



**BRECKENRIDGE TOWN COUNCIL REGULAR MEETING**

Tuesday, September 10, 2013; 7:30 PM

Town Hall Auditorium

<b>I</b>	<b>CALL TO ORDER, ROLL CALL</b>	
<b>II</b>	<b>APPROVAL OF MINUTES - AUGUST 27, 2013</b>	<b>3</b>
<b>III</b>	<b>APPROVAL OF AGENDA</b>	
<b>IV</b>	<b>COMMUNICATIONS TO COUNCIL</b>	
	A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)	
<b>V</b>	<b>CONTINUED BUSINESS</b>	
	A. SECOND READING OF COUNCIL BILLS, SERIES 2013 - PUBLIC HEARINGS	
	1. COUNCIL BILL NO. 34, SERIES 2013 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 14 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE LICENSING AND REGULATION OF MEDICAL MARIJUANA BUSINESSES AND RETAIL MARIJUANA ESTABLISHMENTS	<b>8</b>
	2. COUNCIL BILL NO. 35, SERIES 2013 - AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE CONCERNING CERTAIN VALUE-BASED MUNICIPAL OFFENSES	<b>35</b>
	3. COUNCIL BILL NO. 36, SERIES 2013 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH BEARTOWN LLC, A COLORADO LIMITED LIABILITY COMPANY	<b>40</b>
<b>VI</b>	<b>NEW BUSINESS</b>	
	A. FIRST READING OF COUNCIL BILLS, SERIES 2013	
	1. COUNCIL BILL NO. 37, SERIES 2013: AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE SUBDIVISION STANDARDS", CONCERNING RIGHTS-OF-WAY ACQUIRED BY GOVERNMENTAL ENTITIES	<b>55</b>
	2. COUNCIL BILL NO. 38, SERIES 2013 - AN ORDINANCE AMENDING SECTION 1-4-1 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE GENERAL PENALTY TO BE IMPOSED FOR VIOLATIONS OF THE ORDINANCES OF THE TOWN OF BRECKENRIDGE	<b>59</b>
	B. RESOLUTIONS, SERIES 2013	
	C. OTHER	
<b>VII</b>	<b>PLANNING MATTERS</b>	
	A. PLANNING COMMISSION DECISIONS	<b>62</b>
	B. PLANNING COMMISSION REPORT (MS. MCATAMNEY)	
	C. TOWN PROJECT: CUCUMBER GULCH WETLAND CHANNEL RESTORATION	<b>75</b>
	D. TOWN PROJECT: CUCUMBER GULCH FOREST HEALTH TREATMENT	<b>87</b>
<b>VIII</b>	<b>REPORT OF TOWN MANAGER AND STAFF</b>	
<b>IX</b>	<b>REPORT OF MAYOR AND COUNCILMEMBERS</b>	
	A. CAST/MMC (MAYOR WARNER)	
	B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)	
	C. BRC (MR. BURKE)	

\*Report of the 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.

- D. MARKETING COMMITTEE (MS. WOLFE)
- E. SUMMIT COMBINED HOUSING AUTHORITY (MR. DUDICK)
- F. BRECKENRIDGE HERITAGE ALLIANCE (MR. DUDICK)
- G. WATER TASK FORCE (MR. GALLAGHER)
- H. LANDFILL TASK FORCE (MS. WOLFE)
- I. PUBLIC ART COMMISSION (MR. GALLAGHER)

**X OTHER MATTERS**

**XI SCHEDULED MEETINGS**

**94**

**XII ADJOURNMENT**

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

**TOWN OF BRECKENRIDGE**  
**TOWN COUNCIL REGULAR MEETING**  
**Tuesday, August 27, 2013**  
**PAGE 1**

1 of 5

**CALL TO ORDER, ROLL CALL**

Mayor Warner called the meeting of August 27, 2013 to order at 7:36 pm. The following members answered roll call: Mr. Burke, Mr. Gallagher, Mr. Brewer, Ms. McAtamney, Ms. Wolfe, Mr. Dudick and Mayor Warner.

**APPROVAL OF MINUTES – AUGUST 13, 2013**

With no changes or corrections to the meeting minutes of August 13, 2013, Mayor Warner declared they would stand approved as submitted.

**APPROVAL OF AGENDA**

Mr. Gagen stated there were no changes to the agenda.

**COMMUNICATIONS TO COUNCIL**

- A. Citizen's Comment - (Non-Agenda Items ONLY: 3-minute limit please)  
Mayor Warner opened Citizen's Comments.  
Mr. Eric Mamula, a local business owner, thanked the Council, staff and volunteers for a great job during the USA Pro Cycling Challenge.  
Mr. Dick Carleton, also a business owner, stated he agreed with Mr. Mamula regarding the success of the USA Pro Cycling Challenge. Mr. Carleton gave accolades to Town staff, including the Police Chief and police staff, as well as the local organizing committees and volunteers.  
Mr. Ken Nelson, a business owner and President of the Breckenridge Chapter of the Restaurant Association, read a letter into the record addressed to the Council regarding the Association's support of the USA Pro Cycling Challenge.  
With no further comments, Mayor Warner closed the citizen comments section.
- B. Red, White and Blue Fire District Update  
Mr. Jay Nelson, Deputy Fire Chief of Red, White and Blue Fire Rescue, presented fire mitigation updates and stated the Colorado State Forest Service is involved in helping Red, White and Blue achieve the National Fire Protection Association's (NFPA) Firewise Community designation. He further stated the goal is to submit this application by the end of next year.
- C. Breckenridge Resort Chamber Update  
Mr. John McMahon, Breckenridge Resort Chamber Director, complimented staff on the work for the USA Pro Cycling Challenge, and for the additional press from the event. Mr. McMahon stated Central Reservations is being outsourced to Utah-based VacationRoost effective October 15, 2013, but the GoBreck website will continue.

**CONTINUED BUSINESS**

- A. Second Reading of Council Bills, Series 2013 - Public Hearings
1. COUNCIL BILL NO. 30, SERIES 2013 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 1 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE SALES TAX ORDINANCE"; AND MAKING RELATED AMENDMENTS TO THE BRECKENRIDGE TOWN CODE  
Mayor Warner read the title into the minutes. Mr. Dudick and Mayor Warner recused themselves due to a conflict of interest. Mayor Pro Tem McAtamney reread the title into the minutes. Mr. Berry stated this was a continued second reading for the ordinance, due to lack of quorum at the last meeting. He further stated the Town will receive no increase in revenues from this Ordinance. Mayor Pro Tem McAtamney opened the public hearing.

**TOWN OF BRECKENRIDGE**  
**TOWN COUNCIL REGULAR MEETING**  
**Tuesday, August 27, 2013**  
**PAGE 2**

2 of 5

There were no comments and the public hearing was closed.

Mr. Gallagher moved to approve COUNCIL BILL NO. 30, SERIES 2013 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 1 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE SALES TAX ORDINANCE"; AND MAKING RELATED AMENDMENTS TO THE BRECKENRIDGE TOWN CODE. Ms. Wolfe seconded the motion.

The motion passed 5-0. Mr. Dudick and Mayor Warner abstained.

2. COUNCIL BILL NO. 31, SERIES 2013-AN ORDINANCE ESTABLISHING THE "TOWN OF BRECKENRIDGE CHILDCARE FUND"; AND PROVIDING DETAILS IN CONNECTION WITH THE ADMINISTRATION OF SUCH FUND

Mayor Warner read the title into the minutes. Mr. Berry stated this is a companion ordinance to Council Bill 29, Series 2013, regarding the election question. There is one proposed change from the first reading: The last sentence on page 3, paragraph 3-10-2 beginning with "Monies..." was removed. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Ms. McAtamney moved to approve COUNCIL BILL NO. 31, SERIES 2013-AN ORDINANCE ESTABLISHING THE "TOWN OF BRECKENRIDGE CHILDCARE FUND"; AND PROVIDING DETAILS IN CONNECTION WITH THE ADMINISTRATION OF SUCH FUND. Mr. Brewer seconded the motion.

The motion passed 7-0.

3. COUNCIL BILL NO. 32, SERIES 2013 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH THE BRECKENRIDGE OUTDOOR EDUCATION CENTER, A COLORADO NON-PROFIT CORPORATION (F&D PLACER)

Mayor Warner read the title into the minutes. Mr. Berry stated that an Ordinance is required for any lease exceeding a one year term, and this lease replaces the existing lease set to expire shortly. Mr. Berry further stated there are no changes from the first reading. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Mr. Gallagher moved to approve COUNCIL BILL NO. 32, SERIES 2013 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH THE BRECKENRIDGE OUTDOOR EDUCATION CENTER, A COLORADO NON-PROFIT CORPORATION (F&D PLACER). Mr. Burke seconded the motion.

The motion passed 7-0.

4. COUNCIL BILL NO. 33, SERIES 2013 - AN ORDINANCE AUTHORIZING THE SALE OF TOWN-OWNED REAL PROPERTY (308 North French Street – Hasenstab)

Mayor Warner read the title into the minutes. Mr. Berry stated that per the Town's Charter all property sales must be done by Ordinance and there are no changes from the first reading. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Ms. Wolfe moved to approve COUNCIL BILL NO. 33, SERIES 2013 - AN ORDINANCE AUTHORIZING THE SALE OF TOWN-OWNED REAL PROPERTY (308 North French Street – Hasenstab). Mr. Burke seconded the motion.

The motion passed 7-0.

**NEW BUSINESS**

- A. First Reading of Council Bills, Series 2013

1. COUNCIL BILL NO. 34, SERIES 2013 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 14 OF TITLE 4 OF THE

**TOWN OF BRECKENRIDGE**  
**TOWN COUNCIL REGULAR MEETING**  
**Tuesday, August 27, 2013**  
**PAGE 3**

3 of 5

BRECKENRIDGE TOWN CODE CONCERNING THE LICENSING AND REGULATION OF MEDICAL MARIJUANA BUSINESSES AND RETAIL MARIJUANA ESTABLISHMENTS.

Mayor Warner read the title into the minutes. Ms. Wolfe excused herself due a potential conflict of interest. Mr. Berry stated that Council members will vote today on the version of the ordinance contained in the packet, not any changes that will happen for subsequent readings.

Ms. McAtamney moved to approve COUNCIL BILL NO. 34, SERIES 2013 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 14 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE LICENSING AND REGULATION OF MEDICAL MARIJUANA BUSINESSES AND RETAIL MARIJUANA ESTABLISHMENTS. Mr. Burke seconded the motion. The motion passed 6-0. Ms. Wolfe abstained.

2. COUNCIL BILL NO. 35, SERIES 2013 - AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE CONCERNING CERTAIN VALUE-BASED MUNICIPAL OFFENSES

Mayor Warner read the title into the minutes. Chief Haynes stated this ordinance will increase the limits of misdemeanor municipal value-based offenses from \$1,000 to \$2,000, allowing officers to write citations into Municipal rather than County court.

Mr. Brewer moved to approve COUNCIL BILL NO. 35, SERIES 2013 - AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE CONCERNING CERTAIN VALUE-BASED MUNICIPAL OFFENSES. Mr. Burke seconded the motion. The motion passed 7-0.

3. COUNCIL BILL NO. 36, SERIES 2013 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH BEARTOWN LLC, A COLORADO LIMITED LIABILITY COMPANY

Mayor Warner read the title into the minutes. Mr. Berry stated that leases written for longer than a one-year term must be approved by Council. The term for this lease is five years.

Mr. Dudick moved to approve COUNCIL BILL NO. 36, SERIES 2013 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH BEARTOWN LLC, A COLORADO LIMITED LIABILITY COMPANY. Mr. Burke seconded the motion. The motion passed 7-0.

B. Resolutions, Series 2013 – NONE

C. Other

**PLANNING MATTERS**

- A. Planning Commission Decisions  
There was no Planning Commission meeting held last week.
- B. Planning Commission Report (Ms. McAtamney)  
Ms. McAtamney stated there was no report.

**REPORT OF TOWN MANAGER AND STAFF**

This report was included at the end of the Work Session meeting.

**REPORT OF MAYOR AND COUNCILMEMBERS**

All reports were included at the end of the Work Session.

- A. Cast/MMC (Mayor Warner)

**TOWN OF BRECKENRIDGE**  
**TOWN COUNCIL REGULAR MEETING**  
**Tuesday, August 27, 2013**  
**PAGE 4**

4 of 5

Mayor Warner stated there was no report.

- B. Breckenridge Open Space Advisory Committee (Mr. Brewer)  
Mr. Brewer stated there was no report.
- C. BRC (Mr. Burke)  
Mr. Burke stated there was no report.
- D. Marketing Committee (Ms. Wolfe)  
Ms. Wolfe stated there was no report.
- E. Summit Combined Housing Authority (Mr. Dudick)  
Mr. Dudick stated there was no report.
- F. Breckenridge Heritage Alliance (Mr. Dudick)  
Mr. Dudick stated there was no report.
- G. Water Task Force (Mr. Gallagher)  
Mr. Gallagher stated there was a meeting on August 26th and the engineers drafted a report with four critical issues: (1) Where will the new plant take its water from?; (2) Sites where the actual plant could be located – a potential of seven sites were identified; (3) Issues with designing the new plant; and (4) Sanitation District concerns with discharge.
- H. Landfill Task Force (Ms. Wolfe)  
Ms. Wolfe stated there was no report.
- I. Public Art Commission (Mr. Gallagher)  
Mr. Gallagher stated there was no report. There was no meeting since the last Town Council meeting.

**OTHER MATTERS**

**Liquor License Authority Appointments**

The four candidates for three expired terms included J.B. Katz, Turk Montepare, Bill Tatro, and Eli Yoder. Motions for appointments to the Authority were made for each candidate by the Council. J.B. Katz, Turk Montepare and Bill Tatro were appointed to four-year terms on the Liquor License Authority with the new term beginning September 17, 2013.

Ms. McAtamney stated she wanted to compliment the trail crew for doing a phenomenal job on trail cutting and maintenance. Mayor Warner stated he is seeing some trails showing signs of overuse and wants to ask BOSAC if an additional charge for racing could be tacked on for continued upkeep and maintenance costs.

Mr. Gallagher mentioned the pit bull terrier incident on Hoosier Pass during the USA Pro Cycling Challenge. He stated he believes Breckenridge should get in front of the situation and do something about aggressive dogs in general and pit bulls in particular. Mayor Warner polled the Council on their thoughts about this issue and the decision was made to charge staff with identifying problem breeds and look to see what other communities have done regarding this issue.

**SCHEDULED MEETINGS**

**ADJOURNMENT**

**TOWN OF BRECKENRIDGE**  
**TOWN COUNCIL REGULAR MEETING**  
**Tuesday, August 27, 2013**  
**PAGE 5**

5 of 5

With no further business to discuss at the regular meeting, the meeting was adjourned at 9:00 pm. Upon adjournment, Ms. Wolfe made a motion to resume the recessed Executive Session. Mr. Gallagher seconded the motion. Motion passed 6-1. Mr. Burke dissented.

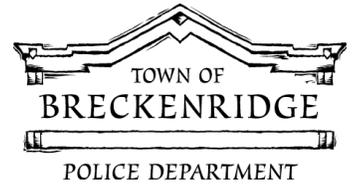
Submitted by Susan Brown, Municipal Services Specialist.

ATTEST:

---

John Warner, Mayor

DRAFT



## MEMORANDUM

**To:** Mayor and Town Council  
**From:** Shannon Haynes, Chief of Police  
**Date:** September 3, 2013  
**Subject:** Licensing and Regulation of Medical Marijuana Businesses and Retail Marijuana Establishments (2<sup>nd</sup> Reading)

---

At the September 10<sup>th</sup> Town Council session, I will be presenting for 2<sup>nd</sup> reading an ordinance regarding the Licensing and Regulation of Medical Marijuana businesses and Retail Marijuana establishments.

You will find clearly marked revisions from first reading that address concerns staff heard from council, as well as other matters staff thought should be updated. These edits include:

- Transfer of a license during the phase in period ending January 1, 2015
- License renewal language
- Revision of language addressing number of licenses
- Revised language regarding the current medical marijuana business in the Downtown Overlay District

I will be available at the Council meeting to answer any questions you might have.

