project, in each upon and subject to the terms and conditions set forth herein.

I. During the pre-development, development ~~and~~, construction, ~~and~~ sale phases of the Project, the Town shall perform a regulatory and administrative role customary of a town and also act as a non-regulatory collaborator with Developer. In instances herein when it is necessary to distinguish between the two roles the Town will undertake with regard to the development of the Project, the Town shall be referred to herein as the "Town Committee" when referencing the Town in its role as a non-regulatory collaborator of Developer, and as the "Town" when acting in its regulatory and administrative capacity as the regulatory authority.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

RETENTION OF DEVELOPER

Section 1.1 Developer. The Town hereby retains Developer to perform pre-development, pre-construction, development and construction management services as described in Article II hereof.

Section 1.2 Standard of Performance. Developer agrees to perform the services required to be performed of it hereunder with due diligence in a manner at least equivalent in quality and efficiency to the manner in which other experienced reputable developers and construction managers perform similar services for projects of like kind and size as the Project and exercising reasonable effort, skill and expertise in the best interest of the Town and the Project.

Section 1.3 Authority. Subject to the terms and provisions of this Agreement, Developer shall have the authority to make and implement day-to-day decisions that are necessary in the performance of its obligations hereunder, to render directions to all third parties in connection

therewith and to execute certain documents consistent with services enumerated in Article II on behalf of the Town in connection therewith.

Section 1.4 Term. The term of this Agreement shall commence on the date hereof and shall continue until the earlier of: (a) either Town's or Developer's early termination of this Agreement pursuant to a right to do so hereunder; or (b) all of Developer's obligations under this Agreement have been satisfied (the "Termination Date").

ARTICLE II

SERVICES; DEVELOPER'S OBLIGATIONS

Section 2.1 Services. During the period from the date hereof until the Termination Date, Developer shall do all things reasonably necessary to facilitate all aspects of the design of the Project (including schematic, conceptual, and construction drawings, plans and specifications), and the approval, permitting, construction, financing, marketing and sale of the Project, including the following services:

(a) Prepare a financial plan, financial analysis and feasibility studies for the Project and for use in obtaining the required Financing.

(b) Select all Consultants necessary to perform the Services and negotiate and enter into Consulting Agreements ~~in accordance with the provisions of all documents for Financing for the design, construction, marketing, and sale of the Project (the "Financing Documents")~~.

(c) Consult with the Summit ~~County~~Combined Housing Authority (the "Housing Authority") to develop a marketing program for the sale of the Units to low and moderate income families as more fully set forth in Section 5.3.

(d) Negotiate the terms and conditions of the ~~Financing~~financing and Financing Documents.

(e) Develop, in consultation with its energy Consultant, Enermodal, a comprehensive energy supply and demand program for incorporation into the design and construction of the Project. The comprehensive energy efficiency program will include a feasibility analysis of a central ~~heating~~heating system for the Project.

(f) Coordinate, manage, and oversee the preparation of all plans, specifications and drawings (and any amendments thereto) by the architects and engineers for the Project in consultation with the Town Committee, it being understood that all such plans, specifications and drawings and amendments thereto shall be subject to the Town's approval. Developer shall assist such Consultants in the development of the design for the Project, including the schematic Project design and outline specifications, and render its best advice and judgment as to conceptual designs, site use and improvements, engineering, selection of materials, building systems and equipment, relative construction feasibility, availability of

materials and labor, time requirements for installation and construction and factors relating to cost, including cost of alternative engineering, designs and materials.

(g) Consult with: (i) the Town Committee; (ii) the engineers performing the design for mechanical, structural, electrical, civil, and plumbing; and (iii) architect regarding the drawings and specifications as they are being prepared and recommending alternative selections wherever design details affect construction feasibility, cost or schedule, including providing recommendations and information to the Town and the architect regarding the assignment of responsibility for safety precautions and programs; temporary Project facilities equipment, materials and services.

(h) Obtain all necessary licenses and permits required for the financing, development, construction, marketing and sale of the Project, and all other necessary licenses and approvals required for the ownership, marketing, sale and operation of the Project, including, without limitation, those related to assuring the availability of utilities to the Project.

(i) Ensure that the Project is designed and constructed in accordance with all applicable laws, ordinances, regulations, building codes, approved plans, approved budget, and other government requirements, including, without limitation, all zoning regulations.

(j) Review all construction documents for the Project and advise and consult with the Town Committee, Town Consultant and Consultants in connection therewith.

(k) Prepare a Project time schedule, together with necessary revisions thereto as appropriate from time to time, in consultation with the Town Committee and Town Consultant.

(l) Schedule, prepare agendas and attend meetings with the Town, Town Committee, or so many of the said parties as shall be necessary at such times and places as shall be appropriate to render periodic oral and written status reports on the progress of any work related to the Project; and send to the Town Committee promptly after transmission copies of all draw requests. The parties agree that all such Such information shall be treated as privileged and not subject to public review. the provisions of Section 7.2.

(m) Prepare and submit to the Town Committee for approval, as and when reasonably required or requested by the Town Committee, proposed development and construction budgets for the Project in such detail as the Town Committee may reasonably request and, without limitation of the foregoing, showing (i) all projected direct and indirect costs for development, construction and sale of the Project, (ii) construction, marketing, financing and carrying costs of the Project, and (iii) costs of ownership and operation thereof through the completion of construction of the Project. Developer shall prepare a pro forma ("Project Pro Forma") consisting of a written description of assumptions and results based on schematic design which will include (i) a full description of the Project commensurate with the schematic design level of detail, (ii) the anticipated total Project cost (including, without limitation, construction, financing, architects, engineers and other professional fees), and (iii) the anticipated annual operation expenses of the ~~home owner~~ homeowner's association to be created by Developer for the Project following completion of construction of the Project and

commencement of Units sales at the Project. The Project Pro Forma shall be updated not less often than once in each calendar quarter and, at the Town Committee's reasonable request, shall be updated more often. ~~The parties agree that all such~~ Such information shall be treated as ~~privileged and not subject to public review.~~ the provisions of Section 7.2.

(n) Construct or cause to be constructed the Project and all Units therein in accordance with plans, budget, and specifications approved by the Town and Town Committee in compliance with all applicable laws, rules, ordinances and regulations of the Town and any other governmental agency or authority having jurisdiction over the Project. Manage all punchlist and warranty issues.

(o) Monitor and take reasonable action to require that all Consultants comply with all of the terms of their contracts and all applicable laws, ordinances, rules, regulations and restrictions governing the development and construction of the Project, including environmental laws.

(p) Develop and implement, in consultation with the Housing Authority and with Town's prior approval ~~(not to be unreasonably withheld)~~: (i) a marketing and sales program for the sale of Units in the Project to Qualified Buyers; and (ii) a form of deed restriction to be imposed on all Units in the Project prior to the first sale of each Unit in order to assure that all Units remains subject to the affordability restrictions described in Sections 5.3 and 5.4 hereof upon any re-sale of such Units. The Housing Authority and Developer shall enter into a separate agreement setting forth the terms of such marketing and sales program.

(q) Prepare planned community or condominium documentation, as applicable, including, a declaration of covenants, conditions and restrictions for the Project, and a set of rules and regulations for the Project.

(r) Cause to be formed a homeowners association for the Project pursuant to articles of incorporation and bylaws conforming with applicable Colorado law.

(s) Develop a standard form of Unit purchase and sale contract for sale of Units at the Project and ~~following acquisition of the Property from Town, develop~~ a form of deed restriction acceptable to the Town to be placed on all ~~units~~ Units prior to sale, ~~and~~; enter into Unit purchase and sale contracts for Units at the Project with Qualified Buyers; and sell the Units to Qualified Buyers.

(t) Prepare an owners' manual for the ongoing operations of the mechanical operations of the Units.

(u) Provide general monitoring and reports on the progress of the work.

(v) In the event a district heating plant is included in the Project, develop a plan in conjunction with the Town Committee for operation of the plant and infrastructure.

Section 2.2 Delegation. Developer shall cause each of its officers and employees to devote so much of their time and efforts to the Project as is necessary for such party Developer to perform its obligations as required hereby through the term of this Agreement.

Section 2.3 Construction of Community Park. In addition to the services to be performed by Developer pursuant to Section 2.1 hereof and the observance and performance of Developer's other covenants and obligations hereunder, in the event Developer elects to proceed with development and construction of the Project by giving Town and Town Committee the Charitable Contribution Notice defined and described in Section 4.1 hereof, Developer shall, as part of its development and construction of the Project: (a) dedicate approximately one quarter of one (1) acre of the land underlying the Project to the Town for construction and operation of a community park (the "Park"), the final location and size of which shall be mutually acceptable to Town and Developer ~~(such acceptance not to be unreasonably withheld or delayed)~~; and (b) construct, at Town's sole cost and expense, all improvements for such Park according to plans and specifications and a budget for such Park approved by Developer and Town, ~~such approval not to be unreasonably withheld or delayed~~. Such dedication shall occur at the time of final platting for the Project and, following completion of construction of the Park and improvements therein, shall be accepted by the Town upon expiration of any required warranty period (which in no event shall exceed ~~one~~ two (2) year years following substantial completion of the Park and related improvements therein). The cost of such Park and all improvements to be constructed by Developer in connection therewith, including, but not limited to, all of Developer's hard and soft costs and all of Developer's overhead and other out-of-pocket costs associated therewith shall be advanced by Town concurrently with the disbursement of the Town Subsidy (as hereinafter defined) in accordance with Section 5.2 hereof and shall be in addition to, and not constitute a part of, such Town Subsidy. During the two (2) year warranty period Town shall provide all required routine (non-warranty work) maintenance and upkeep for the Park. Following acceptance by the Town of such Park and related improvements in accordance with Town's applicable subdivision rules and regulations (subject to the ~~one (1) two (2) year~~ warranty requirement), Town shall be and remain solely responsible for owning, operating, maintaining, repairing, replacing, constructing and reconstructing the Park and any improvements from time to time located therein.

Section 2.4 Cooperation. Subject to and consistent with the Town's rights hereunder to approve and control various aspects of the development and construction of the Project, the Town and Town Committee shall (a) cooperate with Developer in a timely and expeditious manner, and (b) provide full information regarding its requirements for the development and construction of the Project and each component thereof. Notwithstanding anything to the contrary contained herein, following conveyance of the Property to Developer in accordance with Section 4.2 hereof, subject to the obligations of Town to exercise its regulatory and administrative authority in approving the design, zoning, subdivision, development, land use planning, construction, marketing and sale of the Project (in each case in a manner that is not arbitrary or capricious), the Town and Town Committee shall not ~~unreasonably~~ withhold any consent or approval required of it hereunder, in each case so long as such consent or approval does not, in Developer's reasonable good faith judgment: (i) materially alter the conceptual design of the Project as established and agreed upon by Town and Developer at or prior to expiration of the Feasibility Review Period; (ii) reduce the number of Units to be sold to Qualified Buyers pursuant to Section 5.3 hereof or alter the definition of Qualified Buyers set

forth in Section 5.3(b) hereof.; or (iii) modify the form of any deed restriction previously agreed upon by Developer and Town for use in connection with Unit sales to Qualified Buyers in a manner that would reduce the burden on any Unit within the Project to be encumbered by such deed restriction (whether by reducing the term of the affordability restriction established therein; increasing any income limitations for Qualified Buyers, or otherwise).

ARTICLE III

FEASIBILITY REVIEW PERIOD; INSPECTION OF THE PROPERTY

Section 3.1 Feasibility Review Period. The "Feasibility Review Period" shall commence on the Effective Date and shall continue until the property is conveyed pursuant to Section 4.2.

Section 3.2 Inspection of Property. Commencing on the Effective Date and continuing through the expiration of the Feasibility Review Period, Developer and Developer's agents, employees and Consultants shall have the right to enter upon the Property to conduct or cause to be conducted upon the Property ground tests, soil analyses, topographical surveys, engineering studies and other physical examinations of the Property as Developer may deem necessary, and Developer may otherwise do that which, in the sole opinion of Developer, is necessary for Developer to satisfy itself with regard to the physical condition of the Property and all other aspects of the Property (the "Inspection"). If required by Town, Developer shall, to the extent practicable, restore the Property to its prior condition within a reasonable time after any entry made upon the Property pursuant to this Section. To the extent of Developer's available liability insurance, Developer shall indemnify and defend the Town from all claims arising by reason of any entry upon the Property made pursuant to this Section. The obligations of this Section shall survive the termination of this Agreement.

Section 3.3 Existing Property Documents. During the term of this Agreement, upon reasonable written request by Developer (the "Document Request"), the Town shall deliver or make available to Developer within ten (10) days of the Town's receipt of the Document Request, any existing documents related to the Property, including, without limitation, financial feasibility studies or analyses, marketing information, existing surveys, environmental reports, and soils studies that are in the Town's possession or can be obtained without unreasonable effort and expense.

Section 3.4 Review of Title and Survey. Following the Effective Date, Developer may, at its sole cost and expense, order an updated title commitment and updated survey of the Property. Town agrees to cooperate with Developer in providing any information it may have regarding the status of title to the Property and agrees to remove any monetary liens encumbering the Property, whether existing on the date hereof or first arising subsequent to the date hereof. Town further agrees to execute such affidavits at closing Closing (hereinafter defined) on the transfer of the Property to Developer pursuant to Section 4.2 hereof as may be necessary or required by Developer or its lenders to obtain extended coverage title insurance policies. Developer shall pay the cost of all title insurance premiums required for issuance of any title policies at closing Closing on its acquisition of the Property pursuant to Section 4.2 hereof. The provisions of this Section shall survive the expiration of the Feasibility Review Period.

Section 3.5 Developer's Right to Terminate During Feasibility Review Period. If at any time during the Feasibility Review Period Developer determines that is not satisfied for any reason, or no reason, in its sole discretion, with the results of its Property investigations, the feasibility of the Property for Developer's contemplated development of the Project as for-sale affordable housing, the status of title to the Property, the zoning or any other entitlements necessary for the development and construction of the Project, the results of any updated survey of the Property, or any other condition or aspect of the Property or Developer's planned development of the same, whether known or unknown on the Effective Date, and Developer notifies the Town and Town Committee in writing of its election to terminate this Agreement ("Inspection Termination Notice"), this Agreement shall, without further action by Developer, the Town or Town Committee, become null and void, and all of the parties to this Agreement shall be released from any and all further obligation or liability hereunder. In the event Developer terminates the Agreement pursuant to this Section 3.5, Developer shall pay all costs and expenses incurred by Developer in connection with the performance of its services hereunder, including performance of any feasibility analysis of the Property undertaken by Developer, in each case from the Effective Date through and including the date on which the Town and Town Committee receive the Inspection Termination Notice. In such event, neither Town nor Town Committee shall be liable for any services performed by Developer pursuant to this Agreement.

Section 3.6 Town's Right to Terminate During the Feasibility Review Period. In addition to the Town's right to terminate this Agreement for cause pursuant to Section 6.1 hereof, the Town shall have the further right to terminate this Agreement at any time during the Feasibility Review Period, in each case upon and subject to the following terms and conditions:

(a) If Town desires to terminate this Agreement pursuant to this Section 3.6, it shall provide Developer with written notice of such election ("Town's Termination Notice") at any time during the Feasibility Review Period.