1 **FOR WORKSESSION/SECOND READING – SEPT. 10**

2  
3 **MARKED TO SHOW CHANGES FROM FIRST**  
4 **READING**

5  
6 COUNCIL BILL NO. 34

7  
8 Series 2013

9  
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 14 OF  
11 TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE LICENSING AND  
12 REGULATION OF MEDICAL MARIJUANA BUSINESSES AND RETAIL MARIJUANA  
13 ESTABLISHMENTS

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

17  
18 Section 1. Chapter 14 of Title 4 of the Breckenridge Town Code is repealed and reenacted  
19 with changes so as to read in its entirety as follows:

20  
21 CHAPTER 14

22  
23 MARIJUANA LICENSES AND REGULATIONS

24  
25 SECTION:

- 26  
27 4-14-1: SHORT TITLE  
28 4-14-2: FINDINGS  
29 4-14-3: PURPOSE  
30 4-14-4: AUTHORITY  
31 4-14-5: DEFINITIONS  
32 4-14-6: LICENSE REQUIRED  
33 4-14-7: ADOPTION OF STATE CODES AND ADMINISTRATIVE REGULATIONS  
34 4-14-8: APPLICATION FOR LICENSE  
35 4-14-9: FEES  
36 4-14-10: INVESTIGATION OF APPLICATION  
37 4-14-11: AUTHORITY TO IMPOSE CONDITIONS ON LICENSE  
38 4-14-12: DECISION BY LOCAL LICENSING AUTHORITY  
39 4-14-13: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF LICENSE  
40 4-14-14: INSPECTION OF PREMISES  
41 4-14-15: TERM OF LICENSE; RENEWAL

2013 MARIJUANA LICENSING ORDINANCE

- 1 4-14-16: NOTICE OF ISSUANCE OF LICENSE
- 2 4-14-17: DUTIES OF LICENSEE
- 3 4-14-18: SUSPENSION OR REVOCATION OF LICENSE
- 4 4-14-19: TRANSFER OF OWNERSHIP; CHANGE OF LOCATION; MODIFICATION
- 5 OF PREMISES
- 6 4-14-20: ~~NUMBER OF LICENSES AUTHORIZED~~ CONSIDERATION OF NUMBER OF
- 7 EXISTING LICENSES
- 8 4-14-21: LOCATION OF LICENSED PREMISES; CO-LOCATION
- 9 4-14-22: HOURS OF OPERATION
- 10 4-14-22: SIGNAGE
- 11 4-14-24: MARIJUANA ACCESSORIES
- 12 4-14-25: ON-SITE CULTIVATION, GROWING AND PROCESSING
- 13 4-14-26: DISPLAY OF MARIJUANA
- 14 4-14-27: TAXES
- 15 4-14-28: WAREHOUSE STORAGE PERMITS
- 16 4-14-29: VIOLATIONS; PENALTIES; INJUNCTIVE RELIEF
- 17 4-14-30: NO TOWN LIABILITY
- 18 4-14-31: OTHER LAWS REMAIN APPLICABLE
- 19 4-14-32: RULES AND REGULATIONS
- 20 4-14-33: EFFECTIVE DATE

21

22 4-14-1: SHORT TITLE: This Chapter is to be known and may be cited as the “Town Of

23 Breckenridge 2013 Marijuana Licensing Ordinance.”

24

25 4-14-2: FINDINGS: The Town Council adopts this Chapter based upon the following findings of

26 fact:

- 27
- 28 A. The Colorado Medical Marijuana Code (Article 43.3 of Title 12, C.R.S.)
- 29 recognizes the power of a municipality to adopt and enforce its own rules and
- 30 regulations for the licensing of medical marijuana businesses within its
- 31 jurisdiction. Specifically, the Colorado Medical Marijuana Code authorizes
- 32 municipalities to:
  - 33 1. prohibit the operation of medical marijuana centers, optional premises
  - 34 cultivation operations, and medical marijuana-infused product
  - 35 manufacturing facilities within the municipality (Section 12-43.3-106,
  - 36 C.R.S.);
  - 37 2. adopt an ordinance containing specific standards for the issuance of local
  - 38 licenses (Section 12-43.3-301(2)(a), C.R.S.);
  - 39 3. adopt additional local standards for the issuance of licenses, including, but
  - 40 not limited to, distance restrictions between premises for which licenses are
  - 41 issued; reasonable restrictions on the size of an applicant’s licensed

- 1 premises; and any other local requirement necessary to ensure the control of  
 2 the premises and the ease of enforcement of the terms and conditions of the  
 3 license (Section 12-43.3-301(2)(b), C.R.S.);
- 4 4. impose additional requirements necessary for the approval of applications  
 5 under the Colorado Medical Marijuana Code (Section 12-43.3-301(4),  
 6 C.R.S.);
- 7 5. enact ordinances or resolutions concerning matters authorized to local  
 8 governments (Section 12-43.3-305(3), C.R.S.);
- 9 6. enact reasonable regulations or other restrictions applicable to licenses  
 10 based on local government zoning, health, safety and public welfare laws  
 11 for the distribution of medical marijuana that are more restrictive than the  
 12 Colorado Medical Marijuana Code (Section 12-43.3-310(1), C.R.S.);
- 13 7. impose reasonable restrictions upon a local license (Section  
 14 12-43.3-310(7), C.R.S.); and
- 15 8. establish an application fee for a local license (Section 12-43.3-503(1),  
 16 C.R.S.
- 17 B. On November 6, 2012 the voters of the State of Colorado approved Amendment  
 18 64. Amendment 64 added Section 16 of Article XVIII to the Colorado  
 19 Constitution.
- 20 C. Section 16(5)(f) of ~~Amendment 64~~Article XVIII of the Colorado Constitution  
 21 authorizes a municipality to enact an ordinance or regulation, not in conflict with  
 22 ~~Amendment 64~~Section 16 of Article XVIII of the Colorado Constitution,  
 23 governing the time, place, manner, and number of marijuana establishments  
 24 within the boundaries of the municipality.
- 25 D. The Colorado Retail Marijuana Code (Article 43.4 of Title 12, C.R.S.)  
 26 establishes a new procedure that allows for the dual licensing by the State  
 27 Licensing Authority and the Local Licensing Authority of the retail cultivation,  
 28 manufacture, distribution, and sale of retail marijuana and retail marijuana  
 29 products.
- 30 E. Specifically, the Colorado Retail Marijuana Code authorizes municipalities to:
- 31 1. enact regulations governing the time, place, manner, and number of retail  
 32 marijuana establishments within the boundaries of the municipality, which  
 33 may include a local licensing requirement (Section 12-43.4-104(3),  
 34 C.R.S.);

- 1                   2.     impose a separate local licensing requirements as a part of the  
2                                   municipality’s restrictions on time, place, manner, and number of marijuana  
3                                   businesses within the municipality (Section 12-43.4-301(2), C.R.S.);
- 4                   3.     enact ordinances or resolutions concerning matters authorized to local  
5                                   governments (Section 12-43.4-304(2), C.R.S.);
- 6                   4.     adopt and enforce regulations for retail marijuana establishments that are at  
7                                   least as restrictive as the Colorado Retail Marijuana Code and the state  
8                                   administrative regulations (Section 12-43.4-309(1), C.R.S.); and
- 9                   5.     adopt and impose operating fees on marijuana establishments located  
10                                  within its jurisdiction in an amount determined by the municipality (Section  
11                                  12-43.4-501(3), C.R.S.).

12           F.     The presence of medical marijuana businesses and retail marijuana  
13                                  establishments within the Town’s Downtown Overlay District may discourage  
14                                  tourism, which is the economic lifeblood of the community. As such, except for  
15                                  the limited time period described in this Chapter, medical marijuana businesses  
16                                  and retail marijuana establishments should all be ~~limited in number, and, except~~  
17                                  ~~in the limited circumstance described in Section 4-14-21~~, located outside of the  
18                                  Downtown Overlay District in order to protect, defend, and preserve the  
19                                  economic vitality of the Town.

20           G.     The Town Council finds, determines, and declares that to the extent the  
21                                  requirements of this Chapter differ from the requirements of the Colorado  
22                                  Medical Marijuana Code and the Colorado Retail Marijuana Code, the  
23                                  requirements of this Chapter are more restrictive than the Colorado Medical  
24                                  Marijuana Code and at least as restrictive as the Colorado Retail Marijuana Code.

25           H.     This Chapter is necessary and proper to provide for the safety, preserve the  
26                                  health, promote the prosperity, and improve the order, comfort, and convenience  
27                                  of the Town and the inhabitants thereof.

28   4-14-3: PURPOSE: It is the purpose of this Chapter to:

29           A.     Require that medical marijuana businesses and retail marijuana establishments  
30                                  that are located within the Town be operated in a safe manner that do not  
31                                  endanger the public welfare.

32           B.     Mitigate potential negative impacts that medical marijuana businesses and retail  
33                                  marijuana establishments that are located within the Town might cause on  
34                                  surrounding properties and persons.

1 C. Regulate the conduct of persons owning, operating, and using medical marijuana  
2 businesses and retail marijuana establishments that are located within the Town  
3 in order to protect the public health, safety, and welfare.

4 D. Establish a non-discriminatory mechanism by which the Town can control,  
5 through appropriate regulation, the location and operation of medical marijuana  
6 businesses and retail marijuana establishments that are located within the Town.

7 E. Establish requirements and limitations on the location of medical marijuana  
8 businesses and retail marijuana establishments without requiring the immediate  
9 closure of any currently licensed business.

10 ~~F. Limit the number of medical marijuana businesses and retail marijuana~~  
11 ~~establishments that are allowed to operate within the Town without requiring the~~  
12 ~~immediate closure of any currently licensed business.~~

13 4-14-4: AUTHORITY: The Town Council hereby finds, determines, and declares that it has the  
14 power to adopt this Chapter pursuant to:  
15

16 A. The Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S.;

17 B. Section 16 of Article XVIII to the Colorado Constitution ~~(Amendment 64)~~;

18 C. The Colorado Retail Marijuana Code, Article 43.4 of Title 12, C.R.S.;

19 D. The ~~applicable state administrative regulations~~applicable administrative  
20 regulations;

21 E. The Local Government Land Use Control Enabling Act, Part 1 of Article 20 of  
22 Title 29, C.R.S.;

23 F. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);

24 G. Section 31-15-103, C.R.S. (concerning municipal police powers);

25 H. Section 31-15-401, C.R.S. (concerning municipal police powers);

26 I. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);

27 J. The authority granted to home rule municipalities by Article XX of the Colorado  
28 Constitution; and

29 K. The powers contained in the Breckenridge Town Charter.

30 4-14-5: DEFINITIONS:  
31

- 1           A.     The definitions contained in the Colorado Medical Marijuana Code, the Colorado  
 2           Retail Marijuana Code, and the ~~applicable state administrative~~  
 3           ~~regulations~~applicable administrative regulations (as defined in Subsection B of  
 4           this Section), each as amended from time to time, are incorporated into this  
 5           Chapter by reference.
- 6           B.     As used in this Chapter the following words have the following meanings, unless  
 7           the context clearly requires otherwise:

ABANDON:                                 The knowing relinquishment of a license issued by the Town under this Chapter. Abandonment includes both an intention to abandon the license and an act by which the intention is put into effect. For the purposes of this Chapter, abandonment shall be presumed if the business activity authorized by a license is ceased for ninety (90) consecutive days (not counting days when the license is ordered to be suspended pursuant to the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, the ~~applicable state administrative regulations~~applicable administrative regulations, or this Chapter).

ADJACENT:                                 Adjacent to or contiguous with the proposed location of a medical marijuana business or retail marijuana establishment. Adjacency is to be determined without regard to the existence of a platted or dedicated public street or alley, and real property that would otherwise be determined to be adjacent to a proposed medical marijuana business or retail marijuana establishment does not lose its adjacency by virtue of the existence of a platted or dedicated public street or alley.

~~AMENDMENT 64:~~                     ~~The voter-initiated amendment to the Colorado Constitution adopted November 6, 2012. Amendment 64 added Section 16 of Article XVIII to the Colorado Constitution.~~

APPLICANT:                               A person who has submitted an application for license to the Local Licensing Authority: that has not been approved or denied by the Local Licensing Authority.

APPLICATION:                            An application for license submitted to the Local Licensing Authority.

APPLICABLE CODE:                       The Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code, whichever applies to the application or the license.

APPLICABLE ~~STATE~~                    Whichever of the state administrative regulations apply to the

ADMINISTRATIVE REGULATION:	application or the license, <u>as well as any administrative regulations issued by the Local Licensing Authority pursuant to Section 4-14-32.</u>
BUILDING OFFICIAL:	The Chief Building Official of the Town, or the Chief Building Official's designee authorized to act pursuant to Section 1-7-2 of this Code.
COLORADO MEDICAL MARIJUANA CODE:	Article 43.3 of Title 12, C.R.S., as amended from time to time.
COLORADO RETAIL MARIJUANA CODE:	Article 43.4 of Title 12, C.R.S., as amended from time to time.
DAY:	A calendar day, unless otherwise indicated.
DOWNTOWN OVERLAY DISTRICT:	The geographic area of the Town identified as the Downtown Overlay District in the Town's Land Use Guidelines, as amended from time to time.
GOOD CAUSE:	<p>For the purpose of denial of an application, the denial of the renewal of a license, or the imposition of discipline of a licensee, means:</p> <ol style="list-style-type: none"> <li>1. The licensee or the applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, of provisions of this Chapter, the terms and conditions of any licensed issued by the Local Licensing Authority pursuant to this Chapter, any applicable code, or any applicable <del>state</del> administrative regulation;</li> <li>2. The licensee or the applicant has failed to comply with any special terms or conditions that were placed on the license pursuant to an order of the State Licensing Authority or the Local Licensing Authority; or</li> <li>3. The licensee's licensed premises have been operated in a manner that adversely affects the public health, welfare, or the safety of the immediate neighborhood in which the establishment is located.</li> </ol>
GROUND FLOOR:	The floor of a structure at approximately the same elevation as the natural grade of the surrounding area.
HALFWAY HOUSE:	A group care facility for adults or juveniles who have been placed on probation or parole under applicable law.

LAND USE GUIDELINES:	Has the meaning provided in Section 9-1-5 of this Code.
LICENSE:	A license to operate a medical marijuana business, a retail marijuana establishment, or both a medical marijuana businesses and a retail marijuana establishment, issued by the Local Licensing Authority pursuant to the this Chapter. <u>Wherever in this Chapter the terms “medical marijuana business” and “retail marijuana establishment” are used, such terms include any medical marijuana business and retail marijuana establishment that are dually located in accordance with the applicable law.</u>
LICENSEE:	A person holding a license.
LICENSED PREMISES:	The premises that are the subject of a license.
LOCAL LICENSING AUTHORITY:	The Town Manager of the Town, or the Town Manager’s designee authorized to act pursuant to Section 1-7-2 of this Code.
MARIJUANA ACCESSORIES:	Has the meaning provided in Section 16(2)(g) of <u>Amendment 64 Article XVIII of the Colorado Constitution</u> .
MEDICAL MARIJUANA BUSINESS:	Includes medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused product manufacturing facilities.
PERSON:	Has the meaning provided in Section 1-3-2 of this Code.
RESIDENTIAL USE:	Has the meaning provided in Section 9-1-5 of this Code.
SPLIT LEVEL STRUCTURE:	A structure, or portion of a structure, that includes multiple floors with the lowest floor visible from the street front having a finished grade below the finished grade level of the street front sidewalk.
RETAIL MARIJUANA ESTABLISHMENT:	Has the meaning provided in the Colorado Retail Marijuana Code.
STATE ADMINISTRATIVE REGULATIONS:	<ol style="list-style-type: none"> <li>1. The administrative rules and regulations for medical marijuana businesses issued by the State Licensing Authority and/or the Colorado Department of Revenue, Marijuana Enforcement Division, pursuant to Sections 12-43.3-202(1)(b)(I) and 202(2), C.R.S., as amended from time to time; and</li> <li>2. The administrative rules and regulations for retail marijuana establishments issued by the State Licensing Authority and/or</li> </ol>

Colorado Department of Revenue, Marijuana Enforcement Division, pursuant to Section (16)(5)(a) of Amendment 64 Article XVIII of the Colorado Constitution and Section 12-43.4-202(2)(b), C.R.S., as amended from time to time.

STATE LICENSING AUTHORITY: Has the meaning provided in the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code.

TOWN: Has the meaning provided in Section 1-3-2 of this Code.

4-14-6: LICENSE REQUIRED:

- A. No person may operate a medical marijuana business, a retail marijuana establishment, or ~~both~~ a dually located medical marijuana business and a retail marijuana establishment, within the Town without both a valid license issued by the Local Licensing Authority and a valid license issued by the State Licensing Authority.
- B. A separate license shall be required for each specific business or business entity and for each geographic location.

4-14-7: ADOPTION OF STATE CODES AND ADMINISTRATIVE REGULATIONS:

- A. The following laws, rules, and regulations are adopted by reference and made a part of this Chapter:
  - 1. The Colorado Medical Marijuana Code;
  - 2. The state administrative regulations that apply to medical marijuana businesses;
  - 3. The Colorado Retail Marijuana Code; ~~and~~
  - 4. The state administrative regulations that apply to retail marijuana establishments; and
  - 4.5. Any administrative regulations issued by the Local Licensing Authority pursuant to Section 4-14-32.
- B. Except where the provisions of this Chapter are inconsistent with or differ from the laws, rules, and regulations adopted by reference in Subsection A of this Section, or where, by their nature, the adopted laws, rules, and regulations cannot apply to the Local Licensing Authority, all of the provisions of the adopted laws, rules, and regulations apply to all applications received and licenses issued by the Local Licensing Authority pursuant to this Chapter. Where a provision of the adopted

1 laws, rules, and regulations are applicable to the Local Licensing Authority the  
2 terms “State Licensing Authority,” “Department,” and “Division” shall mean the  
3 Local Licensing Authority, unless the context clearly indicates otherwise.

- 4 | C. If there is a conflict between the provisions of this Chapter and the adopted laws,  
5 rules, and regulations the provisions of this Chapter shall control to the fullest  
6 extent permitted by applicable law.