(b) Developer shall thereafter have ten (10) days following receipt of Town's Termination Notice to provide a detailed itemization of all costs, fees and expenses incurred by Developer in the preparation, negotiation, execution and delivery of this Agreement, its inspection and investigation of the Property and feasibility of the Project for Developer's intended purposes and its financing, development, construction, marketing and sale of the Project. All such costs and expenses incurred by Developer including, but not limited to, Developer's attorneys' fees and costs, costs and expenses of all appraisals, title reports, surveys, environmental and soil studies and reports, energy savings and feasibility studies and reports, engineering fees and expenses (whether related to environmental, mechanical, structural, heating, civil engineering, electrical or otherwise), all costs, fees and expenses incurred by Developer related to any financing then obtained or to be obtained by Developer for the Project (whether relating to commitment or origination fees or good-faith deposits, attorneys' fees and costs of any lender's in-house or outside counsel, title insurance and survey charges, appraisals, environmental reports or otherwise), all costs, fees and expenses incurred by Developer or paid by Developer to third parties in connection with any land use planning and/or design of the Project (whether to architects, engineers, other consultants or otherwise), all costs, fees and expenses incurred by Developer or paid by Developer to third parties in connection with any construction work undertaken by such parties in, on or at the Project, and all other costs, fees,

charges and expenses incurred by Developer or paid by Developer to third-parties in connection with Developer's acquisition, due diligence and feasibility analysis, or inspection, development, design, construction, financing, marketing and/or sale of the Project, in each case up to and including the date of Developer's receipt of the Town's Termination Notice, are hereinafter collectively referred to as the "Developer's Reimbursable Costs."

(c) Town shall have a period of twenty one (21) days following its receipt of Developer's itemized listing of Developer's Reimbursable Costs within which to pay such Developer's Reimbursable Costs to Developer by wire transfer funds pursuant to wiring instructions provided by Developer in its itemized listing of Developer's Reimbursable Costs.

(d) Upon Town's payment of Developer's Reimbursable Costs to Developer, this Agreement shall automatically terminate and be of no further force and effect, except for those terms and provisions hereof which by their terms expressly survive ~~closing~~Closing or termination. If Town fails or refuses to pay Developer the Developer's Reimbursable Costs within the aforesaid (twenty one (21) day period, Seller's Termination Notice shall be deemed revoked and this Agreement shall remain in full force and effect.

Section 3.7 Town's Ownership of Property. Town hereby represents and warrants to Developer that it currently owns the Property free and clear of all liens and encumbrances, except easements of record in the office of the Summit County, Colorado Clerk and Recorder ("Permitted Encumbrances"); that it will own the Property on and as of the Closing Date free and clear of all liens and encumbrances ~~created by it,~~ except the Permitted Encumbrances and any other encumbrance approved by Developer prior to Closing; and that the title insurance policy to be obtained by Developer on the Closing Date for the Property shall specifically so provide.

ARTICLE IV

CHARITABLE CONTRIBUTION OF THE PROPERTY; NO RIGHT TO SHARE IN SALES PROCEEDS, PROFITS OR DEVELOPER FEES; DEVELOPER'S INDEMNITY AND INSURANCE]; COMPLETION GUARANTY]

Section 4.1 Charitable Contribution Notice. Developer shall deliver written notice to the Town (the "Charitable Contribution Notice") of Developer's readiness to proceed with the development and construction of the Project at such time as Developer has completed the Inspection, secured all required Financing, entered into all Consulting Agreements and otherwise made all arrangements necessary to proceed with the development and construction of the Project. The Charitable Contribution Notice will include the final project budget, final program, approved plans, final project schedule, and Town Subsidy as described in Article V Section 5.2.

Section 4.2 Charitable Contribution Closing. ~~Within~~Subject to the provisions of Section 4.3, within sixty (60) days after the Town's receipt of the Charitable Contribution Notice (the "Closing Date"), or as earlier agreed upon by the parties, the Town shall (a) exercise its reasonable discretion to adopt an ordinance, following posting of all required notices and holding of all required public hearings, pursuant to which it approves the donation of the Property to Developer for development and construction of the Project; and (b) execute all documents necessary to convey the Property to the Developer including a special warranty deed

substantially in the form on **Exhibit B** attached hereto and incorporated herein by this reference, conveying good and marketable title to the Property to Developer, subject only to the permitted exceptions on **Exhibit B** to the special warranty deed (hereinafter the "Closing").

Section 4.3 Extension of Closing If Referendum. The parties acknowledge that the conveyance of the Property to Developer pursuant to this Agreement must be approved by ordinance pursuant to the Town's Charter, and that the adoption of such ordinance is subject to the citizens' right of referendum. If an affidavit concerning a potential referendum is filed by a petitioner's committee within ten (10) days after final adoption of the ordinance as required by the Town's Charter, the Closing Date shall be delayed until it is determined if the required number of signatures is submitted to the Town Clerk to force a referendum election. If the required number of signatures is not submitted to the Town Clerk, Closing shall proceed as soon as practicable after such determination is finally made. If an election on the ordinance is required, the Closing Date shall be further delayed until the election is held and the outcome of the election is finally determined. If the ordinance is approved at the referendum election, Closing shall proceed as soon as practicable after such determination is finally made. If the ordinance shall be defeated at the referendum election, this Agreement shall terminate, but the Town shall then pay Developer all sums described under Section 3.6(b) in full and complete satisfaction of all Town's obligations to Developer under this Agreement. Town shall pay all costs and expenses associated with any referendum proceeding, including all election costs.

Section 4.4 Section 4.3—Town Action Prior to Closing. Prior to the Closing Date, the Town shall take all necessary Town action to ensure the Town's authority to convey the Property to Developer and shall execute such resolutions, or other documents, necessary to evidence the Town's authority to convey the Property to Developer.

Section 4.5 Section 4.4—Property Contributed "As Is". EXCEPT AS IS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE CHARITABLE CONTRIBUTION OF THE PROPERTY AS PROVIDED FOR HEREIN, IS MADE ON A STRICTLY "AS IS" "WHERE IS" BASIS AS OF THE CLOSING DATE, AND THE TOWN MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY EXISTING IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO. NOTWITHSTANDING THE FOREGOING, THE PARTIES UNDERSTAND, ACKNOWLEDGE AND AGREE THAT IN THE EVENT DEVELOPER'S INVESTIGATION AND INSPECTION OF THE PROPERTY DURING THE FEASIBILITY REVIEW PERIOD REVEALS ENVIRONMENTAL CONTAMINATION OF THE PROPERTY OR OTHER PROBLEMS THAT REQUIRE ENVIRONMENTAL REMEDIATION OF THE PROPERTY, THE AMOUNT OF THE TOWN'S SUBSIDY TO BE PROVIDED BY TOWN PURSUANT TO SECTION 5.2 HEREOF WILL LIKELY NEED TO BE INCREASED TO ADDRESS SUCH REMEDIATION ISSUES. THE PARTIES AGREE TO COOPERATE AND NEGOTIATE WITH EACH OTHER IN GOOD FAITH IN REGARDING ANY CHANGES TO THE TOWN'S SUBSIDY MADE NECESSARY AS A RESULT OF SUCH ENVIRONMENTAL REMEDIATION ISSUES. THE PROVISIONS OF

THIS SECTION SHALL SURVIVE THE CLOSING AND SHALL BE FULLY ENFORCEABLE THEREAFTER.

Section 4.6 Section 4.5—No Right to Share in Sales Proceeds, Profits or Developer Fees. Town and Town committee each acknowledge and agree that they shall not be entitled to payment of any sales proceeds resulting from Developer's sale of the Units nor any right to any profits or developer's fee earned or realized by Developer as a result of its development, construction, marketing and sale of the Project.

Section 4.7 Developer's Indemnity. Except as otherwise provided in Section 4.3, to the extent of Developer's available liability insurance Developer agrees to indemnify and defend the Town, its officers, employees, insurers, and self-insurance pool 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 performance of Developer's duties and obligations under this Agreement or the development, construction, and sale of the Project, except to the extent such liability, claim or demand arises through the gross negligence or intentional wrongful act of the Town, its officers, employees, or agents, or Town's breach of this Agreement. To the extent indemnification is required under this Agreement, Developer agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees.

Section 4.8 Developer's Insurance.

(a) Developer shall procure and continuously maintain throughout the term of this Agreement the following minimum insurance coverages:

(1) worker's compensation insurance to cover obligations imposed by applicable laws for any employee of Developer or a subcontractor of Developer engaged in the performance of work under this Agreement.

(2) comprehensive general liability insurance with limits of liability of either: (i) not less than \$1,000,000 each occurrence and \$2,000,000 aggregate; or (ii) \$10,000,000 if written on a "wrap" basis for the Project. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee's acts), blanket contractual, products, and completed operations.

(3) comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate with respect to each of Developer's owned, hired or nonowned vehicles assigned to or used in performance of this Agreement.

(4) Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Developer pursuant to Section 3.2 and Section 4.7 of this Agreement. In the case of any claims-made policy, the necessary

retroactive dates and extended reporting periods shall be procured to maintain such continuous coverages.

(b) The Developer's general liability insurance policy shall be endorsed to include the Town and Town's officers and employees as additional insureds.

(c) Every policy required above shall be primary insurance, and any insurance carried by Town, its officers, or its employees, or carried by or provided through any insurance pool of Town, shall be excess and not contributory insurance to that provided by Developer. Developer shall be solely responsible for any deductible losses under any policy required above.

(d) An ACORD Form 27, or other certificate of insurance acceptable to Town, shall be completed by Developer's insurance agent and provided to the Town as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be reviewed and approved by Town prior to commencement of this Agreement, and upon each renewal or replacement of such policies throughout the term of this Agreement. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled or terminated until at least 30 days' prior written notice has been given to Town. The completed certificate of insurance shall be sent to:

Mary Jean Loufek, Town Clerk
Town of Breckenridge
P.O. Box 168
Breckenridge, Colorado 80424

(e) Notwithstanding any other portion of this Agreement, failure on the part of Mercy to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement for which Town may immediately terminate this Agreement, or the Town may exercise such other rights and remedies as are provided in this Agreement or by applicable law.

(f) The parties hereto understand and agree that Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S. as from time to time amended, or any other limitation, right, immunity or protection otherwise available to Town, its officers, or its employees.

Section 4.9 [Completion Guaranty. At Closing, and as a condition precedent to Town's obligation to convey the Property to Developer pursuant to Section 4.2 hereof, Developer shall cause to be delivered to Town a form of completion guaranty in favor of Town executed by an affiliate of developer reasonably acceptable to Town and otherwise in form and content mutually acceptable to Town, Developer and such affiliate pursuant to which such affiliate shall unconditionally guaranty Developer's completion of construction of the Project].

ARTICLE V

WAIVER OF TOWN FEES; TOWN FINANCING; AFFORDABILITY RESTRICTIONS; COOPERATION IN OBTAINING PROJECT FINANCING

Section 5.1 Waiver of Fees. Upon commencement of the development and construction of the Project following expiration of the Feasibility Review Period and conveyance of title to the Property pursuant to Section 4.2 hereof, the Town shall waive all land fees, building permit fees, water tap fees, and other development impact fees and exactions and shall provide Developer and its contractors with ~~a rebate for an exemption from sales tax properly payable to the Town~~ for any building materials, supplies and equipment purchased or rented within the Town limits during development and construction of the Project. In addition, the Town agrees to cooperate with the Developer in requesting the Breckenridge Sanitation District to waive any sewer tap fees.

Section 5.2 Town Subsidy. The Town shall provide Developer with a subsidy for the development and construction of the Project (the "Town Subsidy") to aid Developer in achieving the Town's objective of having high quality, energy efficient, affordable housing within the Town of Breckenridge. The amount of the Town Subsidy shall be mutually agreed upon by the parties at such time as Developer and the Town agree on a development program, comprehensive energy efficiency ~~supply and demand~~ program and the construction cost estimates for the Project, but in any event, no later than the date of the Charitable Contribution Notice, unless the parties agree to delay such agreement until the Closing Date. The Town Subsidy shall be paid to Developer pursuant to a draw request procedure established by Town and Developer prior to the Closing Date and containing terms and conditions mutually acceptable to Town and Developer.

Section 5.3 Affordability Restrictions.

(a) "AMI" shall mean median income for persons residing in Summit County, Colorado as established from time to time by the U.S. Department of Housing and Urban Development.

(b) Developer agrees to sell the Units to purchasers satisfying the following income classifications (each hereinafter individually referred to as a "Qualified Buyer" and collectively "Qualified Buyers"): (i) at least fifty percent (50%) of the Units shall be sold to Qualified Buyers whose incomes are less than or equal to eighty percent (80%) of AMI; and (ii) the remaining fifty percent (50%) (or such lesser percentage, as applicable) of the Units shall be sold to Qualified Buyers in the following income classifications (in any number or combination) whose household incomes are either: (A) less than or equal to one hundred percent (100%) of AMI; and/or (B) less than or equal to one hundred twenty percent (120%) of AMI. The distribution of one (1), two (2) and three (3) bedroom Units amongst all three income classifications of Qualified Buyers will be determined by Developer (with Town's approval, ~~not to be unreasonably withheld, conditioned or delayed~~) following Developer's completion of a site specific market study for the Project.

(c) During the Feasibility Review Period, Developer shall assist the Housing Authority, as reasonably necessary, in establishing a marketing and sales program for the sale of

the Units if one has not previously been established by the Housing Authority and shall also negotiate with the Housing Authority a form of exclusive listing contract for the sale of the Units following completion of construction of the Units. Such listing contract shall (i) be in form and content mutually acceptable to Developer and Housing Authority; (b) require that all Units be sold to Qualified Buyers in accordance with the affordability restrictions set forth in Section 5.3(b); (iii) be executed no later than commencement of construction of the Project; and (iv) name Housing Authority as the exclusive listing agent for any subsequent re-sale of a Unit during the term of the restrictive covenant described in Section 5.3(d) below.

(d) During the Feasibility Review Period, Developer shall also negotiate with the Town the form of deed restriction to be imposed on each Unit prior to Developer's first sale of each such Unit to a Qualified Buyer. Such deed restriction shall (i) be in form and content mutually acceptable to Developer, Housing Authority and Town; (ii) require that all Units be re-sold to Qualified Buyers in accordance with the affordability restrictions set forth in Section 5.3(b) hereof; (iii) describe any limits placed on the resale price or appreciation in value that may be realized by a Qualified Buyer upon a re-sale of his or her Unit; (iv) describe the procedure by which a Unit may be re-sold and identify the Housing Authority as the exclusive listing agent and source of potential Qualified Buyers for any re-sale of the Unit; (v) require written acknowledgment, in recordable form, from each purchaser of a Unit prior to his or acquisition of the same, of the legal restrictions and limitations imposed by such deed restriction on the title to such purchaser's Unit, including, without limitation, the affordability restrictions of Section 5.3(b) hereof and the limitations on re-sale price placed on such Unit; ~~and~~ (vi) require the establishment of a foreclosure prevention reserve fund (the "Foreclosure Reserve Fund"), either independently of, or in conjunction with, the homeowner's association to be formed by Developer for the Project (the "HOA"), pursuant to which each Unit owner at the Project (starting with the first Qualified Buyer for each Unit at the Project) will be required to deposit the sum of \$5.00 per month into such Foreclosure Reserve Fund as a means of allowing or assisting any Unit owners at the Project to cure any default by such Unit owners on their mortgage payments and/or payments of applicable HOA dues and assessments; (vii) require each Unit owner at the Project (starting with the first Qualified Buyer for each Unit at the Project) to notify Town and the Authority of any notice of default received by such Unit owner from its mortgage lender(s) and/or the HOA within ten (10) days following such Unit owner's receipt of same; (viii) provide for a perpetual duration. Such deed restriction shall; (ix) contain subordination provisions substantially identically to those previously used in the form of deed restriction used for the Gibson Heights project in the Town of Breckenridge, Colorado; and (x) be executed by Developer and recorded against the title to each Unit prior to Developer's first sale of the same to a Qualified Buyer.