7 4-14-8: APPLICATION FOR LICENSE:  
8

9 A. A person seeking to obtain a license from the Local Licensing Authority shall file  
10 an application with the Town’s Municipal Services Office. The Municipal Services  
11 Office is responsible for providing application forms to prospective applicants, and  
12 for generally supervising the application process up to the point that a completed  
13 application is submitted to the Local Licensing Authority for a decision. Once an  
14 application is determined to be complete, the application and all supporting  
15 documentation shall be forwarded to the Local Licensing Authority. The Local  
16 Licensing Authority shall make a final decision on the Application in accordance  
17 with Section 4-14-12.

18 B. No license may be issued by the Local Licensing Authority for a retail marijuana  
19 testing facility.

20 C. No license shall be issued by the Local Licensing Authority to a cooperative  
21 association as defined in Article 55 of Title 7, C.R.S.; a cooperative as defined in  
22 Article 56 of Title 7, C.R.S.; or any other similar cooperatively-owned business  
23 entity, association, or group.

24 D. Until January 1, 2015 only licensees who hold both a valid Town medical  
25 marijuana license and a valid state license issued under the Colorado Medical  
26 Marijuana Code on the effective date of this Chapter may submit an application for  
27 a license for a new retail marijuana establishment license under this Chapter;  
28 provided, however, that between the effective date of this Chapter and January 1,  
29 2015 a licensee who holds both a valid Town medical marijuana or retail marijuana  
30 license and a valid state license of the same type may transfer ownership of the  
31 local license in accordance with the applicable codes, the applicable administrative  
32 regulations, and Section 4-14-19 of this Chapter. The Local Licensing Authority  
33 shall not accept or process any application submitted in violation of this provision.

34 E. A license issued by the Local Licensing Authority does not eliminate the need for  
35 the licensee to obtain other required Town licenses and permits related to the  
36 operation of the licensed premises, including, without limitation:

- 37 1. a development permit if required by the terms of Chapter 1 of Title 9 of this  
38 Code;

- 1                   2.    a Town sales tax license;
- 2                   3.    a Town Business and Occupational Tax License; and
- 3                   4.    a building permit, mechanical permit, plumbing permit, or electrical permit
- 4                         if required by the terms of the Town’s building and technical codes.
- 5                   F.    Properly completed applications shall be processed by the Local Licensing
- 6                         Authority in order of receipt.
- 7                   G.    At all times during the application process the applicant has the burden of
- 8                         establishing it is entitled to the license that is applied for.
- 9                   H.    Pursuant to Section 16(5)(e) of ~~Amendment 64~~Article XVIII of the Colorado
- 10                         Constitution the Local Licensing Authority is designated as the entity that is
- 11                         responsible for processing applications submitted for a license to operate a retail
- 12                         marijuana establishment within the Town and for the issuance of such licenses
- 13                         should the issuance by the Town become necessary because of a failure by the
- 14                         Colorado Department of Revenue, Marijuana Enforcement Division, to adopt
- 15                         regulations pursuant to Section 16(5)(a) of ~~Amendment 64~~Article XVIII of the
- 16                         Colorado Constitution, or because of the failure of the Colorado Department of
- 17                         Revenue, Marijuana Enforcement Division, to process and issue licenses as
- 18                         required by Section 16(5)(g) of ~~Amendment 64~~Article XVIII of the Colorado
- 19                         Constitution.

20 4-14-9: FEES:

- 21
- 22                   A.    An applicant for a new license shall pay to the Town a non-refundable operating fee
- 23                         when the application is filed. The purpose of the fee is to cover the direct and
- 24                         indirect costs to the Town of administering the local licensing mechanism
- 25                         established by this Chapter. For applications filed in 2013 the operating fees are as
- 26                         follows:

27                   1. New medical marijuana business license:

28

Type of License	Local Operating fee
Type 1 Medical Marijuana Center	\$2,812.50
Type 2 Medical Marijuana Center	\$6,562.50
Type 3 Medical Marijuana Center	\$10,500.00

Optional Premises Cultivation License	\$2,062.50
Medical Marijuana-Infused Products Manufacturers' License	\$2,062.50

1  
2  
3

2. Medical marijuana center applying for retail marijuana store license:

Type of License	Local Operating fee
Medical Marijuana Center 1 Applying For Retail Marijuana Store License	\$2,812.50
Medical Marijuana Center 2 Applying For Retail Marijuana Store License	\$6,562.50
Medical Marijuana Center 3 Applying For Retail Marijuana Store License	\$10,500.00

4  
5  
6  
7

3. New retail marijuana establishment license (not an existing medical ~~or~~ marijuana business):

Type of License	Local <del>application</del> -Operating Fee
Retail Store	\$2,062.50
Retail Marijuana Cultivation Facility	\$2,062.50
Retail Marijuana Products Manufacturing	\$2,062.50

Retail Marijuana Testing Facility	N/A <sup>1</sup>
-----------------------------------	------------------

1  
2  
3  
4  
5  
6  
7  
8

- B. Fees for the annual renewal of any license issued by the Town shall be fifty percent of the fee for the issuance of a new license as described in Subsection A of this Section.
- C. The following administrative service/operating fees shall be paid to Town at the time the service is requested:

Service Requested	Fee
<del>Change-Transfer</del> of Ownership of Business License or Application	\$250.00
Corporation or LLC Structure Change (per person)	\$100.00
Change of Location	\$500.00
Modification of Premises	\$150.00

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

- D. The Town is entitled to receive its share of the license application fees received by the State Licensing Authority pursuant to ~~Amendment 64~~ Section 16 of Article XVIII of the Colorado Constitution and the Retail Marijuana Code.
- ~~E. If an application is submitted to the Town pursuant to Section 16(5)(i) of Amendment 64, it shall be accompanied by the full amount of the application fee required by the Colorado Retail Marijuana Code. The Town shall retain all application fees paid to it pursuant to Section 16(5)(i) of Amendment 64.~~
- ~~F.E.~~ At least annually, the amount of fees charged by the Town pursuant to this Section shall be reviewed and, if necessary, adjusted as provided in Subsection ~~GF~~ to reflect the direct and indirect costs incurred by the Town in connection with the adoption, administration, and enforcement of this Chapter.
- ~~G.F.~~ Beginning with the fiscal 2014 budget, the amount of the fees charged by the Town pursuant to this Section shall be fixed by the Town Council as part of its annual budget process. If, for any reason, such fees are not fixed by the Town

<sup>1</sup> The Local Licensing Authority is not authorized to issue a local Retail Marijuana Testing Facility License. See Section 4-14-8(B).

1 Council as part of its annual budget process, the fees for the preceding year shall  
2 continue in full force and effect until changed by the Town Council.

3 4-14-10: INVESTIGATION OF APPLICATION:  
4

- 5 A. Upon receipt of a properly completed application, together with all information  
6 required in connection therewith, and the payment of the applicable fee as  
7 required by Section 4-14-9, the Local Licensing Authority shall transmit copies  
8 of the application to:
- 9 1. the Police Department;
  - 10 2. the Department of Community Development; and
  - 11 3. any other person or agency which the Local Licensing Authority or the  
12 Municipal Services Office determines should properly investigate and  
13 comment upon the application.
- 14 B. Upon receipt of a completed application the Police Department shall promptly  
15 obtain and review a criminal background records search on the applicant.
- 16 C. Within twenty days of receipt of a completed application those Town  
17 departments and other referral agencies described in Subsection A of this Section  
18 shall provide the Local Licensing Authority with comments concerning the  
19 application.
- 20 D. An applicant shall cooperate with the Local Licensing Authority with respect to  
21 the review and investigation of the application.

22 4-14-11: AUTHORITY TO IMPOSE CONDITIONS ON LICENSE: The Local Licensing  
23 Authority may impose such reasonable terms and conditions on a license as may be necessary to  
24 protect the public health, safety, and welfare, and obtain compliance with the requirements of this  
25 Chapter, the applicable code, the ~~applicable state administrative regulations~~ applicable  
26 administrative regulations, and other applicable law.  
27

28 4-14-12: DECISION BY LOCAL LICENSING AUTHORITY:  
29

- 30 A. The Local Licensing Authority shall approve, deny, or conditionally approve an  
31 application within ninety (90) days of ~~receipt of a completed the date of the~~  
32 approval of the applicant's state license application; provided, however, the  
33 deadline for deciding an application may be extended by the Local Licensing  
34 Authority for up to an additional sixty (60) days if the Local Licensing Authority  
35 reasonably determines that it is necessary for the applicant to submit additional  
36 information in order for the Local Licensing Authority to complete the

1 investigation and review of the application. The applicant shall provide any  
2 additional information requested by the Local Licensing Authority.

3 B. No public hearing is required to be held in connection with an application.

4 C. The Local Licensing Authority shall issue a license under this Chapter when, from  
5 a consideration of the application, the investigation, and such other information as  
6 may otherwise be obtained, the Local Licensing Authority determines that:

7 1. The application (including any required attachments and submissions) is  
8 complete and signed by the applicant, and the applicant has provided any  
9 additional information concerning the application requested by the Local  
10 Licensing Authority;

11 2. The applicant has paid the applicable operating fee and any other fees  
12 required by Section 4-14-9;

13 3. The application does not contain a material falsehood or misrepresentation;

14 4. The application complies with all of the requirements of this Chapter, the  
15 applicable code, and the ~~applicable state administrative~~  
16 ~~regulations~~applicable administrative regulations; and

17 5. The applicant holds a valid state license for the licensed premises of the  
18 same class as has been applied for under this Chapter.

19 D. The Local Licensing Authority shall deny an application for a license under this  
20 Chapter if it determines that:

21 1. The application is incomplete, or the applicant has failed to provide any  
22 additional information about the application requested by the Local  
23 Licensing Authority;

24 2. Information contained in the application, or supplemental information  
25 requested from the applicant contains a material falsehood or  
26 misrepresentation;

27 3. The application does not comply with all of the requirements of this  
28 Chapter, the applicable code, and the ~~applicable state administrative~~  
29 ~~regulations~~applicable administrative regulations; or

30 4. The applicant does not hold a valid state license for the licensed premises of  
31 the same class as has been applied for under this Chapter

32 E. If an application is denied, the Local Licensing Authority shall clearly set forth in  
33 writing the grounds for denial.

1 F. If the application is conditionally approved, the Local Licensing Authority shall  
2 clearly set forth in writing the conditions of approval.

3 G. If an application is denied the operating fee paid to the Town at the time of the  
4 filing of the application shall not be refunded.

5 4-14-13: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF LICENSE: Any decision  
6 made by the Local Licensing Authority pursuant to Section 4-14-12 is a final decision and may be  
7 appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.  
8 The applicant's failure to timely appeal the decision is a waiver the applicant's right to contest the  
9 denial or conditional approval of the application.

10  
11 4-14-14: INSPECTION OF PREMISES: In addition to the inspection required by the applicable  
12 code or other applicable law, prior to the issuance of a license the premises proposed to be licensed  
13 shall be inspected by the Building Official to determine compliance with the Town's building and  
14 technical Codes. No license shall be issued if the proposed licensed premises does not comply with  
15 the Town's building and technical codes. Throughout the term of the license the Building Official  
16 may inspect the licensed premises to determine continuing compliance with the Town's building  
17 and technical codes. Access to such premises shall be obtained by the Building Official in  
18 accordance with the applicable provisions of such codes or other applicable law.

19  
20 4-14-15: TERM OF LICENSE; RENEWAL:

21  
22 A. Each license issued pursuant to this Chapter shall be valid for one year from the  
23 date of issuance, and may be renewed as provided in the applicable code, the  
24 ~~applicable state administrative regulations~~applicable administrative regulations,  
25 and this Chapter; provided, however, that a license shall not be renewed if the  
26 Local Licensing Authority determines that the licensed premises have been  
27 inactive, without good cause, for at least one year.

28 B. The Local Licensing Authority may refuse to renew a license for good cause.

29 C. No license for a medical marijuana business shall be renewed by the Local  
30 Licensing Authority until the licensee provides verification that a license was  
31 issued and granted by the State Licensing Authority pursuant to the Colorado  
32 Medical Marijuana Code for the previous license term.

33 ~~C.D.~~ Notwithstanding anything contained in this Chapter to the contrary, a licensee has  
34 no vested right to the renewal of a license, and no property right in the renewal of a  
35 license

36 4-14-16: NOTICE OF ISSUANCE OF LICENSE: Immediately upon the issuance of a license, the  
37 Local Licensing Authority shall send a copy of the license to:

38  
39 A. The Police Department;

- 1 B. The Community Development Department;
- 2 C. The Town Clerk;
- 3 D. The Director of Financial Services; and
- 4 E. Any other person as determined by the Local Licensing Authority.

5 4-14-17: DUTIES OF LICENSEE: It is the duty and obligation of each licensee to:

- 6
- 7 A. Comply with all of the terms and conditions of the license, and any special
- 8 conditions on the license imposed by the Local Licensing Authority pursuant to
- 9 Section 4-14-11;
- 10 B. Comply with all of the requirements of this Chapter;
- 11 C. Comply with all other applicable Town ordinances;
- 12 D. Comply with all applicable state laws and administrative regulations pertaining to
- 13 the category of business for which the license was issued, including, but not
- 14 limited to:
  - 15 1. the applicable code;
  - 16 2. the ~~applicable state administrative regulations~~applicable administrative
  - 17 regulations;
  - 18 3. Sections 18-18-406.3 and 25-1.5-106, C.R.S., to the extent applicable; and
  - 19 4. the administrative regulations issued by the Colorado Department of Public
  - 20 Health and Environment found at 5 CCR 1006-2, to the extent applicable,
  - 21 all as amended from time to time. Compliance with the requirements of this
  - 22 Section is a standard condition of each license issued by the Local Licensing
  - 23 Authority.
- 24 E. Comply with all applicable federal laws, rules, or regulations.

25 4-14-18: SUSPENSION OR REVOCATION OF LICENSE:

- 26
- 27 A. A license issued by the Local Licensing Authority may be suspended or revoked
- 28 by the Local Licensing Authority in accordance with the standards and
- 29 procedures set forth in the applicable code, the ~~state applicable~~ administrative
- 30 regulations, and this Chapter.

- 1 | B. In addition to the standards set forth in the applicable code and the ~~state~~  
2 | ~~applicable~~ administrative regulations, a violation of this Chapter, or of the terms  
3 | and conditions of a license issued by the Local Licensing Authority pursuant to  
4 | this Chapter, may be grounds for the suspension or revocation of a license issued  
5 | by the Local Licensing Authority.
- 6 | C. In connection with the suspension of a license, the Local Licensing Authority  
7 | may impose reasonable conditions.
- 8 | D. In deciding whether a license should be suspended or revoked, and in deciding  
9 | what conditions to impose in the event of a suspension, if any, the Local  
10 | Licensing Authority shall consider:
- 11 | 1. the nature and seriousness of the violation;
  - 12 | 2. corrective action, if any, taken by the licensee;
  - 13 | 3. prior violation(s), if any, by the licensee;
  - 14 | 4. the likelihood of recurrence;
  - 15 | 5. all circumstances surrounding the violation;
  - 16 | 6. whether the violation was willful or deliberate;
  - 17 | 7. the number of previous violations by the licensee;
  - 18 | 8. previous sanctions, if any, imposed against the licensee; and
  - 19 | 9. whether the owner or manager is the violator or has directed an employee or  
20 | other individual to violate the law.
- 21 | E. If an offense is described in the ~~applicable state administrative~~  
22 | ~~regulations~~ ~~applicable administrative regulations~~, the Licensing Authority shall  
23 | follow the provisions of such regulation in deciding the appropriate sanction to be  
24 | imposed upon the licensee.
- 25 | F. A license issued by the Local Licensing Authority may be revoked if the Local  
26 | Licensing Authority determines that the licensed premises have been inactive,  
27 | without good cause, for at least one year.
- 28 | G. If the Local Licensing Authority suspends or revokes a license the licensee may  
29 | appeal the suspension or revocation to the district court pursuant to Rule  
30 | 106(a)(4) of the Colorado Rules of Civil Procedure. The licensee's failure to  
31 | timely appeal the decision is a waiver the licensee's right to contest the denial or  
32 | conditional approval of the application.

1 H. No fee previously paid by a licensee in connection with the application shall be  
2 refunded if the licensee's license is suspended or revoked.

3 4-14-19: TRANSFER OF OWNERSHIP; CHANGE OF LOCATION; MODIFICATION  
4 OF PREMISES:  
5

6 A. Subject to the limitations of Subsections B ~~or~~and C of this Section ~~and Section~~  
7 ~~4-4-8(D)~~, the ownership of a license may be transferred, the permanent location  
8 of a licensed premises may be changed, and the licensed premises may be  
9 modified in accordance with the applicable code, the ~~applicable state~~  
10 ~~administrative regulations~~applicable administrative regulations, and this Chapter.

11 B. No change of location of a licensed premises shall be approved by the Local  
12 Licensing Authority if the proposed new location of the licensed premises is not a  
13 location that is permitted by this Chapter.

14 C. No change of location for a medical marijuana business shall be approved by the  
15 Local Licensing Authority until the licensee provides verification that a license  
16 was issued and granted by the State Licensing Authority pursuant to the Colorado  
17 Medical Marijuana Code for the previous license term.