Section 5.4 Town Cooperation in Obtaining Project Financing. Town agrees to cooperate with Developer in its efforts to obtain the required Financing for the Project and, in connection therewith, agrees to join in any grant applications and execute and deliver any estoppel certificates, consents, subordination agreements and other documents as may be reasonably requested from time to time by any lender or financial institution providing Financing for the Project, so long as such documentation does not financially obligate the Town beyond its financial commitments described herein or otherwise impair Town's rights and remedies hereunder or modify the terms and provisions hereof.

ARTICLE VI

TERMINATION

Section 6.1 Termination by Town for Cause. The Town may terminate this Agreement upon fifteen (15) days written notice for cause. Cause shall be defined as the occurrence of any of the following events relating to the Developer (including any person or entity comprising Developer):

(a) the filing of a voluntary petition in bankruptcy; (ii) being adjudicated a bankrupt or insolvent; (iii) filing of any merger petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency, or other relief for debtors, whether federal or state; (iv) Developer seeking, consenting to, or acquiescing in the appointment of any trustee, receiver, conservator or liquidator of Developer, or of all or any substantial part of its properties (the term "acquiescing," as used herein, shall be deemed to include but not be limited to the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within the time specified by law); (v) a court of competent jurisdiction entering an order, judgment or decree approving a petition filed against Developer seeking any reorganization arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief of debtors, whether federal or state, and Developer either consents to or acquiesces (as hereinabove defined) in the entry of such order, judgment or decree, or such order, judgment or decree shall remain unvacated or unstayed for an aggregate of sixty (60) days from the date of entry thereof, or (vi) the appointment of a trustee, receiver, conservator or liquidator of Developer of all or any substantial part of its properties without the consent of or acquiescence of Developer which remains un-vacated or unstayed for an aggregate of sixty (60) days; or

(b) committing or permitting a breach of or default in any of its duties, liabilities or obligations hereunder; and such failure shall continue for fifteen (15) days after written notice from the Town to Developer of such failure, provided, that if such breach or default cannot reasonably be cured within said fifteen (15) day period, if Developer shall not in good faith commence to cure such failure within such fifteen (15) day period or shall not diligently proceed therewith to completion within a maximum of ninety (90) days following receipt of Town's notice of default.

If the Town terminates this Agreement for cause pursuant to this Section 6.1, Town may pursue all other legal and equitable remedies available to it, including, but not limited to, maintaining an action for damages and/or seeking specific performance.

Section 6.2 Default by Town. In the event of any default by Town or Town Committee in the observance and performance of their obligations hereunder, Developer shall give Town and Town Committee notice of such default and Town and Town Committee shall thereafter have fifteen (15) days following their receipt thereof to cure the same; provided, that if such default cannot reasonably be cured within such fifteen (15) day period Town shall not be in

default if it commences curing the default within such fifteen (15) day period and thereafter cures the default with due diligence within a maximum of ninety (90) days following receipt of Developer's notice of default. If such default is not cured by Town or Town Committee within such fifteen (15) day cure period (or the extended cure period described above, if applicable), Developer may terminate this Agreement upon written notice to Town and Town Committee. In addition to and without limiting the generality of the foregoing, Developer may pursue all other legal and equitable remedies available to it, including, but not limited to, maintaining an action for damages and/or seeking specific performance.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Consent. Subject to the provisions of Section 1.3 above, whenever any non-regulatory consent or approval of the Town or Town Committee is required hereunder, or whenever any consent or approval Developer is required hereunder, such consent or approval shall not be unreasonably withheld, denied or delayed and with regard to any regulatory or administrative consent or approval required by the Town, such consent or approval shall not be withheld arbitrarily or capriciously. The Town and Town Committee each agree to promptly review any required non-regulatory or non-administrative submittal or other document or instrument requiring the Town's or Town Committee's non-regulatory or non-administrative approval or consent hereunder, and to use reasonable, good faith efforts to respond to any request by Developer for such consent or approval in a timely manner, but in no event later than twenty-one (21) days following the Town or Town Committee's receipt of such request. Any submittal to the Town requiring the regulatory or administrative consent or approval of such party shall be processed in accordance with applicable legal requirements and a decision on such submittal rendered by the Town within the time frames required by such legal requirements. The Developer agrees to review in good faith any non-regulatory request for consent by the Town or Town Committee within twenty-one (21) days following the Developer's receipt of such request.

Section 7.2 Confidentiality. The parties agree that the information described in Section 2.1(l) and Section 2.1(m) of this Agreement will be treated as between the parties as "trade secrets, privileged information, and confidential commercial and financial information" within the meaning of Section 24-72-204(3)(a)(IV), C.R.S. (which is part of the Colorado Open Record Act). If the Town receives a request for disclosure of any of the information described in Section 2.1(l) and Section 2.1(m) under the Colorado Open Records Act, the Town will resist such request, and shall not disclose any of such information except pursuant to a final, non-appealable judgment of a court of competent jurisdiction. Further, upon receipt of a request for disclosure of any of the information described in Section 2.1(l) or Section 2.1(m) under the Colorado Open Records Act, the Town shall promptly notify Developer of the request so that Developer may seek an appropriate protective order or take other appropriate action. Town will not oppose any action by Developer to obtain an appropriate protective order or other reliable assurance that the confidentiality provisions of this Section 7.2 will be enforced to the fullest extent permitted by the law.

~~Section 7.3~~ ~~Section 7.2~~ Law Governing. Developer, Town and Town Committee agree that this Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

~~Section 7.4~~ ~~Section 7.3~~ No Waiver. No failure by Developer, the Town or Town Committee to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

~~Section 7.5~~ ~~Section 7.4~~ Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, as the case may be, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

~~Section 7.6~~ ~~Section 7.5~~ Notices. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received: (i) if delivered by messenger, when delivered; (ii) if mailed, on the third business day after deposit in the United States, certified or registered, postage prepaid, return receipt requested; (iii) if sent by facsimile, on the same day such facsimile was sent if received by the party to whom it was sent no later than 5 p.m. on such day, as evidenced by a facsimile confirmation slip confirming receipt (and if not received by 5 p.m. on such day, then such facsimile will be deemed received on the next succeeding business day); or (iv) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

IF TO THE TOWN AND/OR TOWN COMMITTEE:

Town of Breckenridge
Attn: Laurie Best, Project Manager
P.O. Box 168
Breckenridge, CO 80424

with a copy to:

Timothy H. Berry, Esq.
Town Attorney
Town of Breckenridge
P. O. Box 2
Leadville, CO 80461-0002
Facsimile: (719) 486-3039

IF TO DEVELOPER:

Mercy Housing Colorado
Attn: Jane Harrington
1999 Broadway, Suite 1000
Denver, CO 80202
Facsimile: (303) 830-3301

with a copy to:

Isaacson Rosenbaum P.C.
Attn: Paul V. Franke, Esq.
633 17th Street, Suite 2200
Denver, CO 80202
Facsimile: (303) 292-3152

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

Section 7.7 Section 7.6—Successors and Assigns. This Agreement shall be binding on the parties hereto, and their successors and permitted assigns. Developer may not assign this Agreement without the prior written consent of Town or Town Committee; provided however, that Developer may freely assign this Agreement without the Town's or Town Committee's prior written consent so long as such assignment is to an affiliate of Developer created for the specific purpose of developing, constructing, owning and selling the Project so long as Developer remains personally liable to the Town for the performance of Developer's obligations under this Agreement.

Section 7.8 Section 7.7—Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All prior and contemporaneous statements and agreements pertaining to the subject matter of this Agreement are merged into and superseded by this Agreement.

Section 7.9 Section 7.8—Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

Section 7.10 Section 7.9—Amendments. Neither this Agreement nor any term or provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

Section 7.11 Section 7.10—Definition; Captions. The captions to the Articles and Sections of this Agreement are for convenience and reference only and in no way define, limit or

describe the scope or intent of this Agreement or any part hereof, nor in any way affect this Agreement or any part hereof.

Section 7.12 Section 7.11—No Partnership. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or similar relationship between Developer and the Town or between Developer and the Town Committee. Developer shall at all times act as an independent contractor, and not an agent of the Town.

Section 7.13 Section 7.12—No Employment Relationship. It is understood and agreed that nothing contained in this Agreement or the performance hereof shall be construed as creating any employment relationship whatsoever between the Town or Town Committee and employees of Developer. Therefore, neither Developer nor any of its respective employees is or shall be deemed to be employees of the Town or Town Committee. Developer agrees to handle the payroll for its employees, withhold from their wages and salaries and make all tax filings and payments with respect to such employees as is required by law.

Section 7.14 Section 7.13—Attorney's Fees. In the event of any suit or action regarding this Agreement, the parties' performance hereunder or its interpretation or construction, the prevailing party in such suit or action shall be awarded its reasonable attorneys' fees and costs and its reasonable attorneys' fees and costs associated with any appeal.

Section 7.15 Section 7.14—Further Assurances. Each party to this Agreement agrees to execute such other documents and undertake such other actions as may be reasonably required from time to time to effectuate the purposes of this Agreement and consummate the transactions described herein.

Section 7.16 Section 7.15—No Construction Against Drafting Party. This Agreement shall not be subject to any rule of contract construction or interpretation requiring that the same be construed against the party drafting it and the parties each hereby waive the benefit of any such rule of contract construction or interpretation.

[remainder of page left intentionally blank]

Section 7.17 Third Parties. This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party (except a party to whom Developer may assign this Agreement in accordance with the terms hereof) any right to claim damages or to bring suit, action or other proceeding against the because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

Section 7.18 Recording of Memorandum. This Agreement **MAY NOT BE RECORDED** with the Clerk and Recorder of Summit County, Colorado. However, if either party requests the other party to do so, the parties will execute and record with the Clerk and Recorder a Memorandum of Agreement. If such memorandum is recorded and the Property is not conveyed by Town to Developer pursuant to this Agreement, Developer will execute, acknowledge, and deliver to Town upon request a quit claim deed conveying all of Developer's right, title and interest in the Property to Town. This obligation will be specifically enforceable by Town against Developer notwithstanding the expiration or termination of this Agreement for any reason.

Section 7.19 Time Is Of Essence. Time is of the essence of this Agreement.

Section 7.20 Annual Appropriation. Financial obligations of the Town under this Agreement payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the Town Council of the Town of Breckenridge, Colorado. If sufficient funds are not made available, this Agreement may be terminated by either party without penalty; provided, however, that in the event of termination of this Agreement pursuant to this section by the Town, Town shall pay Developer all sums described in Section 3.6(b) in full and complete satisfaction of all Town's obligations to Developer under this Agreement. The Town's obligations hereunder shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DEVELOPER:

MERCY HOUSING COLORADO,
a Colorado non-profit corporation

By: _____
Name: _____
Title: _____

TOWN:

TOWN OF BRECKENRIDGE,
a municipal corporation

By: _____
Name: _____
Title: _____

TOWN COMMITTEE:

~~TOWN OF BRECKENRIDGE,
a municipal corporation~~

By: _____
Name: _____
Title: _____

EXHIBIT A

(Property Legal Description)

[INSERT LEGAL DESCRIPTION]

Annex I

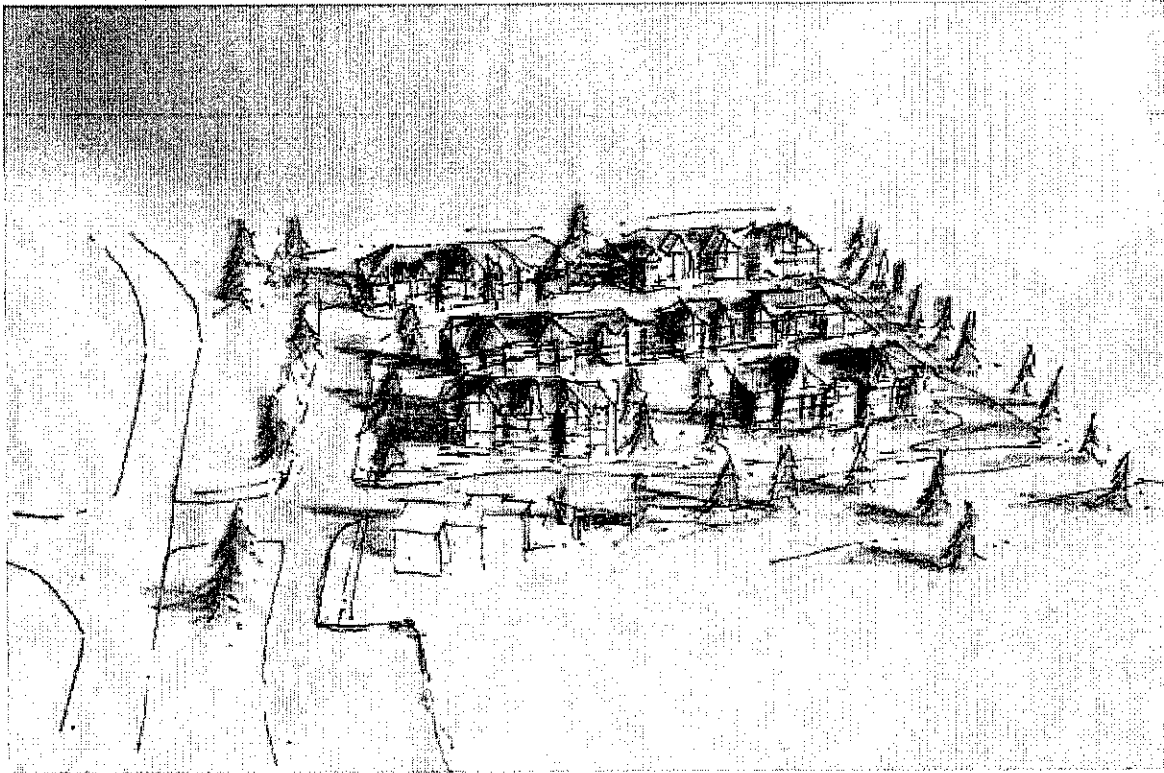
Valley Brook Neighborhood Development Proposal

Dated
January 31, 2008

[see attached]

VALLEY BROOK NEIGHBORHOOD DEVELOPMENT PROPOSAL

JANUARY 31, 2008



January 31, 2008

Laurie Best
Town of Breckenridge
150 Ski Hill Road
P.O. Box 168
Breckenridge, CO 80424

RE: Valley Brook Neighborhood Affordable Housing Developer RFP

Dear Ms Best:

The MHCO team is pleased to submit the attached proposal to develop the Valley Brook Neighborhood. Over the last month we have considered numerous design options, studied the 2006 and 2007 housing studies, and researched energy efficiency alternatives. We believe that this proposal represents the best combination of design, affordability, livability, density, and sustainability that this site can offer.

Our proposal consists of 42 one-, two- and three-bedroom homes, in two-story townhome and stacked flat designs. These homes will be sold to households at three income levels: at or below 80% AMI, 100% AMI, and 120% AMI. The majority of parking will be tucked under the buildings or provided in traditional, alley loaded garages. The site plan is designed to take maximum advantage of the site's tremendous solar potential and incorporates a location for a central heating plant. The addition of Sue Reilly, President of Enermodal, a leading mechanical engineering firm specializing in alternative/renewable energy design, will greatly enhance our abilities to thoroughly explore and implement the most efficient energy strategies. In combination with the sustainable design expertise of Odell Architecture and our development and financing knowledge, our team is well positioned to deliver beautiful, energy conscious, sustainable, and affordable homes.