18 D. On or after the effective date of this Chapter:

19 1. the permanent location of a licensed premises shall not be changed from  
20 one location within the Downtown Overlay District to another location  
21 within the Downtown Overlay District; and

22 2. the permanent location of a licensed premises shall not be changed so as to  
23 relocate the licensed premises into the Downtown Overlay District from a  
24 location outside of the Downtown Overlay District; ~~and~~

25 ~~3. the permanent location of a licensed premises within the Downtown~~  
26 ~~Overlay District shall be changed to another location outside of the~~  
27 ~~Downtown Overlay District if the licensee's legal right to possession of the~~  
28 ~~licensed premises is lost for any reason.~~

29 E. The licensed premises may be modified in accordance with the applicable code, the  
30 ~~applicable state administrative regulations~~applicable administrative regulations,  
31 and this Chapter; provided, however, that no licensed premises located within the  
32 Downtown Overlay District as of the effective date of this Chapter may be  
33 modified to increase the square footage of such licensed premises.

34 ~~4-14-20: NUMBER OF LICENSES AUTHORIZED CONSIDERATION OF NUMBER OF~~  
35 ~~EXISTING LICENSES: Before entering a decision approving or denying an application the Local~~  
36 ~~Licensing Authority shall consider, among the other relevant factors described in the applicable~~

1 codes, the number, type, and availability of medical marijuana businesses and retail marijuana  
2 establishments located in or near the premises for which the application has been submitted.  
3

4  
5 A. ~~The total number of licenses of each type that may be issued by the Local Licensing~~  
6 ~~Authority under this Chapter are as follows:~~

License Type	Maximum No. of Licenses
Medical marijuana center (Total of Types 1, 2, & 3 licenses)	7
Optional premises cultivation operation	7
Medical marijuana infused product manufacturing facility	7
Retail marijuana store	7
Retail marijuana cultivation facility	7
Retail marijuana products manufacturer	7
Retail marijuana testing facility	02

7  
8 B. ~~A dual medical marijuana center and a retail marijuana store counts under both~~  
9 ~~the “medical marijuana center” and the “retail marijuana store” categories.~~

10 C. ~~\_\_\_\_\_~~

11 D. ~~A retail marijuana cultivation facility that is located at the same licensed premises~~  
12 ~~as retail marijuana store counts under both the “retail marijuana cultivation~~  
13 ~~facility” and the “retail marijuana store” categories.~~

14 E. ~~\_\_\_\_\_~~

---

<sup>2</sup> ~~The Local Licensing Authority is not authorized to issue a local Retail Marijuana Testing Facility License. See  
Section 4-14-8(B).~~

1 ~~F. Except as provided in subsections B and C of this Section, the Local Licensing~~  
2 ~~Authority shall not issue more licenses of any license type than the number of~~  
3 ~~licenses provided in this Section.~~

4 ~~G.~~

5 ~~H. The limitations of Subsection A of this Section do not require the closure of any~~  
6 ~~business for which a license has been issued prior to the effective date of this~~  
7 ~~Chapter, and such business may continue in operation until the first to occur of:~~  
8 ~~(i) the license is revoked by the Local Licensing Authority or the State Licensing~~  
9 ~~Authority; (ii) the license is abandoned, voluntarily surrendered, or not renewed~~  
10 ~~by the licensee; or (iii) the business is otherwise required to close for any lawful~~  
11 ~~reason.~~

12 ~~I. If the total number of Town issued licenses of any type ever drops below the~~  
13 ~~maximum numbers established in Subsection A of this Section, the Local~~  
14 ~~Licensing Authority shall conduct a random drawing of applications for a new~~  
15 ~~license of the same type submitted by qualified applicants, and shall award the~~  
16 ~~license to the winner of the drawing. If more than one license of the same type is~~  
17 ~~available to be awarded, the Local Licensing Authority shall award such licenses~~  
18 ~~as may be required to bring the total number of licenses to the maximum number~~  
19 ~~for such type of license established in Subsection A of this Section. To be~~  
20 ~~permitted to participate in the drawing an applicant must have: (i) submitted a~~  
21 ~~completed application and all accompanying documentation; (ii) paid all required~~  
22 ~~fees; and (iii) been determined by the Local Licensing Authority to be qualified to~~  
23 ~~hold the type of license to be awarded. In determining whether an applicant is~~  
24 ~~qualified to hold the type of license to be awarded the Local Licensing Authority~~  
25 ~~shall consider, without limitation, the factors set forth in Section (5)(b) of~~  
26 ~~Amendment 64. The Local Licensing Authority may establish further rules and~~  
27 ~~regulations for the administration of the required random drawing by~~  
28 ~~administrative rule and regulation adopted pursuant to Section 4-16-32. Such~~  
29 ~~rules and regulations shall be consistent with the requirements of this Section.~~

30 4-14-21: LOCATION OF LICENSED PREMISES; CO-LOCATION:

31  
32 A. No medical marijuana business or retail marijuana establishment shall be located  
33 at a location that does not conform to the requirements of this Section.

34 ~~A. No medical marijuana business or retail marijuana establishment shall be located~~  
35 ~~within the Town except within Land Use Districts 5, 9, 11,19, 20, or 31,~~or the~~~~  
36 ~~Downtown Overlay District.~~

37 ~~B. Notwithstanding Subsection B of this Section any licensed premises that are~~  
38 ~~lawfully located within the Downtown Overlay District as of this effective date of~~  
39 ~~this Chapter may remain in such location until the first to occur of:~~

1 | ~~1. \_\_\_; provided, however, that except as provided in subsections H and I, no new~~  
2 | ~~medical marijuana business or retail marijuana establishment first licensed~~  
3 | ~~on or after the effective date of this Chapter shall be located in the~~  
4 | ~~Downtown Overlay District. the licensee loses legal right to possession of~~  
5 | ~~the licensed premises for any reason; or~~

6 | ~~2. \_\_\_ September 1, 2014.~~

7 | ~~Upon the first to occur of item (i) or item (2) of this Subsection B, the licensed~~  
8 | ~~premises shall be permanently closed, but may be relocated to a location outside of~~  
9 | ~~the Downtown Overlay District in accordance with Section 4-14-19..~~

10 |  
11 | ~~B.C.~~ In addition to the restriction imposed by Subsection B of this Section, no medical  
12 | marijuana business or retail marijuana establishment shall be located:

- 13 | 1. within 500 feet of a licensed child care facility;
- 14 | 2. within 500 feet of any educational institution or school, college or  
15 | university, either public or private;
- 16 | 3. within 500 feet of any halfway house;
- 17 | 4. adjacent to property being used for a residential use; provided, however,  
18 | this restriction does not apply to an adjacent mixed use building containing  
19 | both residential and commercial units;
- 20 | 5. within any building or structure that contains a residential unit;
- 21 | 6. on the ground floor, if located within the Downtown Overlay District; or
- 22 | 7. on any floor immediately above and below the sidewalk fronting at street  
23 | level of any split level structure within the Downtown Overlay District.

24 | ~~C.D.~~ The distances described in Subsection ~~ED~~ of this Section shall be computed by  
25 | direct measurement from the nearest property line of the existing land use  
26 | described in subsections ~~ED~~(1), ~~ED~~(2), or ~~ED~~(3), above, to the nearest  
27 | portion of the building for which the license is requested, using a route of direct  
28 | pedestrian access.

29 | ~~D.E.~~ The distance limitations established by Subsection ~~ED~~ of this Section shall  
30 | control over the distance limitations set forth in any applicable code or applicable  
31 | administrative regulation.

32 | ~~E.F.~~ Nothing in this Chapter prevents a licensee from physically delivering medical  
33 | marijuana to a homebound patient when done in compliance with the Colorado

1 Medical Marijuana Code and the ~~applicable state administrative~~  
2 ~~regulations~~applicable administrative regulations.

3 F.G. No licensed premises shall be operated as a “home occupation” as described in  
4 Section 9-1-19-38A of this Code.

5 ~~G. — If a medical marijuana business that is located within the Downtown Overlay~~  
6 ~~District as of the effective date of this Chapter is converted to a retail marijuana~~  
7 ~~establishment, the licensed premises must relocated to a location outside of the~~  
8 ~~Downtown Overlay District if the square footage of the licensed premises is~~  
9 ~~increased.~~

10 ~~H. — A medical marijuana business may be located at the same location as a retail~~  
11 ~~marijuana establishment subject to the requirements of the applicable code and~~  
12 ~~the~~ applicable state administrative regulationsapplicable administrative  
13 regulations. ~~However, a medical marijuana business that is located within the~~  
14 ~~Downtown Overlay District as of the effective date of this Chapter may be~~  
15 ~~co-located with a new retail marijuana establishment at its current location only if~~  
16 ~~the square footage of the licensed premises is not increased.~~

17 H.

18 4-14-22: HOURS OF OPERATION: A licensed premises may open no earlier than 8 A.M. and  
19 shall close no later than 10 P.M. the same day, Monday through Sunday. No marijuana shall be  
20 sold or dispensed at a licensed premises when the licensed premises ~~is~~are required to be closed  
21 pursuant to this Section.

22  
23 4-14-23: SIGNAGE: All signage for a licensed premises shall comply with the requirements of  
24 Chapter 2 of Title 8 of this Code. In addition, no licensee shall display a sign for a licensed  
25 premises that contains the word “marijuana” or a graphic/image of any portion of a marijuana  
26 plant.

27  
28 4-14-24: MARIJUANA ACCESSORIES: Marijuana accessories may lawfully be sold at a retail  
29 marijuana store or a medical marijuana center. Such items shall be sold at a retail marijuana store  
30 only to persons authorized by law to purchase retail marijuana, and at a medical marijuana center  
31 only to persons authorized to purchase medical marijuana.

32  
33 4-14-25: ON-SITE CULTIVATION, GROWING AND PROCESSING: ~~¶~~The growing,  
34 cultivation, or processing of marijuana on or within a licensed premises is prohibited unless  
35 allowed by the applicable codes and applicable administrative regulations, and the licensed  
36 premises ~~is~~are equipped with a proper ventilation system that filters out the odor of marijuana so  
37 that the odor is not capable of being detected by a person with a normal sense of smell at the  
38 exterior of the licensed premises.

1 4-14-26: DISPLAY OF MARIJUANA: No marijuana shall be displayed within a licensed  
2 premises so as to be visible through a glass, a window, or a door by a person of normal visual  
3 acuity standing at the outside perimeter of the licensed premises.  
4

5 4-14-27: TAXES: Each licensee shall collect and remit to the appropriate taxing authority all sales  
6 and excise taxes that are lawfully due in accordance with applicable law.  
7

8 4-14-28: WAREHOUSE STORAGE PERMITS: The Local Licensing Authority is authorized to  
9 give the Town's consent to the state's issuance of a warehouse storage permit pursuant to any  
10 applicable state administrative regulation.  
11

12 4-14-29: VIOLATIONS; PENALTIES; INJUNCTIVE RELIEF:  
13

14 A. It is unlawful and a civil infraction for any person to violate any provision of this  
15 Chapter. Any person found to be in violation of this Chapter, or against whom a  
16 default judgment has been entered for a violation of this Chapter, shall be  
17 punished as provided in Section 1-4-1-1 of this Code.

18 B. It is unlawful and a misdemeanor offense for any person to violate any of the  
19 misdemeanor offenses described in Part 9 of the Colorado Medical Marijuana  
20 Code, or in Part 9 of the Colorado Retail Marijuana Code. Any person convicted  
21 of any of the misdemeanor offenses described in Part 9 of the Colorado Medical  
22 Marijuana Code or in Part 9 of the Colorado Retail Marijuana Code shall be  
23 punished as provided in Section 1-4-1 this Code.

24 C. The operation of a medical marijuana business or retail marijuana establishment  
25 in violation of this Chapter, the applicable code, or the applicable **state**  
26 administrative regulation<sub>s</sub> may be enjoined by the Town in an action brought in a  
27 court of competent jurisdiction.

28 D. If any action is brought in a court of law by any person concerning the  
29 enforcement, interpretation, or construction of this Chapter, or any license issued  
30 by the Local Licensing Authority, the Town shall recover its reasonable attorney  
31 fees, expert witness fees, and court costs if it is the prevailing party.

32 E. The remedies provided in this Section are in addition to any other remedy  
33 provided by applicable law.

34 4-14-30: NO TOWN LIABILITY: By operating a business pursuant to a license issued by the  
35 Local Licensing Authority a licensee releases the Town, its officers, elected officials, employees,  
36 attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result  
37 from any arrest or prosecution of the licensee, or the licensee's owners, operators, employees,  
38 clients, or customers, for a violation of any state or federal law, rule or regulation related to retail  
39 marijuana or medical marijuana, or from the forced closure of the licensed premises because the

1 | Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, any applicable **state**  
2 administrative regulation, and/or this Chapter, are found to be invalid under any superior law.

3  
4 4-14-31: OTHER LAWS REMAIN APPLICABLE: Before issuing a license the Local Licensing  
5 Authority shall obtain written confirmation from the licensee that the licensee understands and  
6 agrees to the following:

- 7  
8       A.     Neither this Chapter, nor the act of obtaining a license from the Local Licensing  
9             Authority, protects licensees, or the owners, operators, employees, customers,  
10            and clients of a licensed premises, from criminal prosecution pursuant to any  
11            superior law that prohibits the cultivation, sale, use, or possession of controlled  
12            substances, including, but not limited to, medical marijuana and retail marijuana.
- 13       B.     As of the date of the adoption of this Chapter the cultivation, sale, possession,  
14             distribution, and use of marijuana remains a violation of federal law, and this  
15             Chapter affords licensees, and licensee’s owners, operators, employees,  
16             customers, and clients, with no protection from criminal prosecution under such  
17             law. Licensees, and their owners, operators, employees, customers, and clients  
18             assume any and all risk and liability arising or resulting from the operation of the  
19             licensed premises under federal law.
- 20       C.     The Town has no liability to a licensee or any other person for injuries, damages,  
21             or liabilities of any kind, under any legal theory of liability, arising from the  
22             forced closure of the licensed premises if the Colorado Medical Marijuana Code,  
23             the Colorado Retail Marijuana Code, the **state-applicable** administrative  
24             regulations, and/or this Chapter are found to be invalid or illegal under any  
25             superior law.
- 26       D.     To the greatest extent permitted by law, any action taken under the provisions of  
27             this Chapter by any public officer or officers, elected or appointed officials,  
28             employees, attorneys, and agents of the Town of Breckenridge, is not a personal  
29             liability of such person or of the Town.

30 4-14-32: RULES AND REGULATIONS: The Local Licensing Authority may from time to time  
31 adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the  
32 proper administration of this Chapter. Such regulations shall be adopted in accordance with the  
33 procedures established by Chapter 18, Title 1 of this Code.

34  
35 **4-14-33: EFFECTIVE DATE: This Chapter is effective October 1, 2013.**

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



**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 35 (Value-Based Municipal Offense Ordinance)

DATE: September 3, 2013 (for September 10<sup>th</sup> meeting)

---

The second reading of the ordinance that increases the cap on certain “value-based” municipal offenses that can be prosecuted in the Town’s municipal court from \$1,000 to \$2,000 is scheduled for your meeting on September 10<sup>th</sup>.

A “value-based” municipal offense is one that is dependent on the value of the property that is involved in the criminal act. For example, if property is stolen the classification of the crime is based on the value of the property that is stolen.

Under Colorado law, municipalities cannot make a municipal offense out of an act that is classified as a felony under state law. Felonies must be prosecuted in the state court system. A new state law sets the threshold for value-based felony crimes at \$2,000 or more. As a result of this change, value-based crimes involving property with a value of **less** than \$2,000 are now classified as misdemeanor offenses, and can be made municipal offenses and prosecuted in the municipal court.

By taking advantage of the new legislation the Town can prosecute in the municipal court value-based crimes (such as theft) involving property with a value of up to \$2,000, instead of the \$1,000 value cap that currently exists. Staff believes it would be in the Town’s best interest to be able to prosecute value-based crimes of up to \$2,000 in the Town’s municipal court, and supports the adoption of this ordinance.

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 – SEPT. 10**

2  
3 **NO CHANGE FROM FIRST READING**

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

7  
8 COUNCIL BILL NO.35

9  
10 Series 2013

11  
12 AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 6 OF THE BRECKENRIDGE  
13 TOWN CODE CONCERNING CERTAIN VALUE-BASED MUNICIPAL OFFENSES  
14

15 WHEREAS, HB13-1160, which became effective June 5, 2013, authorizes municipalities  
16 to increase the monetary limits of certain of their value-based counterpart misdemeanor  
17 municipal crimes from One Thousand Dollars (\$1,000.00) to Two Thousand Dollars  
18 (\$2,000.00); and  
19

20 WHEREAS, the Town Council of the Town of Breckenridge desires to amend those  
21 portions of Chapter 3 of Title 6 of the Breckenridge Town Code which deal with certain value-  
22 based misdemeanor municipal offenses so as to reflect the increase in the misdemeanor monetary  
23 limits made by HB13-1160.  
24

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

28 Section 1. Subsection E of Section 6-3B-1 of the Breckenridge Town Code, entitled  
29 “Theft”, is amended so as to read in its entirety as follows:  
30

31 E. Where the value of the thing involved is less than ~~one~~ **two** thousand dollars  
32 ~~(\$1,000.00)~~ **(\$2,000.00)**.  
33

34 Section 2. Section 6-3B-1A of the Breckenridge Town Code, entitled “Theft By  
35 Receiving”, is amended so as to read in its entirety as follows:  
36

37 6-3B-1A: THEFT BY RECEIVING:  
38

39 A person commits theft by receiving when he receives, retains, loans money by  
40 pawn or pledge on, or disposes of anything of value of another, knowing or  
41 believing that said thing of value has been stolen, and when he intends to deprive  
42 the lawful owner permanently of the use or benefit of the thing of value, provided  
43 the value of the thing is less ~~one~~ **two** thousand dollars ~~(\$1,000.00)~~ **(\$2,000.00)**.

1  
2       Section 3. Subsections A and B of Section 6-3B-2 of the Breckenridge Town Code,  
3 pertaining to the municipal offense of “Shoplifting”, are amended so as to read in their entirety  
4 as follows:

5  
6       A. Prohibited: It shall be unlawful to commit the crime of shoplifting. A person  
7 commits the crime of shoplifting when he knowingly takes possession of any  
8 unpurchased goods, wares or merchandise of a value of less than ~~one~~ two  
9 thousand dollars ~~(\$1,000.00)~~ (\$2,000.00), owned or held by and offered or  
10 displayed for sale by any store or mercantile establishment, with the intention of  
11 converting such goods, wares or merchandise to his own use, without paying the  
12 purchase price thereof.

13  
14       B. Concealment of Goods: If any person willfully conceals unpurchased goods,  
15 wares or merchandise of value of less than ~~one~~ two thousand dollars  
16 ~~(\$1,000.00)~~ (\$2,000.00) owned or held by and offered or displayed for sale by any  
17 store or other mercantile establishment, such concealment constitutes prima facie  
18 evidence that the person intended to convert the same to his own use without  
19 paying the purchase price therefor within the meaning of subsection A above.

20  
21       Section 4. Section 6-3B-3 of the Breckenridge Town Code, entitled “Price Switching”, is  
22 amended so as to read in its entirety as follows:

23  
24       6-3B-3: PRICE SWITCHING:

25  
26       It is unlawful for any person to willfully alter, remove or switch the indicated  
27 price of any unpurchased goods, wares or merchandise owned by any store or  
28 other mercantile establishment; provided, however, that this Section shall not  
29 apply to goods, wares or merchandise of a value of ~~one~~ two thousand dollars  
30 ~~(\$1,000.00)~~ (\$2,000.00) or more.

31  
32       Section 5. Subsection B of Section 6-3B-4 of the Breckenridge Town Code, entitled  
33 “Procuring Food or Accommodations With Intent To Defraud”, is amended so as to read in its  
34 entirety as follows:

35  
36       B. This Section shall not apply if the total amount due under the agreement ~~one~~  
37 two thousand dollars ~~(\$1,000.00)~~ (\$2,000.00) or more.

38  
39       Section 6. Subsections C(1) and C(2) of Section 6-3B-6 of the Breckenridge Town Code,  
40 pertaining to the municipal offense of “Fraud By Check”, are amended so as to read in their  
41 entirety as follows:

42  
43       1. The check alleged to be fraudulent was for the sum of ~~one~~ two thousand dollars  
44 ~~(\$1,000.00)~~ (\$2,000.00) or more; or

1 2. The person has committed fraud by check involving the issuance of two (2) or  
2 more checks within any sixty (60) day period in the State totaling ~~one~~ **two**  
3 thousand dollars (~~\$1,000.00~~) **(\$2,000.00)** or more in the aggregate; or  
4

5 Section 7. Subsection C of Section 6-3B-7 of the Breckenridge Town Code, pertaining to  
6 the municipal offense of “Fraudulent Use of Credit Device”, is amended so as to read in its  
7 entirety as follows:  
8

9 C. If the total value of property or services obtained by the fraudulent use of a  
10 single credit device within a six (6) month period is ~~one~~ **two** thousand dollars  
11 (~~\$1,000.00~~) **(\$2,000.00)** or more, then this Section does not apply.  
12

13 Section 8. Section 6-3B-14 of the Breckenridge Town Code, entitled “Damage To  
14 Private Property”, is amended so as to read in its entirety as follows:  
15

16 6-3B-14: DAMAGE TO PRIVATE PROPERTY:  
17

18 It shall be unlawful for any person intentionally, knowingly, or recklessly to  
19 injure, deface, destroy, or sever in any manner any real or personal property, or  
20 improvements thereto, of any other person in this Town where the aggregate  
21 damage is less than ~~one~~ **two** thousand dollars (~~\$1,000.00~~) **(\$2,000.00)**.  
22

23 Section 9. Section 6-3B-15 of the Breckenridge Town Code, entitled “Damage To Town  
24 Property”, is amended so as to read in its entirety as follows:  
25

26 6-3B-15: DAMAGE TO TOWN PROPERTY:  
27

28 It shall be unlawful for any person intentionally, knowingly, or recklessly to  
29 injure, deface, destroy or sever in any manner any real or personal property, or  
30 improvements thereto, belonging to the Town where the aggregate damage is less  
31 than ~~one~~ **two** thousand dollars (~~\$1,000.00~~) **(\$2,000.00)**.  
32

33 Section 10. Section 6-3C-5 of the Breckenridge Town Code, entitled, “Injury Or  
34 Removal Of Signs”, is amended so as to read in its entirety as follows:  
35

36 6-3C-5: INJURY OR REMOVAL OF SIGNS:  
37

38 It is hereby unlawful for any unauthorized person to willfully remove, deface,  
39 injure, damage or destroy any street sign, or traffic-control or warning sign,  
40 barricade, or device erected or placed in or adjacent to any street. It is further  
41 provided that this Section shall not apply when the aggregate damage to such  
42 street sign, barricade, or traffic-control or warning device is ~~one~~ **two** thousand  
43 dollars (~~\$1,000.00~~) **(\$2,000.00)** or more.  
44



**MEMO**

TO: Town Council  
FROM: Town Attorney  
RE: Council Bill No. 36 (Approving Lease with Beartown LLC)  
DATE: September 3, 2013 (for September 10<sup>th</sup> meeting)

---

The second reading of the ordinance approving the new Lease with Beartown LLC is scheduled for your meeting on September 10<sup>th</sup>. There are no changes proposed to either the ordinance or the Lease from first reading.

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

1                   ***FOR WORKSESSION/SECOND READING – SEPT. 10***

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

4  
5                                   COUNCIL BILL NO. 36

6  
7                                   Series 2013

8  
9                   AN ORDINANCE APPROVING A LONG-TERM LEASE WITH BEARTOWN LLC, A  
10                                   COLORADO LIMITED LIABILITY COMPANY

11  
12                   WHEREAS, the Town of Breckenridge owns the real property commonly known and  
13 described as 13217 Colorado Highway 9 in Breckenridge, Colorado; and

14  
15                   WHEREAS, the Town Council has agreed to enter into a long-term lease for the Town’s  
16 property with Beartown LLC, a Colorado limited liability company; and

17  
18                   WHEREAS, a proposed Lease has been prepared by the Town Attorney and reviewed by  
19 the Town Council; and

20  
21                   WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

22                                   The council may lease, for such time as council shall determine, any real or  
23 personal property to or from any person, firm, corporation, public and private,  
24 governmental or otherwise.

25  
26  
27 and;

28  
29                   WHEREAS, the term of the proposed Lease exceeds one year in length; and

30  
31                   WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate  
32 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

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

36  
37                   Section 1. The Lease between the Town and Beartown LLC, a Colorado limited liability  
38 company, a copy of which is marked **Exhibit “A”**, attached hereto and incorporated herein by  
39 reference, is approved, and the Town Manager is authorized, empowered, and directed to execute  
40 such agreement for and on behalf of the Town of Breckenridge.

41  
42                   Section 2. Minor changes to or amendments of the approved Lease may be made by the  
43 Town Manager if the Town Attorney certifies in writing that the proposed changes or

1 amendments do not substantially affect the consideration to be received or paid by the Town  
2 pursuant to the approved Lease, or the essential elements of the approved Lease.

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

7  
8 Section 4. 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 \_\_\_\_\_, 2013. 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 \_\_\_\_\_, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal  
15 Building of the 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 Helen Cospolich , Town Clerk

## LEASE

THIS LEASE ("Lease") is made and entered into this 1st day of October 2013 between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Landlord") and Beartown LLC, a Colorado limited liability company ("Tenant").

- 1) Property Leased. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon the terms and conditions set forth in this Lease, the following real property located in the County of Summit and State of Colorado, to wit: The premises commonly known and described as 13217 Colorado Highway 9, Breckenridge, Colorado 80424. The premises consist of the showroom which is approximately 1,559 sf; the workshop which is approximately 2,475 sf; and the house which is approximately 2,153 sf, and includes a garage that is has been converted to living space. The premises are depicted on the attached Exhibit "A", which is incorporated herein by reference (the "Premises")
  
- 2) Term.
  - a) Length of Term. The term of this Lease shall be deemed to have commenced as of 12:01 A.M., local time, on October 1, 2013, and shall end, subject to earlier termination as hereafter provided, at 11:59 P.M., local time, five (5) years subsequent to the date hereof.
  
  - b) Holdover By Tenant. Should Tenant remain in possession of the Premises with the consent of Landlord after the natural expiration of this Lease, a new tenancy from month to month shall be created between Landlord and Tenant which shall be subject to all the terms and conditions hereof, but shall be terminable on sixty (60) days' written notice served by either Landlord or Tenant on the other party.
  
  - c) Early Termination. Notwithstanding the stated term of this Lease as described in Subparagraph 2(a), this Lease may be terminated by either Landlord (if authorized by the Breckenridge Town Council) or Tenant, without liability for breach of this Lease, as follows:
    - i) Written notice of early termination shall be given to the non-terminating party in accordance with the provisions of Paragraph 27 of this Lease. If the Tenant is the terminating party, Tenant shall give Landlord at least thirty (30) days' prior written notice of early termination.
  
    - ii) In order to give the Tenant time to attempt to liquidate its inventory on the Premises:
      - (1) If the Landlord provides written notice of early termination between November 1 and March 1 of any year, the Tenant shall vacate the Premises by the next October 31 following the notification.
  
      - (2) If the Landlord provides notice of early termination between March 2 and October 31 of any year, the Tenant shall vacate the Premises by April 30 of the following year.

3) Premises.

- a) Use of Premises. The Premises may be used by the Tenant only for the manufacture of furniture and accessories, indoor and outdoor display, retail sales of furniture and accessories, residential and the storage of furniture and accessories, and for no other purpose without Landlord's prior written consent. During the term of this Lease, Tenant shall comply with: (i) all the reasonable rules and regulations (not inconsistent with the provisions of this Lease) which the Landlord may make for the protection of the Premises; and (ii) all the laws, ordinances, regulations, rules, and orders of appropriate governmental authorities either now in force or hereafter enacted pertaining to police, fire, sanitation, occupancy, preservation and use of the Premises. Tenant shall not, during the term of this Lease, maintain, commit, or permit the maintenance or commission of any hazard, waste or nuisance on the Premises. The Premises outside of the berm may not be used for storage of large personal items such as trailers, camp trailers, boats or other like items.
- b) Inspection Of Premises. Tenant acknowledges that it has inspected the Premises. Tenant accepts the Premises in "AS IS" condition without recourse to Landlord for any dangerous conditions, known or unknown. Tenant further stipulates that the Premises, including, but not limited to, all grounds, improvements and appliance (if any) are, at the time of this Lease, in good order, repair, and a safe, clean, and tenantable condition.
- c) Surrender of Premises; Removal of Tenant's Property. At the end of the term of this Lease Tenant shall surrender the Premises to the Landlord in as good a condition as existed at the time of the commencement of this Lease, normal wear and tear excepted. At the end of the term of this Lease Tenant shall remove its property from the Premises. Any property of Tenant not removed from the Premises by Tenant at the end of the term of this Lease shall be considered abandoned, and Landlord shall have the right (but not the duty), without any notice to Tenant, to sell or otherwise dispose of the same at the expense of the Tenant. If any of Tenant's property is so disposed of by Landlord, Landlord shall not be accountable to the Tenant for any part of the proceeds of such sale, if any.

4) Rent.

- a) Due Date. The Tenant will pay rent to Landlord not later than the twentieth day of each month beginning November 20, 2013.
- b) Rent Amount. The rent for the Premises shall be \$2,600 per month, or seven percent (7%) of Tenant's gross revenues for the preceding month, whichever is greater. As used in this subsection (b) "gross revenues" means all revenues, of whatever kind or nature, generated by Tenant from the conduct of Tenant's business operations at the Premises. When properly recorded and accounted for, a reduction from gross revenues will be allowed for: (a) bona fide returns for credit; (b) sales taxes collected for remittance to the State or Town; and (c) any wholesale (non-retail) sales made by Tenant. No deduction or

reduction from gross revenues will be allowed for bad debts, loss from theft or any other deduction except as expressly provided otherwise in this Lease. Tenant's gross revenues will be based on revenues from the first day of the month to the last day of the month.

- c) Pro Rated Rent. If the term begins on any day other than the first day of the month, or ends on any day other than the last day of month, the monthly rent shall be prorated accordingly.
  - d) Late Fees. A late charge of five percent (5%) shall be paid on any installment of rent not received by Landlord within ten (10) days of the due date.
- 5) Security Deposit. No security deposit is required.
- 6) Landlord's Lien And Security Interest. Landlord shall at all times have a security interest and a lien for all rent and other sums becoming due hereunder from Tenant upon all personal property of Tenant located in the Premises, and such property shall not be removed without the consent of Landlord until all arrearages in rent and other sums then due to Landlord shall first have been paid. Upon the occurrence of any event of default by Tenant, Landlord may foreclose its security interest and lien in the manner provided by law for the foreclosure of a security interest. Tenant agrees that Landlord may file a financing statement in a form legally sufficient to perfect the security interest in the lien granted to Landlord pursuant to this Paragraph.
- 7) Utilities. Tenant shall initiate, contract for, and obtain, in its name, all utility services required in connection with its use of the Premises, including, but not limited to, water, gas, electricity, telephone and trash removal, and Tenant shall pay all charges for such services as they become due. Landlord shall not be liable for any personal injury or property damage resulting from the negligent operation or faulty installation of utility services provided for use on the Premises, nor shall Landlord be liable for any injury or damage suffered by Tenant as a result of the failure to make necessary repairs to the utility facilities. Tenant shall be liable for any injury or damages to the equipment or service lines of the utility suppliers that are located on the Premises, resulting from the negligent or willful acts of Tenant. In particular, Tenant shall be liable for any loss or damage due to freezing, stoppage, or blockage of water pipes or plumbing fixtures on the Premises.
- 8) Maintenance, Repair And Snow Plowing.
- a) Tenant's Maintenance Obligation. Tenant shall: (i) keep the fixtures and appliances in, or about the Premises in good order and repair; and (ii) perform all required maintenance and repairs to the Premises and the appurtenances thereto, including fixtures and appliances.
  - b) Snow Removal. Tenant shall provide all required snow plowing and snow and ice removal necessary to allow the Premises to be used by Tenant for the uses described in subparagraph 3(a).

- c) Trash Accumulation. Tenant shall keep the grounds which are part of the Premise neat, clean and free from any accumulation of trash, rubbish or unsightly debris.
- 9) Hazardous Materials. Tenant shall not store or permitted the storage on the Premises of any type of hazardous or similar material that is regulated by federal, state or local regulation without the prior, written consent of the Landlord.
- 10) Alterations And Improvements. Tenant shall make no alterations to the Premises or construct any building or make improvements to the Premises without the prior written consent of Landlord. All alterations, changes and improvements built, constructed or placed on the Premises by Tenant, with the exception of fixtures removable without damage to the Premises and moveable personal property shall, unless otherwise provided by written agreement between Landlord and Tenant, be the property of the Landlord and remain on the Premises at the expiration or sooner termination of this Lease.
- 11) Signs. Tenant may not post, place, affix, erect, or display any sign within or outside of the Leased Premises without Landlord's prior approval, which approval may be granted, withheld, or conditionally approved in Landlord's sole and absolute discretion. In considering Tenant's request to place a sign within or outside of the Leased Premises, Landlord acts in its capacity as landlord of the Leased Premises, and not in its governmental capacity. Landlord may remove any sign placed within or outside of the Leased Premises in violation of the portions of this subparagraph. In addition to obtaining Landlord's discretionary permission as described above, Tenant must also obtain any required sign permit from Landlord acting in its governmental capacity. Tenant will maintain all signs located within or outside of the Leased Premises in good, clean, and attractive condition. Tenant will remove all signs placed by Tenant within or outside of the Leased Premises at the expiration or earlier termination of this Lease, and repair any damage or injury caused thereby. If not so removed by Tenant, the Landlord may remove such sign(s) at Tenant's expense.
- 12) Liens. Tenant shall not permit the creation of any type of lien upon the Premises, including, but not limited to, a mechanic's or materialmen's lien. The indemnification provisions of this Lease shall apply to any such lien. If, because of any act or omission of Tenant, and resulting from Tenant's work on the Premises, any mechanic's or other lien, charge or order for the payment of money shall be filed against the Premises, Tenant shall, at Tenant's own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days from the filing of such lien.
- 13) Assignment And Sublease. Tenant shall not sublet the Premises or any part thereof, or assign this Lease, or any part hereof, without the prior written consent of the Landlord.
- 14) Taxes.
- a) Taxes Defined. As used in this Lease, the term "taxes" shall mean all personal property and real property taxes that may be levied, assessed or imposed arising out of Tenant's occupancy and use of the Premises pursuant to this Lease.