During the preparation of this proposal we have consulted local contractors, all the while keeping a constant focus on creating realistic cost assumptions. We forged a preliminary partnership with the Summit Combined Housing Authority for marketing and sales administration, and consulted with Big Horn Management's home owner association management staff to test the adequacy of the home owner association budget. We also discussed various home buyer loan programs and construction loans with local banks. Providers of all the funding resources discussed in this proposal are supportive of the project and are ready to assist in reviewing funding applications.

Given the amount of team building and research conducted to date, the MHCO team is positioned to proceed with a realistic and timely road map to successful completion of the Valley Brook project. We are very excited about this opportunity, and look forward to working with the Town of Breckenridge to make it a model project for subsequent development of Block 11. If you have any questions, please do not hesitate to contact Erin Ganser or me, (303) 830-3300.

Sincerely,

Jane Harrington
Vice President for Single Family Development

L. VISION PLAN

A. PROJECT GOALS AND OBJECTIVES

The Valley Brook project presents a unique opportunity for MHCO to partner with the Town of Breckenridge to achieve the shared goals of developing a mixed income neighborhood for the local workforce. Valley Brook also represents the opportunity to explore and implement innovative, site specific, renewal/alternative energy programs. Through livable floor plans, adherence to the Block 11/Valley Brook Design Guidelines, and creative financing mechanisms, Valley Brook will be a model for developing the remainder of Block 11. Specific goals include the following:

- Develop a community that is affordable to incomes from 70-120% AMI, with focus on households at and below 80% AMI.
- Provide a sustainable housing product that incorporates energy efficiency and green building practices.
- Create a development schedule and business plan that is realistic and mutually beneficial to both parties.
- Undertake a collaborative process to design a site plan that is financially feasible and meets the needs of the workforce and the goals of the Town.
- Provide a variety of household sizes and types that will allow for families to grow and change with out needing to relocate.
- Commission well-designed mortgage assistance and loans that provide the buyer with set payments over time.
- Provide for a well-funded and budgeted HOA that covers all anticipated expenses and contributes to a healthy reserve so that no emergency assessments would be required over time.
- Work together to maximize the use of Town resources that are targeted for affordable housing.

B. RELATIONSHIP BETWEEN THE TOWN OF BRECKENRIDGE AND MHCO

MHCO looks forward to forging a collaborative development partnership with the Town of Breckenridge. We view this relationship to be focused on working together to ensure that individual and mutual goals for the project are achieved. The primary areas of collaboration include refinement of the development program and site/project design through a stakeholder charrette process; assistance in securing grant and foundation funds, as many funding sources are only available to local governments or entities that will perform ongoing administration of the affordability component (i.e. SCHA); expedited facilitation of the appropriate entitlements; and collaboration in achieving sustainability goals through financial participation with the proposed heating district and cooperative evaluation of the energy efficiency analyses provided by Enermodal. This type of team work and cooperation provide us all with the opportunity to leverage each others talents and access to resources.

II. DEVELOPMENT PROGRAM CONCEPT

A. DEVELOPMENT PROGRAM

MHCO proposes to develop a 42-home neighborhood that will be affordable to households from 70% to 120% AMI. Of the total unit count, 22 units, or 53%, are available to households at or below 80% AMI. This proposal contemplates fee simple flats and townhomes. A summary of the development program is below:

22 Homes to be sold to household incomes at or below 80% AMI

Unit Type	Building Type	Sq. Ft.	Parking	# Units	Price
1 Bedroom, 1.5 Bath	Flat	688	Tucked, 2 Car Tandem Space	6	\$144,231
2 Bedroom, 2 Bath	Flat	944	Tucked, 2 Car Tandem Space	10	\$181,496
3 Bedroom, 2.5 Bath	Townhome	1,388	1 Oversized Garage, 1 Surface	6	\$216,392

10 Homes to be sold to household incomes at or below 100% AMI

Unit Type	Building Type	Sq. Ft.	Parking	# Units	Price
2 Bedroom, 2 Bath	Flat	944	Tucked, 2 Car Tandem Space	7	\$245,468
3 Bedroom, 2.5 Bath	Townhome	1,388	Oversized 1 Car Garage, 1 Surface	3	\$332,742

10 Homes to be sold to household incomes at or below 120% AMI

Unit Type	Building Type	Sq. Ft.	Parking	# Units	Price
2 Bedroom, 2 Bath	Flat	944	Tucked, 2 Car Tandem Space	7	\$309,440
3 Bedroom, 2.5 Bath	Townhome	42	Oversized 1 Car Garage, 1 Surface	3	\$364,277

Analysis of Alternative Development Programs

Based on preliminary discussions with the investment banking firm D.A. Davidson, a cooperative could be formed for the project. If selected, and at the direction of the Town, MHCO will provide an analysis of the comparison between cooperative ownership and fee simple ownership to confirm the assumption that fee simple ownership is the most financially feasible approach to this project.

MHCO also evaluated the option of developing the Valley Brook parcel as affordable rental housing. However, we determined that an affordable for-sale project was more appropriate for two reasons. First, due to the property's proximity to Pinewood Village and Breckenridge Terrace there is concern of over-concentrating rental projects and the resultant competition for tenants. Second, given Valley Brook's adjacency to the elementary school and child care center, we determined that the longer-term investment and stability of homeownership would be most complementary to these community anchors.

B. DEVELOPMENT CONCEPT

The following section discusses of the development concept for the Valley Brook parcel. This concept is based on a preliminary site analyses and directed by the Block 11/Valley Brook Design Guidelines. Upon selection for the project, MHCO proposes to hold a stakeholder charrette to help hone and refine the development concept. MHCO will look to the Town for recommendations on participants, format, and timing of the charrette. The following discussion is divided into the following categories: site plan, architecture, and energy efficiency, and is graphically depicted in Section C of this proposal.

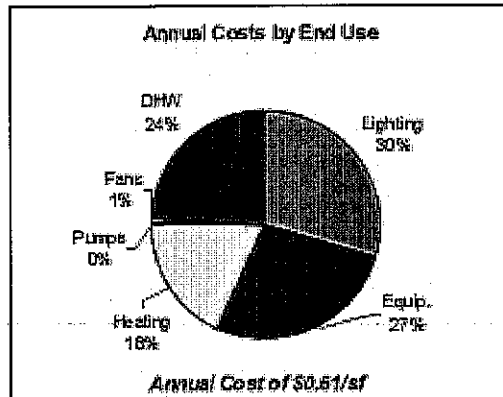
Site Plan

The following design concerns helped formulate the conceptual site plan:

- Reinststate the grid to create formal block and street configurations, and to take advantage of southern exposure
- Create building envelopes that frame and enclose the street
- Provide for efficient snow removal and storage
- Expand opportunities for open space and increased density by limiting surface parking

Initial hourly energy analysis predicts annual energy costs of \$0.6/sf to \$0.7/sf for the units. Space heating accounts for 18% of the costs and domestic hot water (DHW) another 24%. Lighting and equipment (i.e. appliances) are the largest energy users.

The heat district system is an attractive option to reduce energy costs, and also offers opportunities to integrate solar hot water and other renewable energy alternatives for the Valley Brook project as well as the Police Station and child care center. Based on preliminary analysis, we estimate that the additional cost of implementing a heating district will be approximately \$9,000 per unit. The disadvantages of the district heating option include high installation costs for the system, the requisite pumping energy for ongoing circulation of water, and the additional costs for submetering. (Studies indicate that unless submetering is included in such a system that energy actually increases due to lack of quantification of energy use and cost not being directly correlated with the amount of energy used.) In addition to performing a detailed life-cycle analysis of the district system, we will also analyze distributed systems, such as individual or building group furnaces and water heaters. We would also propose a comparison of baseboard water heating to forced-air systems. To help fund these analyses, we will submit a grant requests to Energy Outreach Colorado and Enterprise Green Communities. As the energy efficiency strategy is fine tuned, additional grant and foundation resources may be identified.

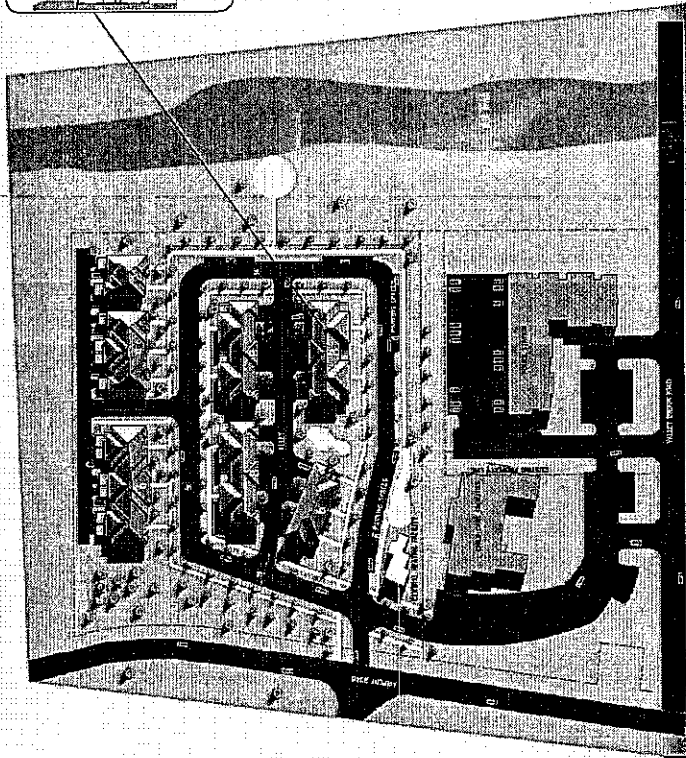
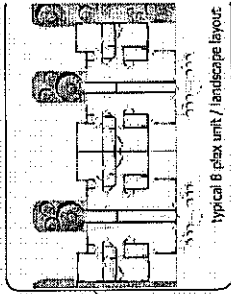


III. CONCEPTUAL PLAN

This section provides graphical representation of the development concept. The graphics included are as follows:

- Illustrative Site Plan
- Site Analysis/Site Organization
- Proposed Conceptual Floor Plans
- Parking Layout/Cross Section
- Typical Elevation

VALLEY BROOK NEIGHBORHOOD AFFORDABLE HOUSING DEVELOPMENT



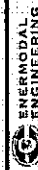
LAND USE ANALYSIS	
total # of 1 bedrooms	6
total # of 2 bedrooms	24
total # of 3 bedrooms	12
total # of parking	72
parking dimensions	72 o.s. covered / 16 street / 5 surface
sidewalk dimensions	10x107 per railing
setbacks	5'
bdgp. coverage	16.1% = 27 acres / 31,154,231 sq. ft.
landscape open space	50.4% = 2.25 acres / 98,810 sq. ft.
parking drives and walks	33.4% = 1.49 acres / 65,317,231 sq. ft.
total land wt. ft.	4.66 acres / 191,275 sq. ft.
22 Homes to be Sold to Homeless Families & or (Income 60% AMI)	
11 Homes to be Sold to Homeless Families & or (Income 100% AMI)	
17 Homes to be Sold to Homeless Families & or (Income 120% AMI)	

Illustrative site plan.

JANUARY 31, 2008



odell architects



COMMERCIAL ENGINEERING

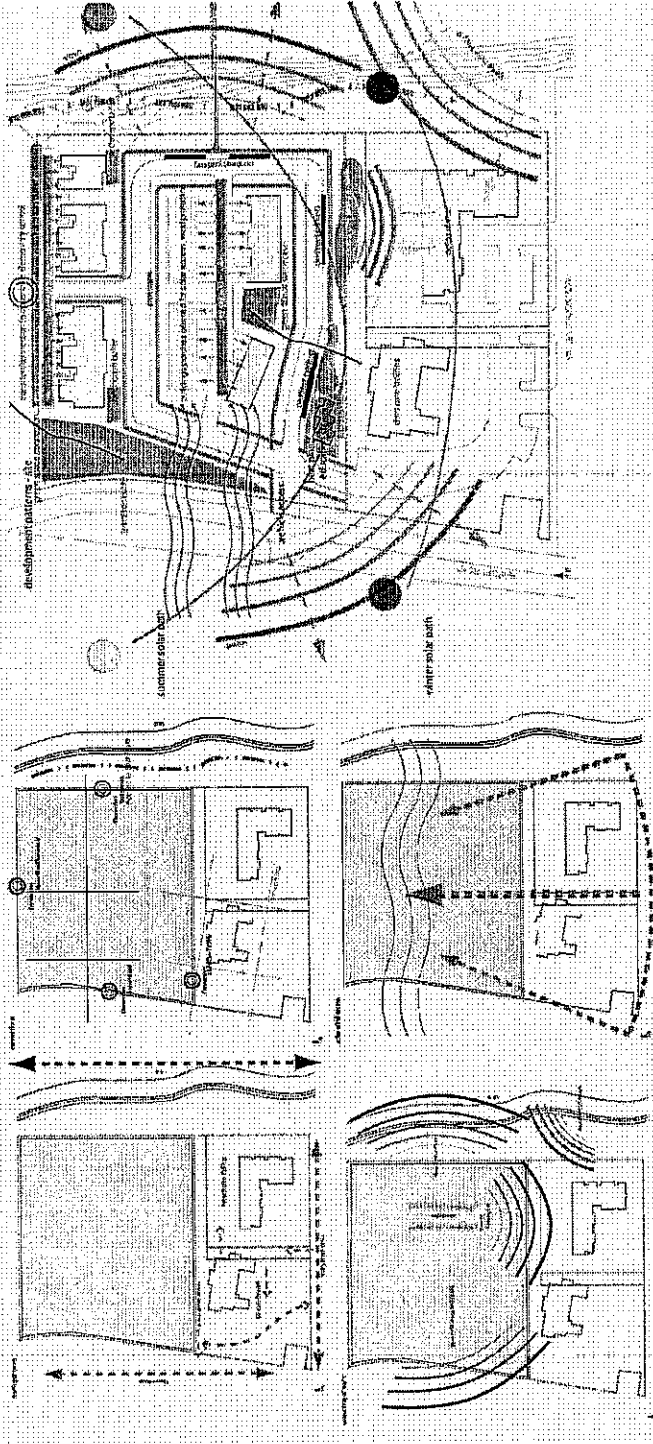


REFERENCE



Merry Housing

VALLEY BROOK NEIGHBORHOOD AFFORDABLE HOUSING DEVELOPMENT



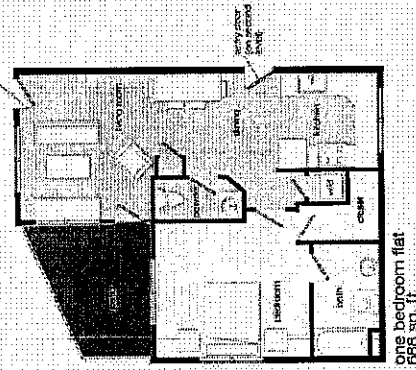
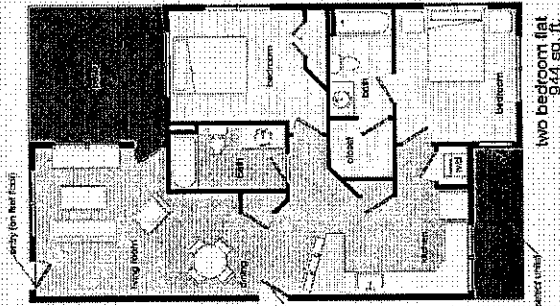
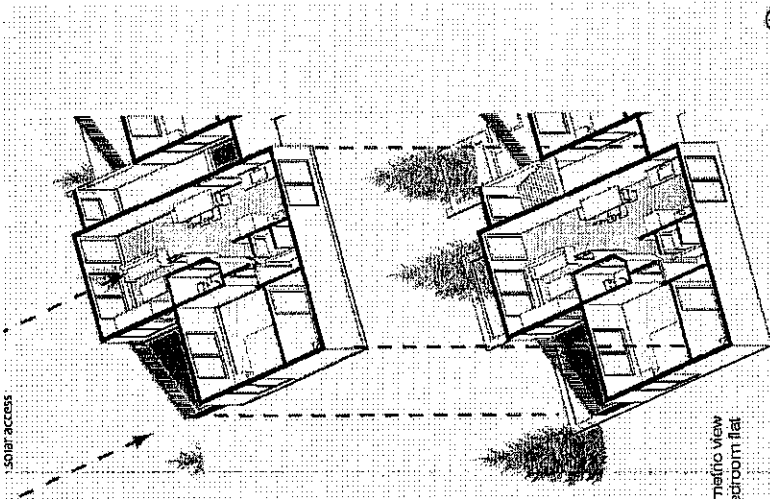
site analysis / site organization