- b) Possessory Interests. Pursuant to Section 39-3-105, C.R.S., all real or personal property owned by Landlord is exempt from taxation. However, the parties acknowledge that Tenant's occupancy and use of the Premises pursuant to this Lease may be deemed to be a taxable possessory interest.
- c) Tenant To Pay Taxes. Any taxes lawfully assessed arising from Tenant's occupancy and use of the Premises pursuant to this Lease shall be paid by Tenant, and Tenant shall indemnify and hold Landlord harmless from any such taxes. Any taxes due arising from Tenant's occupancy and use of the Premises pursuant to this Lease shall be paid by Tenant in a timely manner. Prior to the last day for payment of such taxes without penalty or interest, Tenant shall provide to Landlord a photostatic copy of the receipt(s) or cancelled check(s) showing payment of the taxes. Tenant may pay any taxes in installments if permitted by law.
- d) Tenant's Right to Contest Taxes. In the event Tenant is liable for the payment of any taxes arising from Tenant's occupancy and use of the Premises pursuant to this Lease, Tenant shall have the right, at Tenant's sole expense, to contest any such taxes by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings; provided that Tenant makes timely payment of such taxes if Tenant loses the contest. Tenant shall advise Landlord prior to instituting any such contest and shall as a condition of exercising such right provide Landlord such reasonable assurance as it may request that such contest will be in compliance with the provisions of this Paragraph. Landlord, at Tenant's sole cost and expense, shall reasonably cooperate with Tenant in any such contest, may join in the contest, and shall execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

15) Insurance.

- a) General Liability. Tenant shall procure and maintain throughout the term of this Lease commercial general liability insurance with minimum combined single limits of not less than the limits of liability established under the Colorado Governmental Immunity Act (§24-10-101, et seq., C.R.S.) ("Act"), which limits are as of the commencement of this Lease \$350,000 per person per occurrence and \$990,000 aggregate per occurrence. Such coverages shall be procured and maintained with forms and insurers acceptable to the Landlord. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Tenant pursuant to Paragraph 17 of this Lease. In the case of any claims-made policy, the necessary retroactive damages and extended reporting periods shall be procured to maintain such continuous coverages.
- b) Endorsements. The commercial general liability insurance policy required by Subparagraph 15(a), above, shall be endorsed to include the Landlord and Landlord's officers and employees as additional insured. Tenant's commercial general liability policy shall be primary insurance, and any insurance carried by Landlord, its officers, or its employees, or carried by or provided through any insurance pool of Landlord, shall be

excess and not contributory insurance to that provided by Tenant. Tenant shall be solely responsible for any deductible losses under its commercial general liability policy.

- c) Certificate of Insurance. A certificate of insurance shall be completed by Tenant's insurance agent and provided to the Landlord as evidence that a commercial general liability insurance policy providing the required coverages, conditions, and minimum limits is in full force and effect and shall be reviewed and approved by Landlord prior to commencement of the term of this Lease. The certificate shall identify this Lease and shall provide that the coverages afforded under the policy shall not be canceled or terminated until at least thirty (30) days' prior written notice has been given to Landlord. The completed certificate of insurance shall be sent to:

Town Clerk  
P.O. Box 168  
Breckenridge, CO 80424

- d) Failure to Maintain Insurance. Notwithstanding any other portion of this Lease, failure on the part of Tenant to procure or maintain a policy of commercial general liability insurance providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Lease for which Landlord may immediately terminate this Lease, or, at its discretion, Landlord may procure or renew any such policy or any extended reporting period thereto, and may pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant to Landlord upon demand, together with interest thereon at the highest legal rate.

- 16) No Waiver Of Governmental Immunity. The parties hereto understand and agree that Landlord is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Act., as from time to time amended, or any other limitation or defense otherwise available to Landlord, its officers, or its employees.

- 17) Indemnification. Tenant agrees to indemnify and hold the Landlord, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with Tenant's possession or use of the Premises pursuant to this Lease, or Tenant's breach of this Lease, except to the extent such liability, claim or demand arises through the negligence or willful act of Landlord, its officers, employees, or agents, or Landlord's breach of this Lease. Tenant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Tenant, and also to bear all other costs and expenses related thereto. When the claim is caused by the joint negligence or willful misconduct of Tenant and Landlord or Tenant and a third party unrelated to Tenant (except a party for whom Tenant is vicariously liable pursuant to Paragraph 37 of this Lease), Tenant's duty to defend, indemnify and hold Landlord harmless

shall be in proportion to Tenant's allocable share of the joint negligence or willful misconduct.

- 18) Non-liability Of Landlord. Tenant hereby releases Landlord, and the representatives, agent, and employees of Landlord, from any and all liability for any injury or damage to Tenant, or to Tenant's property located on or about the Premises, resulting from any cause whatsoever, except injury or damage resulting from the willful act of Landlord, or the representatives, agents, and employees of Landlord.
- 19) Tenant's Option To Repair or Rebuild Premises Damaged By Casualty Loss. If the Premises shall be damaged by fire or other casualty, regardless of the cause, Tenant shall have the option, at Tenant's sole expense, to repair such damage (if the Premises are less than a total loss) or rebuild the Premises (if the Premises are a total loss). If Tenant elects to repair or rebuild the Premises, such action shall not constitute the basis for an extension of this Lease, it being expressly understood and agreed that any action of Tenant in repairing or rebuilding the Premises is voluntarily undertaken with not expectation that the term of this Lease will be extended to allow Tenant to recoup its investment in repairing or rebuilding the Premises. If Tenant elects to repair or rebuild the Premises following a fire or other casualty loss, rent shall be abated for so long as the Premises may not be lawfully occupied and used by the Tenant for the purposes set forth in Paragraph 3(a). Following a fire or other casualty loss, Tenant shall notify Landlord within twenty (20) days if Tenant elects to repair or rebuild the Premises in accordance with this Paragraph. If Tenant elects not to repair or rebuild the Premises following a casualty loss, or fails to notify Landlord of its intention within such twenty (20) day period, Landlord may terminate this Lease upon written notice to Tenant. As used in this Paragraph 19, the term "casualty" shall mean damage to the Premises caused by fire, wind, rain, snow, flood explosion, or any other accident or unforeseen event or occurrence.
- 20) Tenant Default. Tenant shall be in default under this Lease if Tenant fails to comply with any of the terms, provisions or covenants of this Lease within three (3) days following services of a demand for compliance notice by Landlord in accordance with Colorado law.
- 21) Landlord's Remedies Upon Default. If the Tenant is in default under this Lease, Landlord shall have all of the remedies provided for in such circumstances by Colorado law, including without limitation, the right to terminate this Lease by written notice to Tenant, in which event Tenant shall immediately surrender the Premises to Landlord and, if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or evict Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for any claim for damages therefore.
- 22) Abandonment. If, at any time during the term of this Lease, Tenant abandons the Premises, Landlord may, at its option, and with or without terminating this Lease, enter the Premises by any means without being liable for any prosecution therefore, and without becoming liable to Tenant for damages or for any payment of any kind whatsoever, and may, at Landlord's

discretion, retake possession and make such changes and repair as may be required, relet the Premises for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this Lease during the balance of the unexpired term, and the net rent for such period realized by Landlord by means of such reletting, less all expenses of such changes and repairs.

- 23) Landlord Default; Tenant's Remedies. In the event Landlord materially defaults in its performance of any of the material covenants or agreements to be kept, done or performed by Landlord under the terms of this Lease, Tenant shall notify the Landlord in writing of the nature of such default. Within five (5) days following receipt of such notice the Landlord shall correct such default; or, in the event of a default not capable of being corrected within five (5) days, the Landlord shall commence correcting the default within five (5) days of receipt of notification thereof and thereafter correct the default with due diligence. If the Landlord fails to correct the default as provided above, the Tenant shall have such rights as may be provided by applicable Colorado law.
- 24) Quiet Enjoyment. Landlord covenants that upon paying the rent and performing the covenants herein contained, Tenant shall peacefully and quietly have, hold, and enjoy the Premises for the agreed term.
- 25) Access To Premises. Tenant shall permit Landlord, its agents, employees and contractors, to have access to and to enter the Premises at all reasonable and necessary times to inspect the Premises for any purpose connected with the repair, improvement, care and management of the Premises, or for any other purpose reasonably connected with Landlord's interest in the Premises.
- 26) Attorney's Fees. Tenant shall pay all reasonable attorneys' fees and costs on behalf of Landlord if:
- a) Landlord retains an attorney to institute litigation against Tenant for a breach of the terms and conditions of the Lease;
  - b) Landlord retains an attorney to institute litigation against Tenant for unlawful detainer of the Premises; or
  - c) Landlord is made party to litigation against Tenant instituted by a third party by reason of Landlord's ownership of the Premises, wherein Landlord is not at fault either actually or by reason of the responsibilities and liabilities assumed by Tenant in this Lease.
  - d) The reasonable attorneys' fees and costs incurred by Landlord herein shall be paid by Tenant whether litigation is actually instituted or prosecuted to judgment or not.
- 27) Notices. Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

If To Landlord:

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

WITH A COPY (WHICH SHALL  
NOT CONSTITUTE NOTICE) TO:

Timothy H. Berry, Esq.  
Timothy H. Berry, P.C.  
P. O. Box 2  
Leadville, CO 80461

If To Tenant:

Beartown LLC  
Alison Palmer  
P.O. Box 2768  
Breckenridge, CO 80424

Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given on the third day following mailing. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process. E-mail is not a valid way to give notice under this Lease.

28) Time Of Essence. Time is of the essence of this Lease.

29) No Partnership. Notwithstanding anything contained in this Lease to the contrary, it is expressly understood and agreed that the Landlord shall not be construed or held to be a partner, associate or joint venturer of Tenant in the conduct of Tenant's business.

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

31) Complete Agreement. It is understood and agreed that this Lease contains the complete and final expression of the agreement between the parties as to the subject matter of this Lease and that there are no promises, representations, or inducements except as are herein set forth.

32) Modification. This Lease may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

33) Applicable Law; Venue; Waiver of Jury Trial. This Lease shall be interpreted in all respects in accordance with the laws of the State of Colorado. The parties agree to the jurisdiction and

venue of the courts of Summit County, Colorado in connection with any dispute arising out of or in any matter connected with this Lease. **BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET OR CONSTRUE THIS AGREEMENT.**

- 34) Counterparts. This Lease may be execute simultaneously in two or more counterparts, each of which shall be considered an original for all purposes and all of which together shall constitute but one and the same instrument.
- 35) Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Lease.
- 36) Waiver. The failure of either party to exercise any of its rights under this Lease shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.
- 37) Tenant's Vicarious Responsibility. Tenant shall be responsible under this Lease for the conduct or actions of Tenant's members, customers, business invitees, contractors and other persons who are permitted, allowed or are authorized to use the Premises by the Tenant.
- 38) Terminology. Wherever applicable, the pronouns in this Lease designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Lease, the singular shall include the plural, and the plural shall include the singular.
- 39) Landlord's Consent. As to any consent that is required or permitted to be given by Landlord under this Lease, such consent may be withheld in Landlord's sole and absolute discretion.
- 40) No Recording. This Lease shall **NOT** be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado.
- 41) Binding Effect. This Lease shall be binding upon, and shall inure to the benefit of the parties, and their respective successors and permitted assigns.
- 42) Copy of Agreement. Both parties hereby acknowledge receipt of a complete and signed copy of this Lease.

LANDLORD: TOWN OF BRECKENRIDGE, a  
Colorado municipal corporation

By \_\_\_\_\_

Tim Gagen, Town Manager

TENANT:

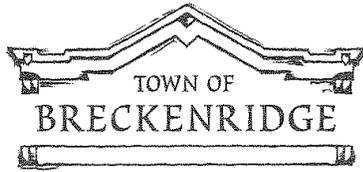
Beartown LLC, a Colorado limited liability company

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

Print Name: \_\_\_\_\_

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

**Exhibit A**  
**Map of the “Premises”**



## MEMORANDUM

**TO: Mayor and Town Council**

**FROM: Julia Puester, AICP**

**DATE: September 4, 2013 for meeting of September 10, 2013**

**SUBJECT: First Reading: Amendment to the Subdivision Standards for Rights-of-Way Acquisition**

---

Enclosed in this packet is an ordinance modifying the Subdivision Standards. This proposal would exclude parcels from a subdivision review created as a result of a right-of-way acquisition by a governmental entity.

The proposed modification is in response to the Colorado Department of Transportation's (CDOT) right of way acquisition for the Four O'Clock Road roundabout. The exemption will save time and money in preparing and processing a subdivision application.

Staff finds that this exemption is consistent with other exemptions in the Subdivision Standards and recommends approval of the ordinance as written. Staff will be available at the meeting to answer any questions.

1 ***FOR WORKSESSION/FIRST READING – SEPT. 10***

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

5  
6 COUNCIL BILL NO. \_\_\_\_

7  
8 Series 2013

9  
10 AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE  
11 TOWN CODE, KNOWN AS THE “BRECKENRIDGE SUBDIVISION STANDARDS,”  
12 CONCERNING RIGHTS-OF-WAY ACQUIRED BY GOVERNMENTAL ENTITIES

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

16  
17 Section 1. The definition of “Subdivision” in Section 9-2-2 of the Breckenridge Town  
18 Code is amended to read in its entirety as follows:

19  
SUBDIVISION:

The division of a tract or parcel of land into two (2) or more parcels, lots, sites or other division for the purpose, whether immediate or future, transfer of ownership or sale, building development, including any resubdivision. Subdivision shall include, but not be limited to, the following types of developments and/or legal interests:

A. Division Of Land: The division of land, whether by deed, metes and bounds description, map, plat or other recorded instrument.

B. Division Of A Structure: The division of a structure into two (2) or more separate interests through division of the fee title thereto, whether by conveyance, license, contract for sale, or any other method of disposition including, but not limited to, the creation of a common interest community pursuant to the common interest ownership act, article 33.3, title 38, Colorado Revised Statutes.

C. Timeshare Interests: The creation of interval estates, timeshare estates, time span estates and other timesharing interests as defined by the condominium ownership act, article 33, title 38, Colorado Revised Statutes.

D. Cooperative: The creation of a cooperative as defined in the Colorado common interest ownership act, article 33.3,

title 38, Colorado Revised Statutes.

E. Exclusions: Unless the method of land disposition is adopted for the purpose of evading this chapter, the term "subdivision", as defined in this section shall not apply to any division of land or interests in land:

1. Which is created by any court in this state pursuant to the law of eminent domain, partition or by operation of law.

2. Which is created by lien, mortgage, deed of trust or any other security instrument or the foreclosure of any such instrument.

3. Which is created by a security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity.

4. Which creates an interest or interests in oil, gas, minerals or water which are now or hereafter severed from the surface ownership of real property.

5. Which creates a parcel or parcels as a result of the acquisition of land by the town.

**6. Which creates a parcel or parcels as a result of the acquisition of right-of-way by the town or other governmental entity.**

1  
2        Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the  
3 various secondary codes adopted by reference therein, shall continue in full force and effect.  
4

5        Section 3. The Town Council hereby finds, determines and declares that this ordinance is  
6 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and  
7 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants  
8 thereof.  
9

10        Section 4. The Town Council hereby finds, determines and declares that it has the power  
11 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,  
12 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal  
13 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)  
14 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to  
15 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers  
16 contained in the Breckenridge Town Charter.  
17



**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Proposed Amendment to Town's "General Penalty" Ordinance

DATE: September 3, 2013 (for September 10<sup>th</sup> meeting)

---

The Town's "General Penalty Ordinance" specifies the maximum punishment that the Municipal Judge can impose on a defendant for a violation of a Town ordinance. It is the "default rule" that applies if an ordinance does not specify a particular punishment that is to be imposed for a violation of the ordinance.

Currently, the General Penalty Ordinance provides for a maximum fine of \$999; imprisonment in the county jail for up to one day less than one year; or both such fine and imprisonment.

The Colorado legislature recently passed and the Governor signed into law HB13-1060. This new law amended the Colorado statutes providing the maximum penalties that can be imposed by municipal courts for municipal ordinance violations. Under the new law, fines in the municipal court can now be as high as \$2,650. Interestingly, the new statute also provides that the maximum municipal court fine amount is to be automatically increased on January 1, 2014 and on January 1 of each year thereafter to account for inflation.

Under Article 20, Section 6 of the Colorado Constitution a home rule municipality has the power to define and regulate the jurisdiction of its municipal court, and well to prescribe the power and duties of its municipal court. However, HB13-1060 automatically applies to home rule municipalities unless it is superseded by a home rule ordinance. Here, I do not see any reason for the Town to vary from the provisions of HB13-1060, but I do think it is appropriate for the Town's General Penalty Ordinance to be amended to reflect the heightened punishment provisions that are contained in HB13-1060.

Enclosed is an ordinance that amends the Town's General Penalty Ordinance to:

1. Increase the maximum fine that can be imposed in the Town's municipal court from \$999 to \$2,650, and provide for the annual inflation adjustment described in HB13-1060; and

2. Increase the maximum jail time for a municipal court violation to one full year. Although the maximum amount of jail is not the subject of HB13-1060, I think it is appropriate for the Town's General Penalty Ordinance to be brought into line with existing state law.

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

1 ***FOR WORKSESSION/FIRST READING – SEPT. 10***

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

5  
6 COUNCIL BILL NO. \_\_\_\_

7  
8 Series 2013

9  
10 AN ORDINANCE AMENDING SECTION 1-4-1 OF THE BRECKENRIDGE TOWN CODE  
11 CONCERNING THE GENERAL PENALTY TO BE IMPOSED FOR VIOLATIONS OF THE  
12 ORDINANCES OF THE TOWN OF BRECKENRIDGE  
13

14 WHEREAS, HB13-1060, which became effective April 18, 2013, increased the  
15 maximum monetary fine that may be assessed by a municipal court of record (such as the  
16 Breckenridge Municipal Court) from One Thousand Dollars (\$1,000.00) to Two Thousand Six  
17 Hundred Fifty Dollars (\$2,650.00), and further provides for an annual cost of living adjustment  
18 to reflect inflation; and  
19

20 WHEREAS, the Town Council of the Town of Breckenridge desires to amend the  
21 Town’s “General Penalty Ordinance” to reflect the increase in the maximum monetary fine that  
22 may be assessed by a municipal court under HB13-1060.  
23

24 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
25 BRECKENRIDGE, COLORADO:  
26

27 Section 1. Section A of Section 1-4-1 of the Breckenridge Town Code is amended so as  
28 to read in its entirety as follows:  
29

30 A. It is unlawful for any person to violate any ordinance of the town, this code, or  
31 any code adopted by reference. Each violation is a misdemeanor offense, except  
32 those violations specifically classified as infractions in any Town ordinance, this  
33 code, or any code adopted by reference. Any person convicted of a misdemeanor  
34 violation of this code, any ordinance of the town, any code adopted by reference,  
35 or any regulation adopted pursuant to this code or town ordinance shall be  
36 punished by a fine of not more than ~~nine hundred ninety nine dollars (\$999.00)~~  
37 **two thousand six hundred fifty dollars (\$2,650.00)**, or by imprisonment not to  
38 exceed ~~one day less than one year~~, or by both such fine and imprisonment;  
39 provided, however, that no person under the age of eighteen (18) years as of the  
40 date of the offense for which he is convicted shall be subject to a jail sentence,  
41 except in the case of a conviction of a traffic offense under title 7 of this code.  
42 Any persons found to have committed a violation of an infraction shall be  
43 punished as provided in Section 1-4-1-1. **The maximum amount of the fine that**  
44 **may be imposed under this section shall automatically be increased annually**  
45 **as provided in Section 13-10-113(1)(b), C.R.S.**



**MEMORANDUM**

**To:** Town Council

**From:** Peter Grosshuesch, Director of Community Development

**Date:** September 4, 2013

**Re:** Planning Commission Decisions of the September 3, 2013, Meeting.

---

***DECISIONS FROM THE PLANNING COMMISSION AGENDA OF September 3, 2013:***

**CLASS C APPLICATIONS:**

- 1) Lot 83, Highlands Park (SG) PC#2013068, 201 Lake Edge Drive  
Construct a new, single family residence with 4 bedrooms, 4.5 bathrooms, 4,960 sq. ft. of density and 5,857 sq. ft. of mass for a F.A.R. of 1:6.91. Approved.
- 2) Lot 2, Shock Hill, Legacy Homes (SG) PC#2013069, 0065 Penn Lode  
Construct a new, single family residence with 5 bedrooms, 6.5 bathrooms, 6,400 sq. ft. of density and 7,899 sq. ft. of mass for a F.A.R. of 1:3.69. Approved.
- 3) Sharp Residence (SG) PC#2013073, 446 Timber Trail Road  
Construct a new, single family residence with 7 bedrooms, 6.5 bathrooms, 7,742 sq. ft. of density and 8,683 sq. ft. of mass for a F.A.R. of 1:4.41. Approved.
- 4) Synergy Market Home (MGT) PC#2013071, 0047 Galena Court  
Construct a new, single family residence with 4 bedrooms, 4 bathrooms, 4,934 sq. ft. of density and 4,984 sq. ft. of mass for a F.A.R. of 1:12.93. Approved.
- 5) Lot 12, Crescent (MGT) PC#2013072, 760 Fairways Drive  
Construct a new, single family residence with 4 bedrooms, 4 bathrooms, 2,986 sq. ft. of density and 3,428 sq. ft. of mass for a F.A.R. of 1:8.64. Approved.
- 6) Columbia Lode Duplex 17 & 16 (MM) PC#2013070, 76 & 82 Luisa Drive  
Construct a new duplex residence with 4 bedrooms and 3.5 bathrooms (Unit 16), 3 bedrooms and 2.5 bathrooms (Unit 17), 4,324 sq. ft. of density and 5,920 sq. ft. of mass. Approved.

**CLASS C VARIANCE APPLICATIONS:**

None.

**CLASS B APPLICATIONS:**

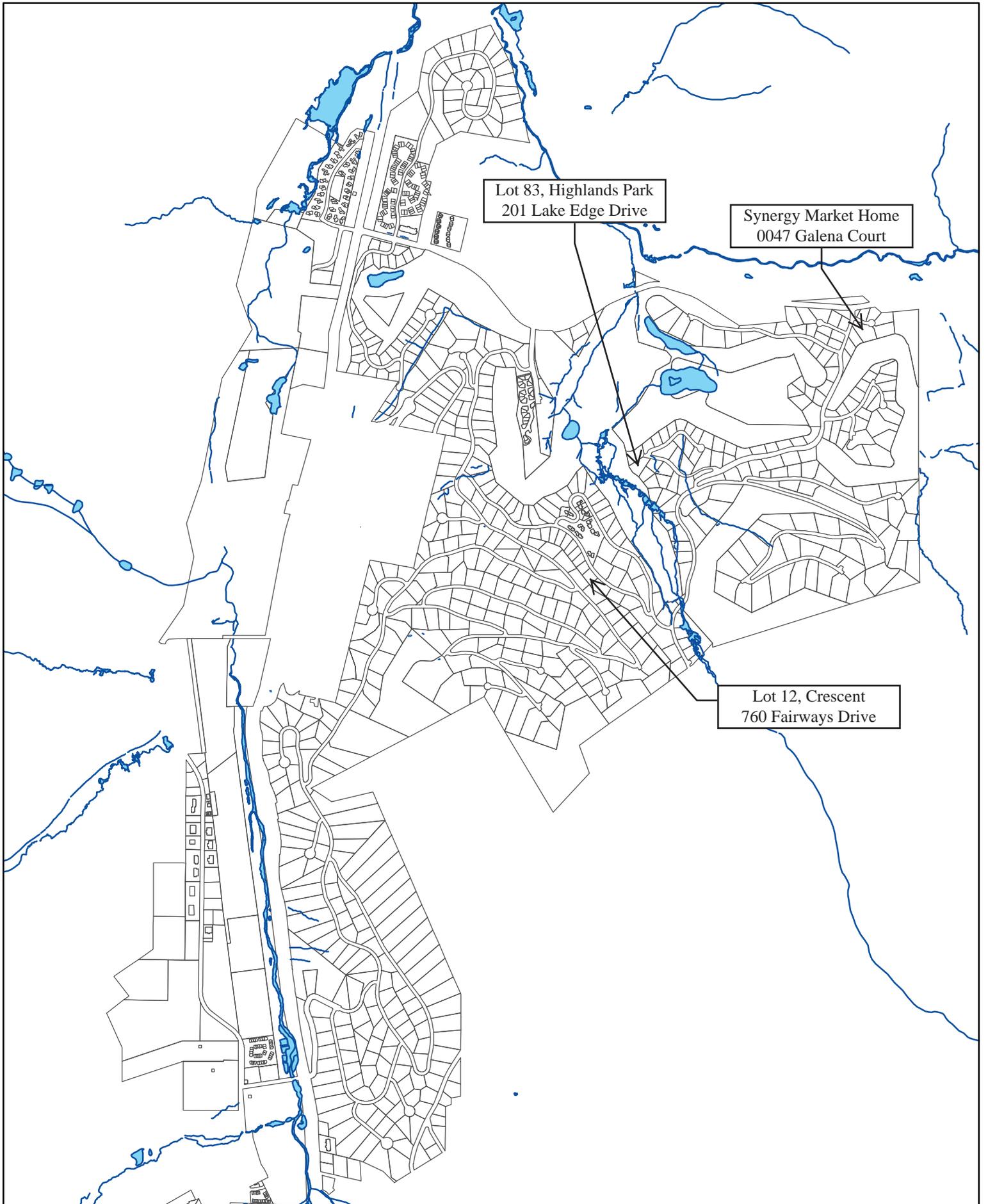
None.

**CLASS A APPLICATIONS:**

None.

**TOWN PROJECT HEARINGS:**

- 1) Cucumber Gulch Wetland Channel Restoration (MT for SR) PC#2013074  
Restore wetlands and beaver pond habitat in the Upper Cucumber Gulch Area. Recommendation that the Town Council approve.
- 2) Forest Health for MBJ and Wedge Parcels (MT for SR) PC#2013075  
Forest health treatment in Cucumber Gulch Preserve, specifically addressing standing dead lodgepole pines and deadfall on the former MBJ and Wedge parcels. Recommendation that the Town Council approve.



Lot 83, Highlands Park  
201 Lake Edge Drive

Synergy Market Home  
0047 Galena Court

Lot 12, Crescent  
760 Fairways Drive

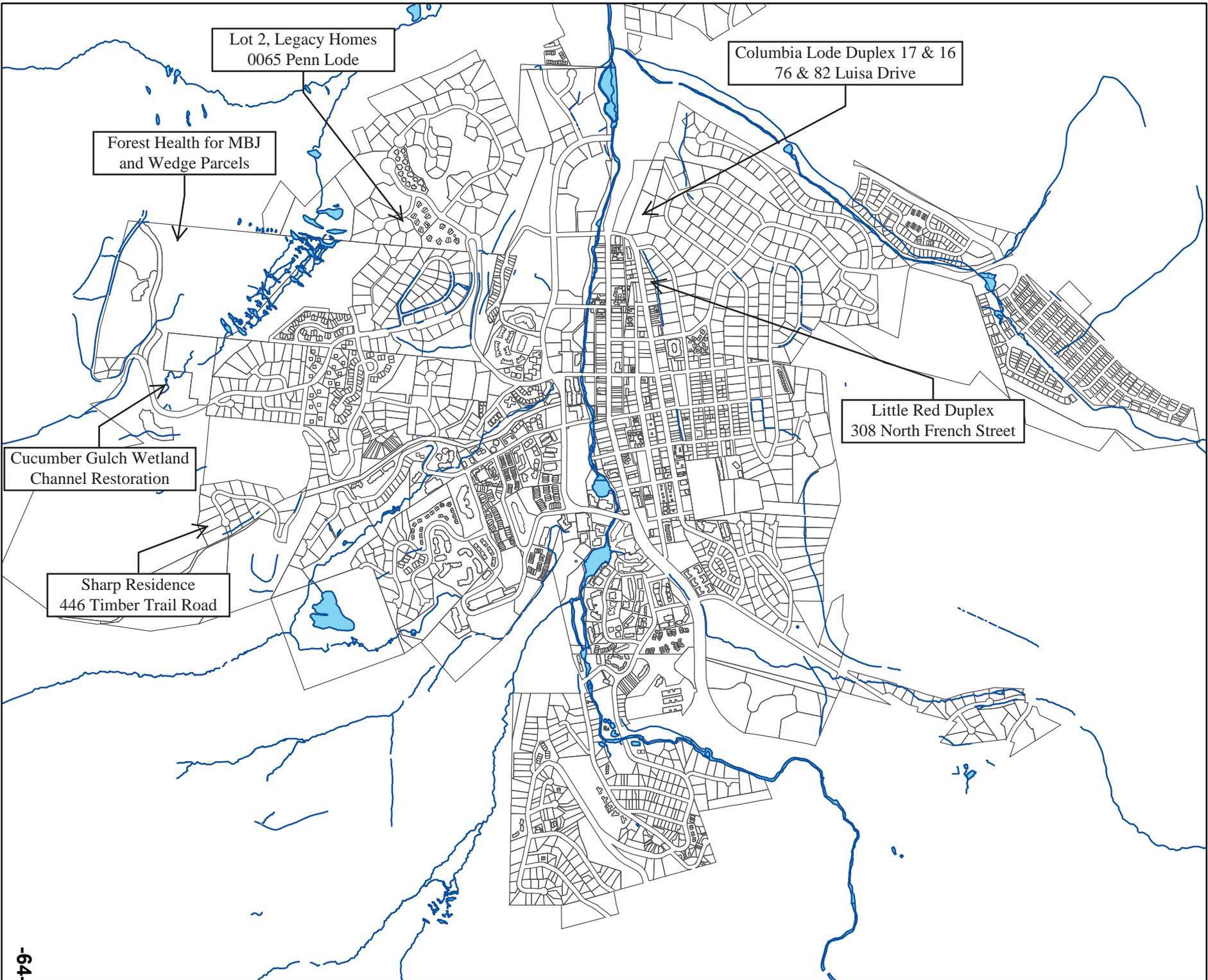


# Breckenridge North

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

printed 4/12/2011





Lot 2, Legacy Homes  
0065 Penn Lode

Columbia Lode Duplex 17 & 16  
76 & 82 Luisa Drive

Forest Health for MBJ  
and Wedge Parcels

Little Red Duplex  
308 North French Street

Cucumber Gulch Wetland  
Channel Restoration

Sharp Residence  
446 Timber Trail Road



NOT TO SCALE

printed 4/12/2011

# Breckenridge South

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



## PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

### ROLL CALL

Kate Christopher            Jim Lamb                            Gretchen Dudney  
Dan Schroder                Eric Mamula  
Dave Pringle

Trip Butler and Jennifer McAtamney, Town Council Liaison, were absent. Mayor John Warner was present.

### APPROVAL OF AGENDA

With no changes, the September 3, 2013 Planning Commission meeting agenda was approved unanimously (6-0).

### APPROVAL OF MINUTES

With no changes, the August 6, 2013, Planning Commission Minutes were approved as presented.

### CONSENT CALENDAR:

1. Lot 83, Highlands Park (SG) PC#2013068, 201 Lake Edge Drive
2. Lot 2, Shock Hill, Legacy Homes (SG) PC#2013069, 0065 Penn Lode
3. Sharp Residence (SG) PC#2013073, 446 Timber Trail Road
4. Synergy Market Home (MGT) PC#2013071, 0047 Galena Court
5. Lot 12, Crescent (MGT) PC#2013072, 760 Fairways Drive
6. Columbia Lode Duplex 17 & 16 (MM) PC#2013070, 76 & 82 Luisa Drive

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

### TOWN COUNCIL REPORT:

Mayor John Warner gave the report filling in for Councilwoman Jennifer McAtamney. The Council had first reading of new marijuana regulations which plays into our town brand. Attorney will rewrite ordinance so that sole proprietor would be required not to have retail in the downtown corridor. Don't want to undermine the will of the voters but we feel that we have a duty to protect our brand and Main Street. This is within the town rights according to Amendment 64. It is in EngageBreck and there are numerous positive comments. Also, the Council wanted no caps on the number of dispensaries except for the Mayor. Mayor wanted a cap of 5 but the majority wanted to let the free market to play out. Feel free to get on EngageBreck. (Mr. Schroder: I am in support of no downtown dispensaries with the Council.) We are inadvertently creating a neighborhood of dispensaries on Airport Road. This is a complicated and messy issue. (Mr. Pringle: How does the law work with retail versus supply to the retail shops?) The supply must be fairly close. Could opt to be just medical marijuana or just retail or both. If you are both retail and medical you have to have 2 entrances 2 counters for the under 21 medical marijuana and the over 21 retail. (Mr. Mamula: Has the state made estimates how many people might be recreational users vs. medical?) Probably all current medical marijuana will go retail. (Mr. Pringle: Will it be like a need for additional liquor license?) There is currently no cap, but Mr. Berry (Town Attorney) might rethink some things since Council did not want a cap. At this point the person who will evaluate the applications will be the Town Manager. Currently have 5 dispensaries, but if there is more like 15 then we might need an addendum for something like a liquor license board.

Mr. Gallagher and Mayor Warner toured the Black Forest Fire, an amazing tour, saw the entirety of fire, Cathedral Pines neighborhood was asked to use best practices to prepare for fire, they lost 1 out of 100 houses and surrounding neighborhoods that weren't using preventative planning practices were 95% lost. Pre-mitigation really worked for the Cathedral Pines neighborhood. I came back with good info with Mr. Gallagher and learned a lot about best landscaping fire mitigation practices, like not using wood chips around

your home. The one house that was lost in Cathedral Pines had all of his woodworking materials under his deck. A great lesson learned. (Mr. Pringle: I am a believer in defensible space, but concerned about fires creating own weather patterns and still this neighborhood weren't touched?) Yes, because of mitigation practices used that the fire stayed within 50 feet. The homes that tried to do defensible space within other neighborhoods lost their homes because their neighbors didn't do defensible space. Need to have 100% buy in.