JANUARY 31, 2008



odell architects

VALLEY BROOK NEIGHBORHOOD AFFORDABLE HOUSING DEVELOPMENT

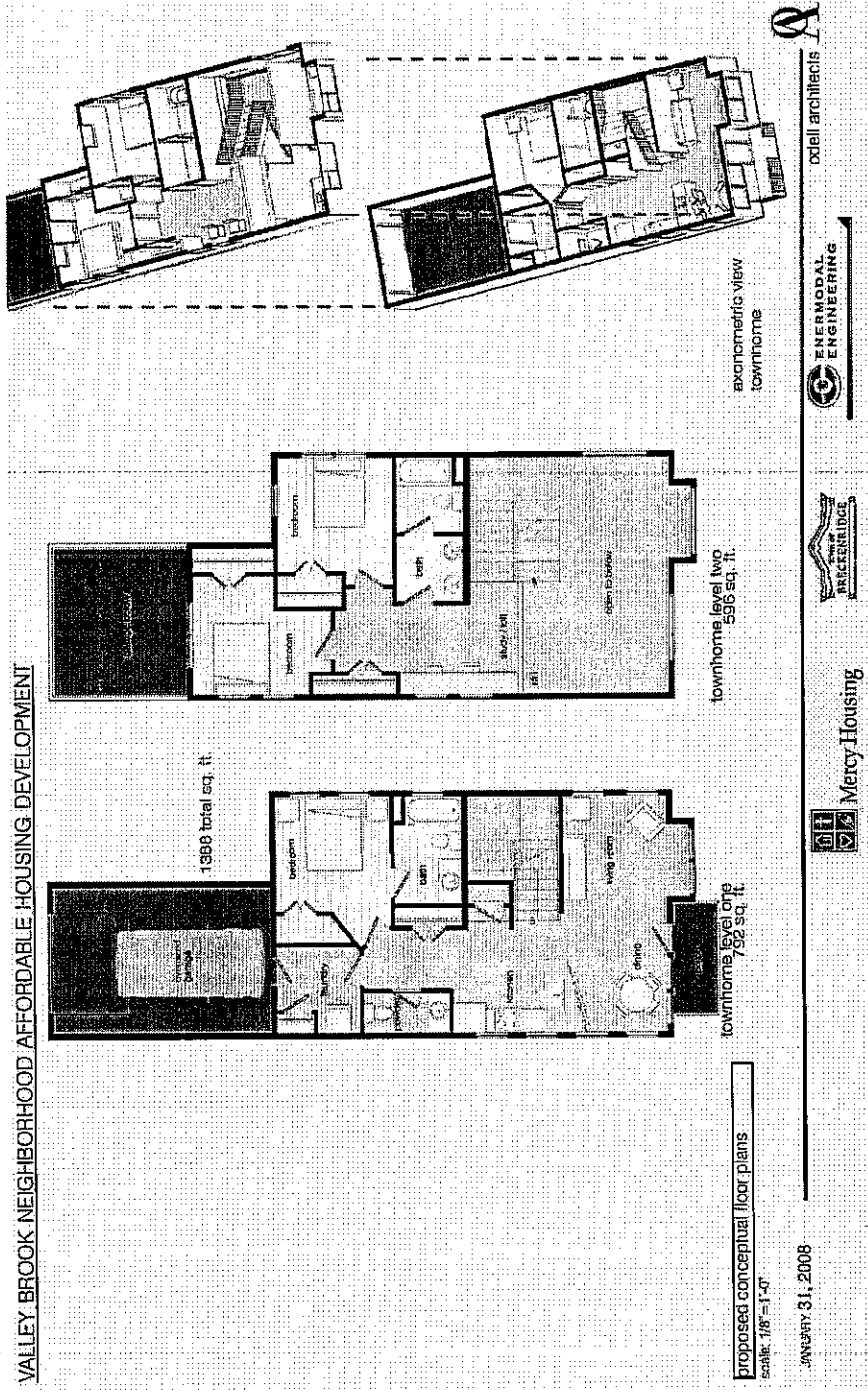


proposed conceptual floor plans
scale: 1/8" = 1'-0"

JANUARY 31, 2008

 ERMODAL ENGINEERING
 RESERVING
 Mercy Housing
 odell architects

VALLEY BROOK NEIGHBORHOOD AFFORDABLE HOUSING DEVELOPMENT



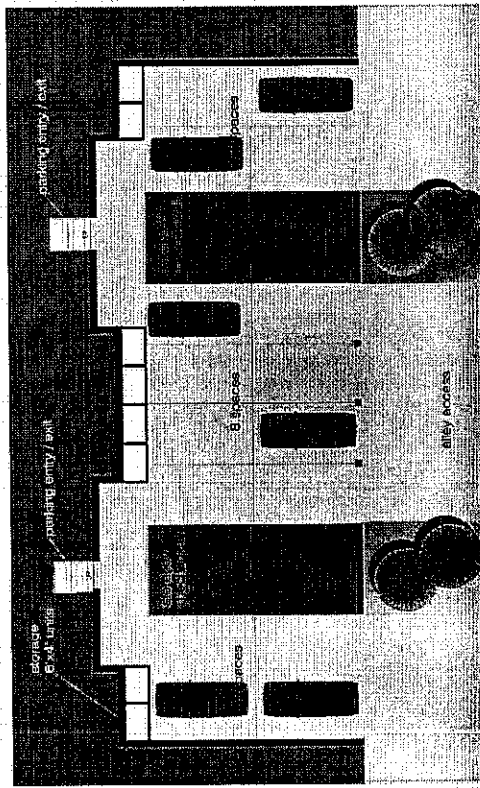
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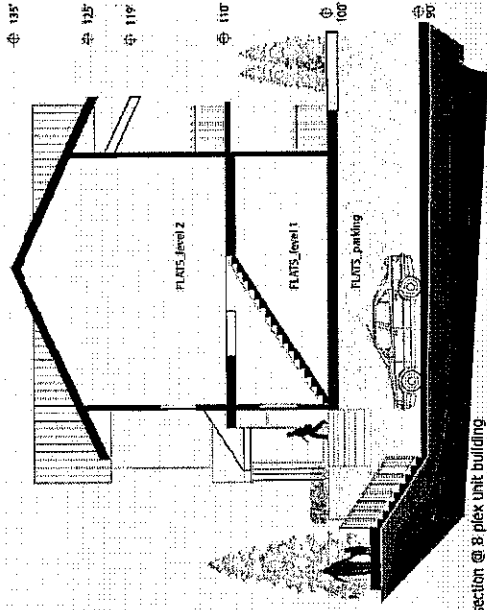
Mercy Housing



VALLEY BROOK NEIGHBORHOOD AFFORDABLE HOUSING DEVELOPMENT



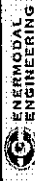
typical under building parking plan @ flats for one and two bedroom units



section @ 8 plex unit building

parking layout / cross section

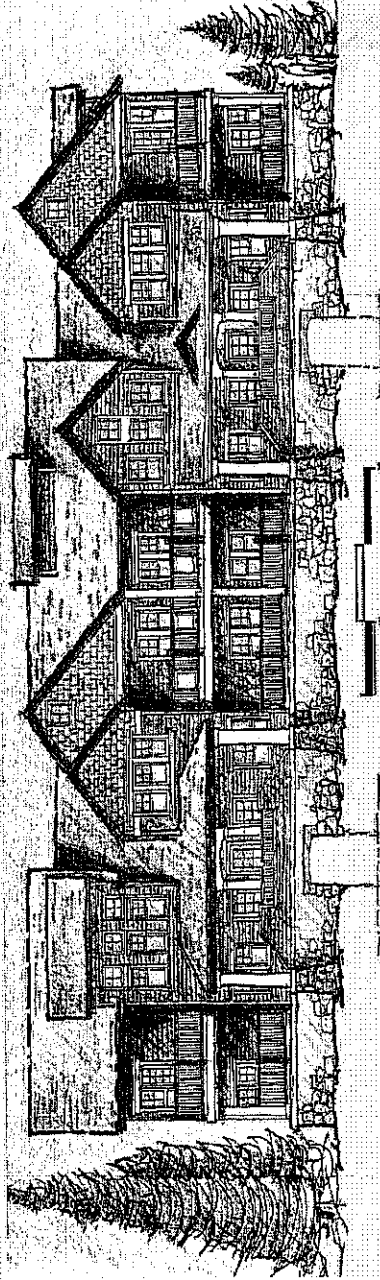
JANUARY 31, 2008



odell architects



VALLEY BROOK NEIGHBORHOOD AFFORDABLE HOUSING DEVELOPMENT

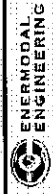


Typical elevation

JANUARY 31, 2008



Mercy Housing



odell architects



IV. BUSINESS PLAN

A. PRO FORMA NARRATIVE

This section provides a discussion of the assumptions used in the preliminary pro forma. The preliminary pro forma is the result of assumptions derived from research and tests commensurate with a preliminary project feasibility analysis undertaken prior to award of the project. Although MHCO is confident in the assumptions, all research and conceptual plans are preliminary. Therefore the pro forma presented in this proposal cannot be considered the final product.

Unit and Affordability Mix

The total number of units was selected based on a number of factors including but not limited to:

- The recommendations put forth in the 2007 Summit County Housing Demand Analysis, conducted by RRC Associates, Inc and Rees Consulting, Inc. as well as the 2006 Town of Breckenridge Housing Needs Analysis conducted by RRC Associates, Inc.
- Desire to maximize amenities such as open space and limit surface parking.
- Create affordability to a range of incomes but concentrate on the lower income of the continuum.

Pricing

Pricing is driven by target incomes, cost of mortgage funds, Home Owner Association dues, and unit size. The strategies used in pricing this neighborhood are as follows:

- Assumption that there are 1.5 people per bedroom. Example: a 1 bedroom unit price is derived from the income limit for 1.5 person household.
- When determining the mortgage amount that a target income can afford, an AMI percentage that is ten percent under the target AMI is used. Example: With a unit targeted to 80%, the maximum mortgage affordable should be priced to 70% AMI households.
- Use of conservative mortgage assumptions in determining the mortgage amount that a target income can afford.
- 6.25% mortgage interest, 1% over current rates
- Property taxes and Home Owner Association dues are assumed to be \$235 per month. This estimate is based on discussions with Big Horn Property Management, the management company used by Ophir Mountain and Gibson Heights.
- 30% housing expenses to income ratio.
- 10% down payment, which is a typical percentage achievable with existing downpayment programs.

Total Development Cost

The development team consulted numerous resources to identify an acceptable estimated cost per square foot for total development costs. Odell Architects worked most closely with TCD to provide construction cost estimates (hard costs), and MHCO applied a historical average for soft costs to arrive at an estimated total development cost of \$206.00 per square foot, without the costs associated with the heating district.

Town of Breckenridge Assistance

This pro forma assumes that the land is either donated to MHCO or leased to the HOA at no cost. It is also assumed that plan review, zoning, and building fees will be waived. MHCO will pursue supporting and grand foundation to assist with the costs of implementing the most efficient energy options; however it is assumed that the Town will assist with the increased costs associated with these programs.

B. FEASIBILITY PRO FORMA WITH RESIDENTIAL COSTS OF HEAT PLANT

TABLE II ILLUSTRATING 2007 HUD MEDIAN INCOMES:

# of Persons	% of Median Income for Area:					
	120%	110%	100%	80%	70%	65%
1 Person	\$66,247	\$60,720	\$55,250	\$49,680	\$44,160	\$38,680
2 Persons	\$75,600	\$69,360	\$63,000	\$56,700	\$50,400	\$44,560
3 Persons	\$85,080	\$77,520	\$70,500	\$63,610	\$56,720	\$49,265
4 Persons	\$94,080	\$86,680	\$78,800	\$70,220	\$63,040	\$56,165
5 Persons	\$102,120	\$93,510	\$85,100	\$76,650	\$68,080	\$59,315
6 Persons	\$109,680	\$100,740	\$91,400	\$82,260	\$73,120	\$63,410

Income Level of Occupant	Type of Unit	Unit Size (sq. ft.)	Number of Units	Projected Income	30% Monthly Income	30% Monthly Income	Max Monthly Payment less \$247 HOA & Tax	Max Loan Amount 8.25% Loan Rate	Sales Price 80% LTV	Sales Price per S.F.	Total Sales Income	
Up to 80% Median												
	1-BD; 1 1/2 Ba	688	6	\$41,878	\$12,563	\$1,834	\$787	\$157,659	\$192,086	\$280.40	\$289,283	
	2-BD; 2Ba	844	10	\$49,630	\$14,889	\$1,941	\$864	\$181,827	\$178,830	\$180.97	\$1,708,600	
	3-BD; 2 Ba	1,388	6	\$87,966	\$26,389	\$1,434	\$1,167	\$167,804	\$214,228	\$184.04	\$1,285,857	
Up to 100% Median												
	2-BD; 2Ba	844	7	\$63,810	\$19,143	\$1,826	\$1,348	\$216,879	\$248,208	\$297.74	\$1,703,113	
	3-BD; 2 Ba	1,388	3	\$73,785	\$22,135	\$1,844	\$1,844	\$282,486	\$382,740	\$276.72	\$926,276	
Up to 120% Median												
	2-BD; 2Ba	844	7	\$77,590	\$23,277	\$1,920	\$1,703	\$275,647	\$307,278	\$364.60	\$2,100,944	
	3-BD; 2 Ba	1,388	3	\$88,145	\$26,443	\$2,254	\$2,007	\$325,200	\$362,112	\$268.89	\$1,066,536	
Gross Square Feet		36,806	42								\$8,783,824	
										OTHER INCOME:		
										Foundation/HLE	\$100,000	\$100,000
										DOH Grant	\$264,000	\$264,000
										TOTAL	\$364,000	\$564,000
										TOTAL GROSS RESIDENTIAL & OTHER INCOME		
										LESS: Cost of Sale Factor @ 8.5%	\$449,083	
										TOTAL PROJECT INCOME		\$8,664,238

Assumptions

Homebuyer Loan Rate	8.25%
Tax & HOA payment/mo	\$247
Hard Costs/SF	\$185
Heat District	\$472,500
Soft Costs (25% of Hard)	\$41
LTV	80%

Development Costs

Hard Costs	\$8,255,384
Residential Component of Heat District	\$472,500
Soft Costs	\$1,563,849
Developer Fee 8.75%	\$844,965
TOTAL PROJECT COSTS	\$9,136,738

*These cost are for residential needs only

GAP Due to Heating District	\$472,500
Potential Grants	\$155,000
Funding Needed for Heat District	\$317,500

C. FEASIBILITY PRO FORMA WITHOUT HEAT DISTRICT

TABLE ILLUSTRATING HUD 2007 MEDIAN INCOMES:

# of Persons	% of Median Income for Area						
	120%	110%	100%	90%	80%	70%	60%
1 Person	\$66,240	\$60,720	\$55,200	\$49,680	\$44,160	\$38,640	\$33,120
2 Persons	\$79,800	\$73,300	\$67,800	\$62,300	\$56,800	\$51,300	\$45,800
3 Persons	\$85,080	\$77,890	\$70,600	\$63,410	\$56,220	\$49,030	\$41,840
4 Persons	\$94,660	\$85,690	\$76,800	\$70,920	\$63,040	\$55,160	\$48,220
5 Persons	\$102,120	\$93,610	\$85,100	\$76,590	\$68,080	\$59,570	\$51,310
6 Persons	\$109,680	\$100,640	\$91,400	\$82,260	\$73,120	\$63,980	\$55,410

SALES INCOME										
Income Level of Occupant	Type of Unit	Unit Size (sq. ft.)	Number of Units	Projected Income	Monthly Income	30% Monthly Income	Max Monthly Payment/Lease \$247 HOA & Tax	Max Loan Amount 6.25% Loan Rate	Sales Price 90% LTV	Total Sales Income
Up to 80% Median										
	1-BD; 1 1/2 Ba	688	6	\$41,370	\$3,448	\$1,034	\$787	\$127,896	\$142,066	\$652,368
	2-BD; 2Ba	944	10	\$49,630	\$4,136	\$1,241	\$961	\$161,367	\$179,330	\$1,793,302
	3-BD; 2 Ba	1,388	6	\$57,365	\$4,780	\$1,434	\$1,107	\$192,804	\$214,226	\$1,285,357
Up to 100% Median										
	2-BD; 2Ba	944	7	\$63,810	\$5,318	\$1,585	\$1,348	\$218,872	\$243,303	\$1,703,118
	3-BD; 2 Ba	1,388	3	\$72,765	\$6,146	\$1,844	\$1,544	\$266,466	\$332,742	\$696,226
Up to 120% Median										
	2-BD; 2Ba	944	7	\$77,860	\$6,489	\$1,946	\$1,708	\$276,547	\$307,276	\$2,160,824
	3-BD; 2 Ba	1,388	3	\$90,145	\$7,512	\$2,254	\$2,007	\$326,800	\$362,112	\$1,096,336
Gross Square Feet		35,506	42							\$8,783,321
								OTHER INCOME:		
								Foundation/HILB	\$100,000	
								DDH Grant	\$294,000	
								TOTAL	\$394,000	\$364,000
								TOTAL GROSS RESIDENTIAL & OTHER INCOME:		\$9,147,321
								LESS: Cost of Sale Factor of	6.5%	(\$423,083)
								TOTAL PROJECT INCOME		\$8,664,238

Assumptions	
Homebuyer Loan Rate	6.25%
Tax & HOA payment/mo	\$247
Hard Costs/SF	\$165
Soft Costs (25% of Hard)	\$41
LTV	90%

Development Costs	
Hard Costs	\$6,255,394
Soft Costs	\$1,563,849
Developer Fee	9.75% \$644,995
TOTAL PROJECT COSTS	
\$8,664,238	

DEVELOPMENT SCHEDULE

Selection/Development Agreement Executed

March-April, 2008

Due Diligence/Design Development

April-July, 2008

Survey, Soils, Phase I

Market study

Energy studies

Public process

Design/ Redesign

Subsidy sources and uses

Ongoing energy source studies and funding research

Ongoing pricing

Construction Documents/Entitlements

July-December, 2008

Energy source selection and design

Public process

Design refinement

Studies (energy, engineering, traffic, etc.)

Financing and grant commitments

Management agent contract

HOA formed (Mercy, SCHA and Town as initial HOA board members)

Project approvals from CHFA, FHA, etc.

Marketing activities and sales contracts

Building Permits/ Loan Closing/Ground Breaking

April, 2009

Ongoing marketing activities, sales contracts

Occupancy

Winter-Spring 2010

D. FINANCING

Predevelopment Financing

As an affiliate of Mercy Housing Inc. (MHI), Mercy Housing Colorado has access to a line of credit up to \$100,000 for predevelopment costs.

Construction Financing

Construction financing will be structured as a participation agreement with the Colorado Division of Housing, Mercy Loan Fund, and a local bank. Discussions with potential players confirm their ability and willingness to participate on the project. Blending the lower rates of the Division of Housing and Mercy Loan Fund with the local bank rate, and diligently timing and structuring of the construction draws and repayments will help MHCO reduce the overall borrowing costs, and allow us to maximize affordability in the project. This approach also supports the participation of the local bank, as it helps mitigate the risk associated with a construction loan. MHCO staff has executed this blended rate borrowing strategy on similar projects in partnership with the Division of Housing, Mercy Loan Fund and local banks, and the result were positive for all participants.

Grant and Foundation Support

MHCO's efforts to secure grants and foundation support will focus on achieving the most units priced to be affordable to households at 80% AMI; identifying and fostering credit worthy households; and funding effective alternative or renewable energy options. Discussions have been held with the sources listed below. As alternative/renewable energy strategies are agreed upon, more sources may be identified.

- Colorado Division of Housing, HOME funds, up to \$264,000 available
- Enterprise Green Communities
 - Charrette Grant, up to \$5,000 available
 - Planning and Construction Grant, up to \$50,000 available
- Energy Outreach Colorado, Energy Solutions Grant, up to \$100,000 available
- Federal Home Loan Bank Affordable Housing Grant, eligible for up to \$50,000
- Fannie Mae Affordable Housing Grant: up to \$50,000 available

Mortgage Financing

MHCO will work with the Summit Combined Housing Authority, local lenders, and select real estate brokers to create a supportive "mortgage infrastructure." This infrastructure will assure broad access to affordable 30-year, fixed rate mortgages for initial and future home buyers. Creation of this infrastructure is vital to any sustainable home ownership endeavor, and consists of:

- Home Buyer Education curriculum approved by CHFA
- CHFA, FHA, and Fannie Mae down payment and closing cost assistance
- Identification of mortgage lenders experienced in providing approved, low and moderate income homebuyer products

Obtaining project approval from CHFA, FHA, Fannie Mae, Freddie Mac, Veterans Administration, and USDA is vital. Once the project is approved, local lenders can use the programs provided by these institutions to deliver the best low rate, 30-year loans to buyers.

Town of Breckenridge Assistance

This pro forma assumes that the land is either donated to MHCO or leased to the HOA at no cost. It is also assumed that plan review, zoning, and building fees will be waived. MHCO will pursue supporting and grant foundation to assist with the costs of implementing the most efficient energy options; however it is assumed that the Town will assist with the increased costs associated with these programs.

E. MARKETING

If selected, MHCO will enter into an Exclusive Listing Agreement with the Summit Combined Housing Authority (SCHA). SCHA will perform the following duties with MHCO assistance:

- Homebuyer education
- Neighborhood and home marketing
- Homebuyer qualification
- Sales contracting and closings

All activities will be performed in conformance with the written policies and procedures agreed to by the Town of Breckenridge, SCHA, MHCO, and participating funding entities.

A budget equal to 2% of total project has been set aside for marketing materials and sales activities. SCHA will receive a 3% commission on sales for undertaking these duties. MHCO will work with SCHA in developing relationships with participating lenders and in conducting potential home buyer meetings. Please see attached letter of support from SCHA.

V. DEVELOPMENT TEAM QUALIFICATIONS

A. MERCY HOUSING COMPANY DESCRIPTION

For over 25 years, Mercy Housing, a national not-for-profit affordable housing organization headquartered in Denver, has been a leader in developing and managing affordable housing. Mercy Housing was started by an attorney in Nebraska that sought a concrete response to the need for affordable, attainable, and safe housing. Since its formation, Mercy has grown into a national organization with a presence in 41 states and has developed over \$1.7 billion of affordable housing. Over its 25 year history, Mercy Housing has developed nearly 19,000 homes: 69 percent of the development is rental units and 31 percent is homeownership. Our projects, programs, and properties serve more than 58,000 people each day.

Mercy's Mission

The mission of Mercy Housing Colorado (MHCO) is *to create stable, vibrant, and healthy communities by developing, financing and operating affordable, program-enriched housing for families, seniors, and people with special needs who lack the economic resources to access quality, safe housing opportunities.* We believe that affordable housing and supportive programs improve the economic status of residents, transform neighborhoods, and stabilize lives. Mercy Housing Colorado's goal is to perform at levels of operational excellence that ensure financial stability, assure the health and sustainable growth of the property portfolio, and achieve excellence in resident programs to assist residents and their communities to attain their self-determined goals.

In Colorado, Mercy owns and manages 13 properties that serve nearly 1,700 residents including families, seniors, and people with special needs. Approximately 70% of Mercy's residents are families, 20% are seniors, and the remaining 10% are people with special needs. As of October 2007, MHCO has 367 rental or for-sale units in sale or rent-up, construction, pre-development, or concept phases. Additionally, Mercy Housing Colorado runs the largest and most successful HUD Homes homeownership program in the country. In this program Mercy purchases foreclosed homes, performs basic renovations, and sells the homes to households between 60-120 % AML. Since 2006, this program has provided affordable homes to more than 100 families in the Denver Metro area.

MHCO is the geographic business center for Colorado within the larger, nationwide Mercy Housing, Inc (MHI) organization. With the financial resources and banking relationships of MHI, MHCO has extensive experience and financial resources to develop neighborhoods that

stand the test of time and are truly affordable to the target market. Additionally, as a non-profit organization, our fees are consistently lower than those of a for-profit developer.

B. MHCO DEVELOPMENT TEAM

MHCO's development team collectively maintains over 75 years of affordable housing and project management experience. The team's expertise has resulted in the financing, development, and sale of thousands of housing units.

- Mercy's team has a proven record in designing successful homeownership mortgage programs that enhance the target market's ability to achieve and maintain ownership.
- Our fluency in the use of municipal, state, and federal lending programs ensure our housing developments are successful.
- Mercy maintains long-standing partnerships with local, state, and federal housing organizations and agencies.
- We have extensive experience crafting deed restrictions that set residency, employment, and/or income limits, which will ensure that our projects serve the target population.
- We invest heavily in construction management to ensure that development costs and timelines to guarantee delivery of a quality, affordable housing product.

Team Member Resumes

Jennifer Erixon, President

Jennifer began as President of Mercy Housing Colorado (MHCO) in 2007. She is responsible for leading MHCO operations in Colorado, including the oversight of affordable housing development, fund raising, and resident services. She comes to MHCO with 10 years of experience structuring complex affordable housing transactions, evaluating markets, directing risk analysis and partnering with developers and large institutional investors. Jennifer came to Mercy from Capmark Securities, Inc. where she served as the Vice President/Director of Capital Markets. Prior to Capmark, Jennifer was a Vice President of Underwriting in the affordable housing group at PNC Multifamily Capital. She attended Vassar College and the University of Colorado at Denver where she graduated summa cum laude. She holds a Bachelor of Arts degree in political science.

Jane Harrington, Regional Vice President, Single Family Housing

Jane is the Regional Vice President of Single Family Housing and is responsible for identifying and cultivating opportunities for new business and new real estate single family housing for MHCO, including conceptual feasibility, acquisition, negotiation of contracts, securing governmental approvals, structuring and obtaining construction and permanent financing, design of homeowner mortgage programs, and overseeing the design and construction process. Jane has been involved in the affordable housing industry since 1974. She has financed, developed, created, and administered programs that have placed thousands of low and moderate income households in affordable housing. She has been a housing counselor for a non-profit foundation in St. Paul, Minnesota; Director of Multi-family Operations and Manager of Western Slope Operations for the Colorado Housing and Finance Authority; Executive Director of Summit County Colorado Housing Authority; and Executive Director of the Lowry Community Land Trust. She is a graduate of Iowa State University with a specialty Bachelor Degree in Housing. While with Mercy Housing Colorado, Ms. Harrington has overseen the development of Legacy at City Park South and Villas Montanas.

Erin Gunser, Project Developer

Erin is the Project Developer for MHCO and performs development tasks associated with the acquisition of land and buildings, facilitation of the public development approval process, and the coordination of development partnerships with other non-profit agencies. Erin joined the MHCO team in 2006 and came to Mercy from the City of Westminster where she assisted new and expanding businesses with real estate needs and planning, regulatory, and financing issues. Additionally, Erin has experience with urban infill, brownfields redevelopment, and stakeholder

consensus building. She has managed numerous large-scale redevelopment processes, overseeing implementation of public finance structures, providing sub-consultant oversight, and coordination between municipal, state, and federal governments. She graduated from the University of Colorado in Boulder with a B.A. in Geography and from the University of Colorado in Denver with a M.A. in Urban and Regional Planning. While with Mercy Housing Colorado, Ms. Ganser has managed due diligence on numerous projects, including sub-contractor management, neighborhood outreach, preliminary financial feasibility analysis, and facilitation of pre-development meetings with stakeholders and local jurisdictions.

Gary Truitt, Owners Representative, Construction

Gary represents Mercy through the construction of numerous projects within the Mercy Housing system, and oversees construction management of all MHCO projects. He maintains over 25 years of experience successfully managing the construction process for multi-family and single family residential projects. His extensive achievements are based on strong analytical, problem solving and organizational skills, and ability to develop and lead productive teams. He has managed projects in size from \$10 to \$40 million and from 150 to 500 thousand net rentable square feet and also has previous experience as a general contractor and subcontractor on various construction projects for both single and multi-family housing.



Firm Overview

Odell Architects, P.C. was established in April of 1995 by Jerome E. (Otis) Odell. Since its inception, Odell Architects, P.C. has been a full service architecture firm offering planning, design, technical documentation, and consulting to a broad range of clients in the Rocky Mountain Region. We are recognized for our expertise in a variety of building types including community facilities, sports and recreation facilities, senior housing, affordable housing, work force housing, multi-family housing, health care, and office development. Our firm practices with a disciplined approach and adds order to the process of designing and constructing a building. Our portfolio includes over 3,500 units of housing development throughout the state and more than 10 tax credit housing projects. Nearly 50% of our work has been for private housing developers and public housing agencies.

Odell Architects, P.C. is committed to the sustainability of the environment through design. With four LEED certified staff members, we are well equipped to provide completed projects that are energy efficient and sustainable. Our team participates in ongoing training to learn about the most current sustainable design products. We work to incorporate sustainable materials whenever possible in our design process. It is our commitment to provide affordable, durable, efficient, beautiful, and socially responsible design options. We are connected to the United States Green Building Council and utilize these resources to research current technology for green-built design. We recently facilitated a workshop on sustainable design for affordable multifamily development. The feedback received from affordable housing developers was overwhelmingly positive as practical, sustainable strategies were presented and reviewed against the cost benefits of this approach. At present time Odell Architects, P.C. has designed one LEED Silver certified project, and we are currently designing two LEED certified developments.

Jerome E. (Otis) Odell, AIA, LEED AP, Principal

Mr. Odell is the founding principal of Odell Architects, P.C. with a strong background in project management, design, and technical skills. Over the past 33 years in Colorado he has had the unique opportunity to be involved in a wide range of outstanding architectural projects from affordable housing developments throughout the Rocky Mountain West to new civic institutions in downtown Denver. This has provided a foundation for the development of strong leadership skills and an enthusiasm for providing excellence in architectural services.

Education

Bachelor of Environmental Design, University of Colorado, Boulder 1979

Experience

Otis served as Principal-in-Charge on the following projects that are similar to the Valley Brook project. As Principal-in-Charge he has guided the overall project vision, facilitated public meetings, collaborated to establish design direction, maintained budget goals and reviewed technical documentation.

- Parkside at Stapleton** - Denver, Colorado - 68 units of affordable rental housing, 9% LIHTC program.
- Moelker Commons** - Greeley, Colorado - 103 units of mixed income housing and mixed use development, Redevelopment of downtown city block, 4% Tax Credits.
- Middle Creek Village** - Vail, Colorado - 142 units of mixed income work force housing including structured parking for 238 cars, 4% Tax Credits.
- Willow Glen** - Lakewood, Colorado - 70 units of senior affordable housing over structured parking, 9% LIHTC program.
- Village on the Creek** - Idaho Springs, Colorado - 52 units of work force housing on a steep mountain site.
- Poplar Grove** - Longmont, Colorado - 102 units of townhome style new urbanist residential development.
- Shandola Workforce Housing** - Telluride, Colorado - Phase IV of a work force 25 unit affordable development in a resort community.
- Wolf Park Townhomes** - Winter Park, Colorado - 16 unit market rate townhome development in a resort community.
- Ophir Mountain Village** - Frisco, Colorado - 28 units of for sale affordable development in duplex configuration in Summit County.
- Casa de Rosal** - Denver, Colorado - 54 units of senior housing. PUD process for zoning and density approvals, 9% LIHTC program.
- Maplewood** - Lakewood, Colorado - Renovation and new construction of 125 units including recreation and common space, 9% LIHTC program.

ARCHITECTURE + PLANNING + INTERIORS
1129 CHEROKEE STREET + DENVER, CO. 80204 + PHONE (303) 670-5980 + FAX (303) 670-7162

ENERMODAL ENGINEERING INC.

1554 EMERSON STREET
DENVER, CO 80218
TEL: (303) 861-2070 FAX: (303) 830-2016
EMAIL: denver@enermodal.com



ENERGY AND RESOURCE EFFICIENCY
ENERGY ANALYSIS SOFTWARE
BUILDING ENERGY AUDITS AND MONITORING
WINDOW / WALL / DOOR EVALUATION



Education

1988: M.S.
Mechanical Engineering,
Univ. of California,
Berkeley, CA

1984: B.S.
Mechanical Engineering,
Univ. of Colorado,
Boulder, CO

Recognition

Licensed Professional
Engineer in Colorado
and California

U.S. Green Building
Council LEED 2.0
Accredited
Professional

Board Member,
Colorado Renewable
Energy Society (2000-
2003)

Grant reviewer for
Energy Outreach
Colorado

SUSAN REILLY, PRESIDENT

B.S., M.S., Mechanical Engineering, P.E., LEED A.P.

Expertise

- ◆ 20 years experience in building energy field
- ◆ Licensed Professional Engineer in Colorado and LEED Accredited Professional. Currently under contract to the United States Green Building Council to review projects and support Technical Advisory Group on new addition of reference guides.
- ◆ Expert in application of building analysis software, including DOE-2.2, WINDOW 5, THERM 5, and Lumen Micro
- ◆ Assistance in evaluating sustainable design and energy efficient solutions for a wide range of building types, including laboratories, apartment building, offices, schools and hospitals.

Recent Projects

Lakewood Housing Authority, Maplewood Housing

Enermodal is working with Lakewood Housing Authority on the renovation of this 3-story, 100-unit apartment building. Through Xcel's Energy Design Assistance program, Enermodal is evaluating energy efficiency replacement options, including windows, lighting, appliances, HVAC systems and domestic hot water options. Enermodal assisted the authority in writing a grant to Energy Outreach Colorado for which they were awarded over \$100,000 for the efficiency upgrades.

City of Snomass Affordable Housing Development, Snomass, CO

Enermodal worked with City of Snomass and the design team to develop a cost-effective design for modular, single-family, for-sale housing. Working within the constraints of the modular housing industry and climate demands, we arrived at the most cost-effective design solution addressing everything from insulation levels, window selection, to HVAC and domestic hot water systems.

Lakewood Housing Authority, Senior Housing

Enermodal worked with Lakewood Housing Authority on the design of this 6-story, 120-unit apartment building. Through a cost-benefit analysis of energy efficiency strategies, the project incorporated a much more efficient lighting design, condensing boilers and gray water heat recovery. Enermodal assisted the authority in writing a grant to Energy Outreach Colorado for which they were awarded \$85,000 for the efficiency upgrades.

Denver Housing Authority, Phase 2 Park Avenue

We are currently performing a life cycle analysis of heating, ventilation and air conditioning options for Phase 2 of DHA's Park Avenue development in Denver. The project includes 60 apartments and is in schematic design. We are evaluating a range of systems, including PTAC units, furnaces with DX cooling, heat pump systems, and four-pipe fan coil systems. We are also working with the design team to ensure compliance with the new Denver building energy code.

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EMAIL: denver@enermodal.com



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BUILDING ENERGY AUDITS AND MONITORING
WINDOW / WALL / DOOR EVALUATION

Awards

Building Award for sustainable design from Colorado Renewable Energy Society for project with Northeast Denver Housing Center

Award for Energy Efficiency from MidAmerican (Iowa) for Walnut Creek Wildlife Refuge and Visitor's Center (1996)

Department of Energy Special Award for Excellence in Technology Transfer, Federal Laboratory Consortium (1988)

SUSAN REILLY, PRESIDENT B.S., M.S., Mechanical Engineering, P.E.

Recent Projects (cont.)

Denver Housing Authority, Thomas Bean Towers

We worked with Denver Housing Authority through the Governor's Office of Energy Management to reduce the energy use in the renovation of the 189-unit, Thomas Bean Towers. We successfully worked with the team to upgrade the lighting, refrigerators and boilers with financial assistance from Energy Saving Partners.

Northeast Denver Housing Center, Denver, Colorado

Enermodal has provided ongoing technical assistance to this affordable housing provider in Denver. We have performed life-cycle cost analyses on mechanical options, insulation levels, windows, and domestic hot water alternatives. We have also assisted them in writing grants to cover additional costs.

910 Sante Fe, Colorado

Enermodal is providing the LEED energy analysis and mechanical design consulting services for this 25,000 sf mixed-use facility. This renovation to a warehouse will have office, studios, a café, and living units. Evaporative cooling and energy recovery will be used for the commercial space, and radiant floors and natural ventilation for the living units. We investigated comfort issues related to the radiant floors and the use of solar water heating.

University of Denver Law School, Denver, Colorado

Early on the University of Denver committed to this building being LEED certified. Enermodal served as the energy consultant and worked with the team to identify cost-effective energy features. The final design is 40% more efficient than ASHRAE 90.1-1999 energy standard. It has efficient lighting and occupancy controls throughout the building and the 250,000 sf parking garage is lit with low wattage fluorescents.

Dormitories, University of Vermont and Jackson State University

Enermodal's role was to recommend more energy and resource efficient options for these dormitories. The end products were very different because of the climates and clients. The University of Vermont has a two-pipe system with valance radiators, while Jackson State University went with PTAC units. In addition, the optimal insulation levels and window performance specifications were very different for these two projects. This project entailed extensive analysis of the campus district system as compared to a new central plant and more distributed systems. While the district system energy costs are higher than the central and distributed systems, the decision was made to stay on the district system because of the sunk costs associated with it.



January 24, 2008

MERCY HOUSING COLORADO
1999 Broadway, #1000
Denver, CO 80202

Attn: Jane Harrington, VP

Jane:

The Summit Combined Housing Authority is delighted to begin conversation with you regarding marketing plans for the Valley Brook subdivision proposal in Breckenridge, Colorado. The initial plan as you forwarded to me today provides benefit not only to the SCHA, but to the prospective purchasers of the units by keeping closing costs to a minimum. And, with the knowledge of the local market, the experience of our two real estate agents and our close relationship with the Town of Breckenridge, the SCHA is perfectly situated to provide maximum benefit to Mercy Housing in this endeavor as well.

We offer our support to you as you move forward with your proposal; please let me know if there is additional information I could provide to assist in finalizing a marketing plan at the appropriate time!

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Kermode", is written over a printed name and title.

Jennifer Kermode
Executive Director

Cc: file

EXHIBIT B

(Form of Special Warranty Deed)

UPON RECORDING RETURN TO:

SPECIAL WARRANTY DEED

THIS DEED, dated _____, 200__, between the TOWN OF BRECKENRIDGE, a municipal corporation ("Grantor"), whose address is _____, and MERCY HOUSING COLORADO, a Colorado non-profit corporation ("Grantee"), whose address is _____, of the County of _____, State of _____.

WITNESS, that Grantor, for and in consideration of the sum of \$0.00, the receipt and sufficiency of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto Grantee all of the real property described on Exhibit A, attached hereto and incorporated herein by this reference, commonly known as _____, located in the County of Summit, Town of Breckenridge, State of Colorado, together with improvements and appurtenances, belonging or in any way appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of the Grantor, either in law or equity, of, in, and to the above Real Property (the "Property").

Grantor does hereby covenant and agree that it shall WARRANT AND FOREVER DEFEND the title to the Property for the benefit of Grantee against all persons claiming by, through or under Grantor, subject to the matters described on Exhibit B attached hereto, and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has executed this deed to be effective on the date set forth above.

TOWN OF BRECKENRIDGE
a Colorado municipal corporation

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____ as _____ of the TOWN OF BRECKENRIDGE, a Colorado municipal corporation.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

[SEAL]

**EXHIBIT A
TO
SPECIAL WARRANTY DEED**

Legal Description of Property

[TO BE ATTACHED]

**EXHIBIT B
TO
SPECIAL WARRANTY DEED**

Permitted Exceptions

[TO BE ATTACHED]

Document comparison done by Workshare Professional on Tuesday, June 03, 2008
 3:18:34 PM

Input:	
Document 1	interwovenSite://irdms1/IRWL/1759678/7
Document 2	interwovenSite://IRDMS1/IRWL/1759678/8
Rendering set	standard color

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<u>Insertion</u>	
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Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	107
Deletions	73
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	180

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen
DATE: 6/5/2008
RE: Tyrolean Communication Tower

Issue:

Consideration of a Resolution Approving a License Agreement with Summit County for the Tyrolean Communication Tower

Background:

About a year and a half ago the Summit County Communications Board, of which Breckenridge is a member, was working on a project to replace and upgrade the communication tower known as Tyrolean, located near the Lodge and Spa with grant funds. The Tyrolean tower is a critical part of the public safety communication system servicing the Upper Blue. At that time issues arose with the existing tower easement and the adjacent property owner. The Town stepped in by offering use of a Town owned adjacent property for putting the tower if need be. The County and the Communication Board were ultimately able to resolve the issues of the existing site but as part of that resolution the tower was redesigned to use guide wires instead of being free-standing and one of the guide wires needs to be located on the Town land that we offered for use for the Tower. Tim Berry has recommended a license agreement with the County in order to permit the location of the guide wire anchor on Town property. If ever the Tower or guide wire were to go away the license agreement would be terminated.

Recommendation:

Staff recommends approval of the license agreement with Summit County.

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RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2008.

TOWN OF BRECKENRIDGE

ATTEST:

By _____
John G. Warner, Mayor

Mary Jean Loufek,
CMC, Town Clerk

APPROVED IN FORM

Town Attorney Date

1 5. Limited Scope Of License. The License may only be used for following purposes:
2 installation, maintenance, repair, and replacement of a cable support for the County's radio tower
3 located adjacent to the Licensed Premises. The County may not alter or change its use of the
4 Licensed Premises without the Town's prior written permission.
5

6 6. Non-Transferability Of License. The License is neither transferable nor assignable by
7 the County. Any attempt by the County to assign or transfer the License is a nullity and of no
8 effect.
9

10 7. Default. If either party defaults in the performance of any of the material covenants
11 or agreements to be kept, done, or performed by it under the terms of this Agreement, the non-
12 defaulting party may notify the defaulting party in writing of the nature of such default. Within
13 five days following receipt of such notice the defaulting party shall correct such default; or, in
14 the event of a default not capable of being corrected within five days, the defaulting party shall
15 commence correcting the default within five days of receipt of notification thereof and thereafter
16 correct the default with due diligence. If the defaulting party fails to correct the default as
17 provided above, the non-defaulting party, without further notice, shall have the right to declare
18 that this Agreement is terminated pursuant to Section 8 effective upon such date as the non-
19 defaulting party designates. The rights and remedies provided for herein may be exercised singly
20 or in combination.
21

22 8. Termination. This Agreement is fully terminable as follows:
23

24 a. Termination Upon Notice To County. This Agreement shall terminate
25 upon written notice of termination given by the Town to the County in
26 accordance with Section 13. Such notice may be given by the Town only
27 if the County's radio tower cable support is destroyed or permanently
28 removed by County from the Licensed Premises.
29

30 b. Termination Upon Default. This Agreement may be terminated as
31 provided in Section 7 in the event of default.
32

33 c. Recording Of Notice Of Termination. Upon termination of this
34 Agreement the Town may record a written Notice of Termination with the
35 Clerk and Recorder of Summit County, Colorado.
36

37 9. Permanent Removal Of Encroachment Upon Termination. Upon the termination of
38 this Agreement the County shall, at the Town's option, remove the County's radio tower support
39 cable from the Licensed Premises. The County shall pay all costs associated with the removal of
40 the cable.
41

42 10. Insurance. The County shall obtain and maintain at all times during the term of this
43 Agreement, at its cost, a policy or policies of comprehensive general liability insurance with
44 limits of coverage of not less than \$150,000 for injuries, damages or losses sustained by any one
45 person in any single occurrence, and not less than \$600,000 for injuries, damages, or losses
46 incurred by two or more persons in any single occurrence. The Town shall be named as an

LICENSE AGREEMENT

1 additional insured on all such policies and the County shall furnish the Town with a copy of such
2 policy or policies prior to signing this Agreement and on each renewal or replacement of such
3 insurance throughout the term of this Agreement. Notwithstanding anything contained herein to
4 the contrary, the Town may immediately terminate this Agreement if the County fails to procure
5 and maintain the insurance required by this Section. If the limits of liability for local
6 governments under the Colorado Governmental Immunity Act, Section 24-10-101, et seq.,
7 C.R.S. (the "Act") are increased, the County's insurance requirement provided in this Section
8 shall be increased accordingly.
9

10 11. County's Waiver Of Claims Against Town. As a part of the consideration paid by
11 the County to the Town for this Agreement, the County waives all claims against the Town for
12 loss or damage to the County's improvements located on the Licensed Premises unless such loss
13 or damage is caused by the negligence or intentional wrongful act of the Town, its employees or
14 agents.
15

16 12. Indemnification. Subject to the limits of the Act, the County agrees to indemnify and
17 defend the Town, its officers, employees, insurers, and self-insurance pool against all liability,
18 claims, and demands, on account of injury, loss, or damage, including, without limitation, claims
19 arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or
20 any other loss of any kind whatsoever, arising out of the County's use of the Licensed Premises
21 to the extent that such injury, loss, or damage is caused by:
22

- 23 (i) the negligence or intentional wrongful act of the County or any officer,
24 employee, representative, or agent of the County; or
- 25 (ii) the County's breach of this Agreement,
26

27 except to the extent such liability, claim or demand arises through the negligence or intentional
28 wrongful act of the Town, its officers, employees, or agents, or the Town's breach of this
29 Agreement. To the extent indemnification is required under this Agreement, the County agrees to
30 investigate, handle, respond to, and to provide defense for and defend against, any such liability,
31 claims, or demands at its expense, and to bear all other costs and expenses related thereto,
32 including court costs and attorney fees.
33

34 13. Notice. All notices required or permitted under this Agreement shall be given by
35 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
36 carrier delivery, or by telecopies, directed as follows:
37

38 If intended for Town to:

39
40 Town of Breckenridge
41 P.O. Box 168
42 150 Ski Hill Road
43 Breckenridge, Colorado 80424
44 Attn: Town Manager
45 Telecopier number: (970)547-3104
46 Telephone number: (970)453-2251

LICENSE AGREEMENT

1
2 with a copy in each case (which shall not constitute notice) to:

3
4 Timothy H. Berry, Esq.
5 Timothy H. Berry, P.C.
6 131 West 5th Street
7 P. O. Box 2
8 Leadville, Colorado 80461
9 Telecopier number: (719)486-3039
10 Telephone number: (719)486-1889

11
12 If intended for the County to:

13
14 Summit County Government
15 P.O. Box 68
16 Breckenridge, Colorado 80424
17 Attn: County Manager
18
19 Telecopier number: (970)453-3535
20 Telephone number: (970)453-3401

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

23
24 Jeffrey L. Huntley, Esq.
25 Summit County Attorney
26 P.O. Box 68
27 Breckenridge, Colorado 80424
28
29 Telecopier number: (970)453-3535
30 Telephone number: (970)453-3407

31
32 Any notice delivered by mail in accordance with this Section shall be deemed to have been duly
33 given and received on the third business day after the notice is deposited in any post office or
34 postal box regularly maintained by the United States postal service. Any notice delivered by
35 telecopier in accordance with this Section shall be deemed to have been duly given and received
36 upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone
37 and a copy of said notice is sent by certified mail, return receipt requested, on the same day to
38 the intended recipient. Any notice delivered by hand or commercial carrier shall be deemed to
39 have been duly given and received upon actual receipt. Either party, by notice given as provided
40 above, may change the address to which future notices may be sent.

41
42 14. Attorney's Fees. If any action is brought in a court of law by either party to this
43 Agreement concerning the enforcement, interpretation, or construction of this Agreement, the
44 prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as
45 well as costs, including expert witness's fees, incurred in the prosecution or defense of such
46 action.

LICENSE AGREEMENT

1
2 15. Waiver. The failure of either party to exercise any of its rights under this Agreement
3 shall not be a waiver of those rights. A party waives only those rights specified in writing and
4 signed by the party waiving its rights.
5

6 16. Severability. If any provision of this Agreement is found to invalid, illegal or
7 unenforceable the validity, legality and enforceability of the remaining provisions of this
8 Agreement shall not be affected or impaired thereby.
9

10 17. Governmental Immunity. The parties hereto understand and agree that the Town and
11 the County are both relying on, and do not waive or intend to waive by any provision of this
12 Agreement, the monetary limitations (presently \$150,00 per person and \$600,000 per
13 occurrence) or any other rights, immunities, and protections provided by the Act, as from time to
14 time amended, or any other law or limitation otherwise available to the Town or the County,
15 their officers, or its employees.
16

17 18. Entire Agreement. This Agreement constitutes the entire agreement and
18 understanding between the parties and supersedes any prior agreement or understanding relating
19 to the subject matter of this Agreement.
20

21 19. Modification. This Agreement may be modified or amended only by a duly
22 authorized written instrument executed by the parties hereto. Oral amendments to this
23 Agreement are not permitted.
24

25 20. Section Headings. Section headings are inserted for convenience only and in no way
26 limit or define the interpretation to be placed upon this Agreement.
27

28 21. Third Parties. This Agreement does not, confer upon or grant to any third party any
29 right to claim damages or to bring suit, action, or other proceeding against either the Town or the
30 County because of any breach of this Agreement. There are no third party beneficiaries of this
31 Agreement.
32

33 22. No Adverse Construction. Both parties acknowledge having had the opportunity to
34 participate in the drafting of this Agreement. This Agreement shall not be construed against
35 either party based upon authorship.
36

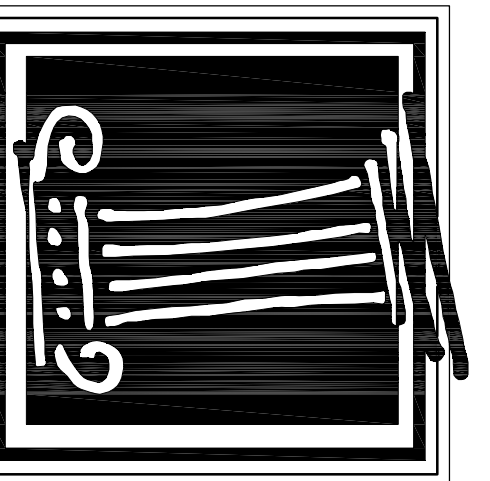
37 23. Incorporation of Exhibits. All exhibits described in this Agreement are incorporated
38 into this Agreement by reference.
39

40 24. Annual Appropriation. Financial obligations of the Town and the County under this
41 Agreement payable after the current fiscal year are contingent upon funds for that purpose being
42 appropriated, budgeted, and otherwise made available by their respective governing bodies. If
43 sufficient funds shall not be made available, this Agreement may be terminated by either party
44 without penalty
45

Exhibit “A”
**To License Agreement Between The Town of Breckenridge and The Board of County
Commissioners of Summit County, Colorado**

Depiction of Licensed Premises

See the attached Exhibit A-1

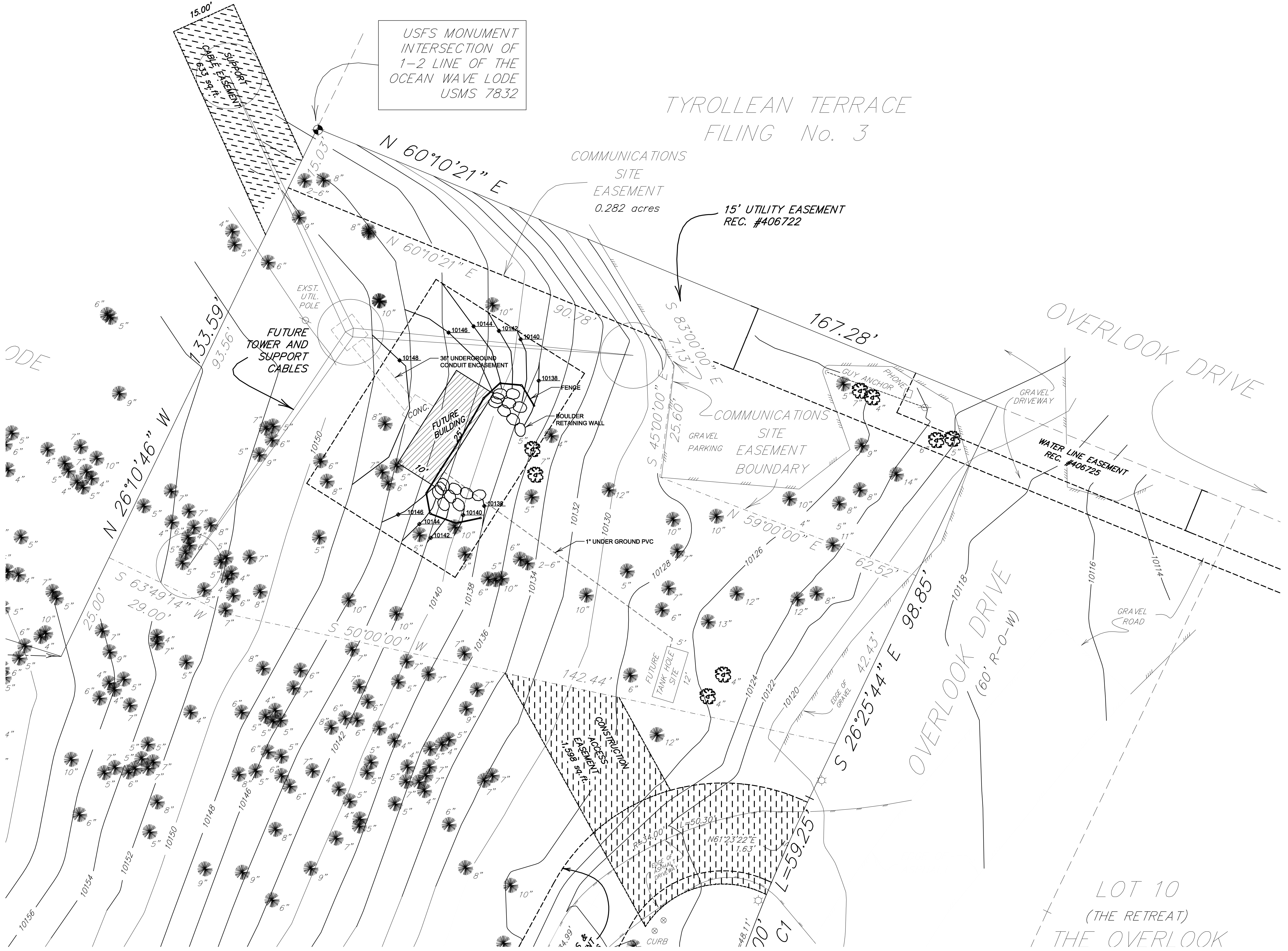
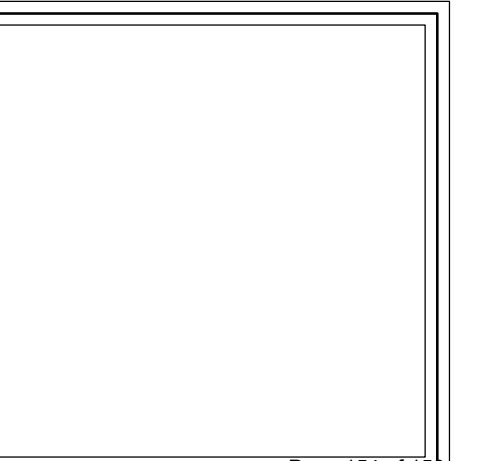
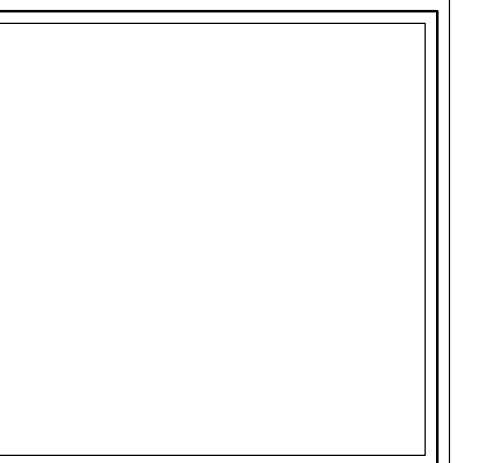


REPEATER SITE
 SUMMIT COUNTY
 COMMUNICATIONS

Bostad
 International Incorporated
 Darrick Wade AIA, AICP Architect, President
 PO Box 2895, Frisco, CO 80443 970.668.1155

Dates:	
CURRENT SET:	11-09-07

OWNERS: SUMMIT COUNTY COM CENTER
CONTRACTOR: TBD
PROJECT #: 07-39
DRAWN BY: G. BORK
CHECKED BY: D. Wade



USFS MONUMENT
 INTERSECTION OF
 1-2 LINE OF THE
 OCEAN WAVE LODGE
 USMS 7832

TYROLLEAN TERRACE
 FILING No. 3

COMMUNICATIONS
 SITE
 EASEMENT
 0.282 acres

15' UTILITY EASEMENT
 REC. #406722

OVERLOOK DRIVE

OVERLOOK DRIVE
 (60' R-O-W)

LOT 10
 (THE RETREAT)
 THE OVERLOOK

Memorandum

To: Town Council

From: Jennifer Cram, Planner III

Date: May 7, 2008

Re: Special Permit for Arts District of Breckenridge Barrel Firing Workshop and Arts District Celebration Demonstration

In conjunction with a Tin Shop Guest Artist workshop with guest artist Syma from NY, NY and the Arts District celebration we would like to barrel-fire hand built vessels within the Arts District. The barrel firings will take place on June 23rd, 24th and 25th as part of the Tin Shop program, as well as July 6th as part of the Arts District Celebration. The vessels will be constructed as part of a workshop at the Tin Shop on June 18th. The barrel-firings are completely contained within a metal barrels (2). Fuel for the firings includes newspaper and wood shavings. We will conduct the firings in the Barney Ford gravel parking lot on the corner of Washington Avenue and South Ridge Street. Staff, Syma and workshop participants will be present the entire time the barrels are burning. The barrels will be completely extinguished once the ceramic vessels have burned to the appropriate temperature (approximately 2 hours). Barrel firings are a traditional way to atmospherically fire ceramic vessels.

The current Town Code (Section 5-5-3) prohibits open burning within town limits. However, Section 5-5-5 allows the Town Council to grant a special permit to authorize open burning. Specifically, Section 5-5-5 states:

Notwithstanding the provisions of section 5-5-3 of this chapter, the town council shall have the authority to issue a special permit for the purpose of authorizing open burning within the town. An application for such a permit shall be made in writing to the town council and shall state the date, time, location and purpose of such fire, and a description of all safety and precautionary measures planned. The town council shall act upon such request at its next regularly scheduled meeting following receipt of the completed application. The town council may grant such application if it finds that there are special and unique circumstances which justify granting the application. All open burning conducted within the town pursuant to a special permit issued pursuant to this section shall be conducted in accordance with the rules pertaining to open burning contained in the town's fire code. The town council may impose such other reasonable conditions upon a special permit as it shall determine to be necessary to adequately protect the health, safety and welfare of the town and its inhabitants. It shall be unlawful for any person to conduct any open burning within the town in violation of the terms and conditions of a special permit issued pursuant to this section. (Ord. 21, Series 1994)

We have already discussed this proposal with the Red, White & Blue Fire Department. A special permit from the Town Council is the only outstanding issue.

Following is a motion that the Town Council may like to use to approve the special permit:

“I move to approve a special permit to allow 4 barrel firings within the Arts District of Breckenridge as part of a scheduled workshop and Arts District celebration, on June 23rd, 24th, 25th and July 6th, 2008, All burning at the barrel firings shall comply with the “Open Burning” requirements of Section 307 of the International Fire Code, 2000 Edition. In addition, the Town shall obtain an open burning permit from the Red, White & Blue Fire Department.”



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.

JUNE 2008

Tuesday, June 10	First Meeting of the Month
Friday, June 13	Town Party
Saturday, June 21	NRO Gala
Tuesday, June 24	Second Meeting of the Month

JULY 2008

Tuesday, July 8	First Meeting of the Month
Tuesday, July 22	Second Meeting of the Month
Tuesday, July 29	Public Official Liability Training

OTHER MEETINGS

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

4th Wednesday of the Month; 9am

2nd Wednesday of the Month; 12 pm

Summit Combined Housing Authority;

Breckenridge Heritage Alliance; Gaymon Cabin

CAST

CML

NWCCOG, RRR, QQ,

I-70 Coalition