Arts District: We lost 30 parking spots here and with the Harris Street Building, lost 60 parking spots. This was apparent during bike race but the Arts District is going well although a couple weeks behind. Both big projects we have been underwhelmed by the number of local contractors and costs of working on that, but because economy is better, we are doing better as a town on tax revenue. Asbestos mitigation was tough on the Harris Street renovation.

(Mr. Mamula: Has the Town Council addressed the fact that local contractors are not as engaged after they complained when the economic downturn?) A lot of the workers have left the county so that's why some of the contractors haven't been around now.

Cucumber Gulch blowout: The Boreas Creek 60" pipe blew out the beaver ponds. It will be remediated. And we will do fire mitigation work on MJB and Wedge.

The US Pro Challenge: The bike race was put on EngageBreck to ask people what they think. Aspen did a live post race seminar and it was overwhelmingly positive from their residents. Restaurant Association came to Breck Town Council with a letter in support of the long range view of the Bike Race. The goal is to grow the pie year over year. If merchants are patient, this will pay dividends.

Decision to heat sidewalk on Lincoln up to Ridge Street, takes natural gas, but will reduce slips and falls.

Median Landscape from roundabout to north to Valley Brook Road, a few Council members don't like the stone, natural look, so we are getting a plan back that will be more manicured, more intense and highly maintained from roundabout to Valley Brook. From Valley Brook to Fairview will be less formal but look better than a patch of weeds. There will be a median all the way to Tiger Road, which was news to me. (Mr. Schroder: Is this a Town of Breck thing? Would like to have a choice that is minimal upkeep and money, would be better to do it right the first time and not follow Town of Frisco's example with replacing rock every year.) Valley Brook to Fairview a buff concrete paver that would have a weed barrier underneath is proposed for this area. Maybe use some Breck Street lamps every 200 feet as an icon for the Town. Maybe some stands for hanging plants but this would require a lot more upkeep. Fairview is a joint County / Town project topic.

(Ms. Dudney: Will Highway 9 be paved before snow flies?) They think they will get it done by end of October, even though Contractor is not pleasing CDOT with their progress.

(Ms. Dudney: How are sales on solar panels?) They are sold out without a lot of marketing. (Mr. Lamb: I don't even notice the solar panels, I'm pleased with how well shielded it is.) (Mr. Pringle: I don't think there is any impact from Highway 9, maybe from Fairview.) (Ms. Puester: There will be landscaping installed in strategic locations later this fall.) (Mr. Lamb: We did a good job of communicating as opposed to how it worked at Summit Cove Elementary.)

BOSAC paid for two pieces of property between Alpine Bank. EngageBreck is giving input on how to use this, some people want parking, outdoor yoga, playground, no suggestions for retail. (Mr. Thompson: The historic guidelines mention a visual corridor to the Carter Museum as well.)

## **WORKSESSIONS:**

### **1. Planning Application Reclassifications (JP)**

Ms. Puester presented a memo identifying some potential modifications that could assist with efficiencies in the development review process or fill in some holes that staff has identified. The proposed changes for comment are:

- Class A: Add cellular towers and antennas.
- Class B: Reclassify Small Vendor Carts to a Class C development, still requiring Planning Commission review but not requiring public notice, while keeping Large Vendor Carts a Class B (and public notice).
- Class C:

- Change Single family structures outside of the Historic District to Class D development, with the ability of the Director to reclassify to a Class C if staff identifies any issues.
- Change Duplex structures outside of the Historic District to Class D development, with the ability of the Director to reclassify to a Class C.
- Add a seasonal category to code language that states temporary structures or uses greater than three days in duration.
- Class D:
  - Add a new Master Sign Plan Modification category.
  - Add any covenant changes to the existing language of substitution of employee housing unit.
  - Allow minor remodels and additions of less than 10% of total square footage.

Class A: Add cellular towers and antennas. This would be a new section to address land use and visibility and appropriateness of the location.

*Commissioner Questions / Comments:*

Ms. Christopher: This is a great idea, good to address.

Mr. Mamula: I agree.

Ms. Dudney: I agree.

Mr. Pringle: I agree and would like to see what other municipalities and residential areas are doing.

Ms. Christopher: In Phoenix they have cell towers designed like palm and pine trees.

Mr. Schroder: I agree too; there is a lot of ability to hide and screen these cell towers.

Class B: Reclassify Small Vendor Carts to a Class C development, still requiring Planning Commission review but not requiring public notice, while keeping Large Vendor Carts a Class B. Staff is proposing to separate these out as small carts are limited to 40 sq. ft. for 1 year, large are 100 sq. ft. for 3 years. Small carts get put away in the evening and large carts don't. Large carts need public notice since they stay in place for 3 years.

*Commissioner Questions / Comments:*

Mr. Pringle: In favor.

Mr. Schroder: In favor and need to keep Class B for large carts. Do we need to spend time on large vendor carts? (Ms. Puester: We currently only allow for 3 large vendor carts, crepe cart is exempted. Large vending carts for up to 12 outdoor seating and an established look; more impact.)

Ms. Dudney: This is more fair.

Mr. Mamula: I don't agree, they all need public notice for mixed use buildings. There are potential issues for blocking doors and windows of existing businesses. I would leave it the way it is. Because small vendor carts could be objectionable to the owners of businesses but the landlord may not care. You can have 4 small carts.

Ms. Christopher: If the small cart is the same owner as the business, would that work?

Mr. Mamula: Jerky, Stellas are large. (Mr. Thompson: Kavas is small and operates only in summer.)

Mr. Pringle: Class C would not get any special notice. (Ms. Puester: Could up the notifications for this; the filing fees are hefty.)

Mr. Mamula: I care about the public notice not the filing fees. (Ms. Puester: Class C would come on a consent calendar, could modify process to require notice with it.)

Mr. Lamb: Would support a hybrid change in code so that neighbors could get a notice.

Mr. Mamula: Part of the fee structure being high is intentional to discourage the small carts.

Ms. Dudney: We all agree with the hybrid idea.

Class C:

- Change Single family structures outside of the Historic District to Class D development, with the ability of the Director to reclassify to a Class C if staff identifies issues.
- Change Duplex structures outside of the Historic District to Class D development, with the ability of the

Director to reclassify to a Class C.

*Commissioner Questions / Comments:*

- Ms. Dudney: What are the advantages to moving from Class C to Class D? (Ms. Puester: It would reduce the time to create all of the reports for Class C. Staff would still do a thorough review in house for the file. Would skip the Planning Commission and Council consent agenda. It also saves time for the homeowner, about 3 weeks. Would be doing some kind of hybrid fee as staff would still be spending quite a bit of time reviewing and working with applicants. Currently, staff points out issues in the reports already or requests call ups, the Commission would see those still with issues). (Mr. Grosshuesch: If we give a denial recommendation on a Class D, we would call that up. It is a significant amount of time that we spend writing these up for the packet. It will give planning more time to focus on A and B applications and give the Planning Commission more time to read those and focus on development code issues.)
- Mr. Mamula: The report is not what it used to be; it is more stripped down. There are neighborhoods that have created their own code and we have changed things for them like requiring paved driveways. I agree with 90% of these things, but we will get to the point where whole subdivisions will be redeveloped. As a Planning Commission I would like to see to help direct the planning, even when they aren't denied. Out of the 16 callups I'm glad that 4 of them didn't get built. The applicant changed because of the callup process. I'm leery. I would like to see more reasons to bump up to us like a tear down in old neighborhood, ridgeline development, I would like to have this be automatically called up. The Commission and Council need to have some input.
- Mr. Pringle: I would concur with Mr. Mamula. Speeding things up don't necessarily make the process better. We should maybe take more time on the consent calendar to make sure we do the Town service. We are a little less critical as a commission, which gives the staff a lot of latitude. We have a system that works now. Maybe we open up every consent calendar item in these meetings to discuss further. I would like to stay with the process we have, we've already streamlined it. It is still an important part of what we do.
- Mr. Lamb: We have some things come through like the Highlands that we trust their architectural board. What if we have more things beyond a steep slope like a tear down, negative points, whatever looks questionable to help streamline this that is called up? We have a short building season here so 3 weeks is important. Staff points out the issues.
- Mr. Mamula: We have looked at stuff in the Highlands.
- Ms. Dudney: I appreciate that there is tenure on this. The most difficult thing is to step back and see if we can streamline things, 3 weeks is a long time for homeowners especially with the percentage of denials. I would like to see a compromise. Could we carve out some things that we can agree on? But the large majority should go through, don't assume that government has to add on inordinately. (Mr. Grosshuesch: We have a track record of what is going to be problematic; our position is when in doubt, call it up.)
- Mr. Mamula: I would like to see the raw score and if there is anything in there then I'd like to bring that up in these meetings. (Ms. Puester: Could we do a hybrid system like negative points, no envelopes, laundry list of what would go to Planning Commission?) We have a good staff now and trust what you guys are doing but will not always have the same staff and may not always be like this.
- Mr. Pringle: We are proposing to eliminate the consent calendar so that we can at least look at the report. Maybe a one page summary.
- Mr. Lamb: Site plan, abbreviations in one page or a summary? (Ms. Puester: We have a strong code and have modified it over time to address issues. Have not changed the code based on single family review issues in a long time. Staff points out issues that are flawed with the code. We have the rules on stucco and driveways and so on. So if there were to be concerns we could

- look at those.)
- Mr. Pringle: But a lot of these happened because Planning Commission looked at it. Stucco is Mr. Mamula's baby and we stopped it. (Mr. Grosshuesch: We have learned a lot because of the boom of single family homes and the architectural review committees work out these issues before we get there.)
- Mr. Schroder: We are appointed community members. I like seeing the consent calendar and I like knowing that planners have gone through and I like being informed as a Planning Commissioner. I like the suggestion of a snapshot of the consent calendar. But this is a Planning Commission of what the role is, maybe it is not the role to review single family homes, I like knowing what is coming ahead of time. Maybe a summary like you have the class C subdivisions.
- Ms. Christopher: I agree that our job is to help guide the development of the community and that is everything including the single family homes. We don't need the full packet if that helps.
- Mr. Lamb: Anything that does not have architectural review committee, is on a hillside, ridgeline, tear down, has negative points, that is a slam dunk.
- Ms. Christopher: Would still like to see this info even though so that we know what is going through.
- Mr. Lamb: Would like to see save the 3 weeks for the homeowner if possible.
- Mr. Mamula: I agree with Mr. Grosshuesch that HOA review committees are tough. There are some subs which do not have one- Warriors Mark is a different story, glad we got as in depth as we did with a duplex there. (Ms. Puester: What if we come back with a draft proposal to identify the major points that would kick in Planning Commission review and then a briefing about projects that don't come before the Commission so that you stay informed?)
- Ms. Christopher: Suggest that we kick only some of the single family homes down like HOA review committees but the rest comes to us.
- Mr. Pringle: Don't want to see any changes, we've done enough already to streamline.
- Mr. Mamula: I don't have any problem with this if I knew this staff would be here forever, but we've had staff members that we can't trust. I'm worried about the future and the future quality of the staff. Can look into list of what would include the Planning Commission review.  
(Ms. Puester: So is the direction to come back with draft language on what would go to Planning Commission and an idea of how to keep the Commission informed on all of the applications that have been approved or going through staff review?)
- Vote:
- Mr. Pringle: Don't come back with proposal.
- Mr. Mamula: Come back with proposal.
- Ms. Dudney: Come back with proposal.
- Mr. Lamb: Come back with proposal.
- Ms. Christopher: Will look at proposal.
- Mr. Schroder: Will look at proposal.

- Temporary structures or uses greater than three days in duration. Would like more direction on this with seasonal language. Is 3 days the time, could it be longer, can we get a seasonal category?

*Commissioner Questions / Comments:*

- Ms. Christopher: What is this? (Ms. Puester: Beaver Run Summer Tent. Special Event structures are for 3 days. Do you want to go back and think about this more or do you want us to come back with a proposal?)
- Ms. Dudney: Yes, the Planning Commission sees the same problems with this. (Consensus: Yes.)

Class D:

- Add Master Sign Plan Modifications. Reduces cost for the applicant, more of an incentive to update signs

if we drop the fees, if they are not changing square footage. This is coming as Master Sign Plan is outdated and we want to update the style with minor modifications. (Ms. Puester clarified: Major modifications would still come to Planning Commission as class C. Any new Master Sign Plans would still come to the Planning Commission. We want incentives for people to update their sign packages reduce fees from \$705. Staff will define minor modifications versus major modifications.)

*Commissioner Questions / Comments:*

Mr. Mamula: Make sure you look at the staff time it takes to review a sign plan and make sure the fees are appropriate. (Mr. Thompson: We want to make sure that landlords update their Master Sign Plans so that they get modernized, even though it takes more staff time to do this but it will be beneficial to do so.)

Mr. Schroder: Let's freshen the place up, like Mayor Warner talked about.  
(The Commission was unanimous with this decision.)

- Add substitution of employee housing unit. Want to include more aspects, beef this language up. (Unanimous yes vote on this from Commission.)
- Allow minor remodels and additions of less than 10% of total square footage. As long as there are no changes to the exterior of the structure.

*Commissioner Questions / Comments:*

Mr. Schroder: I believe that this is in line with our duties. (Ms. Puester: I will wrap this in the discussion about single families and come back.)

Mr. Mamula: I would like to see a square footage cap like x% or 500 square feet total for example, whatever makes sense so that a large addition to a 10,000 square foot house can't fall under this.

(Staff will come back with language)

2. Little Red Duplex in the Historic District (MGT), 308 North French Street

Mr. Pringle stated that Mr. Hasenstab and Ms. McCormick are the applicants and are neighbors of Mr. Pringle, but they have not discussed this topic previously. He is the adjacent property owner in the back.

Mr. Thompson presented a proposal to construct a new duplex in the Historic District at 308 North French Street, former location of the Little Red Schoolhouse. The proposal calls for a 3,534 sq. ft. "mirror image" duplex (total square footage), with three bedrooms and four bathrooms in each of the two units. Each unit has a one car garage and one outdoor tandem space. Access is proposed via a shared driveway, utilizing the existing driveway on a neighbor's property to the south. The proposed building is to be created from prefabricated units joined together. It is to be two stories in height with a substantial amount of structure between floors. Each side of the duplex is identical in form and detail, or a mirror image. Staff believes that the form and shape of buildings in this character area are of the utmost importance. The proposed mirror image duplex was not a form and shape seen historically in Breckenridge. Mr. Thompson discussed the following:

- Priority Policy 140 (Use building forms similar to those found historically in the area)
- Priority Policy 8 (Reinforce the visual unity of the block)
- Priority Policy 80 (Respect the perceived building scale established by historic structures within the relevant character area)
- Priority Policy 80A (Use connectors to link smaller modules and for new additions to historic structures)
- Priority Policy 138 (New buildings should be in scale with existing historic and supporting buildings in the North End)

- Priority Policy 144 (Reinforce the typical narrow front façade widths that are typical of historic buildings in the area)
- Priority Policy 142 (Building height should be similar to nearby historic buildings)

Staff is seeking input on the key points described for design direction. A more detailed review will come before the Commission with a full development permit application.

Applicant Presentation: Ms. Mary McCormick, Architect, and Mr. Garrett Hasenstab, Applicant

Ms. McCormick: It is our intention to address and resolve these issues and that the projects contribute to the community. There are issues that are unclear so we need planning commission direction to fix things in the future. I have a revision with pulling roof line down and would like commission to see if this meets with 142? (Ms. Dudney: They are looking for direction from us as to where they should head, but by no means could we say that we approve this if you have not shown it to Staff and given them time to review the new revisions.) (Mr. Mamula: We don't want to give specific design direction.) Concerns with the math that Mr. Thompson used and don't agree with it. (Ms. Dudney: It is not appropriate for us to make an opinion on this, it would be appropriate to work with staff and see your point of view and staff's point of view. We rely on staff for consistent interpretation and calculations. We can't give you real specifics because we don't have specific plans.) (Ms. Christopher: Details need to be worked out with staff in the end.)

Staff had the following questions for the Planning Commission:

1. Did the Planning Commission agree that a mirror image duplex does not meet Priority Policy 140? (Use building forms similar to those found historically in the area.)

Mr. Lamb: I agree with staff interpretations. All of the Planning Commissioners agreed with the staff interpretation.

Ms. McCormick asked whether Priority Policy 140 refers to form or shape but nowhere does mirror images comes up, only refers to windows, rooflines. I don't see it in the code. (Mr. Grosshuesch: It says to use building forms similar to the historic character area.) (Mr. Hasenstab: No duplexes were built historically, we would like to build a duplex within the guidelines.)

Ms. Dudney: I don't object to the duplex, it is the fact that the two shapes are exactly alike, there needs to be variation.

Mr. Pringle: Two homes on the lot that are connected by common garage wall, we would like incorporate the duplex use with modules attached to make it look more like one structure, beyond just the common wall. Modules that make up that use, more like one structure

Ms. Christopher: The staff is really a good resource for you for a design that would be acceptable.

Mr. Pringle: There are examples of duplexes in the historic district that could help you. (Mr. Hasenstab: We are hoping for a bit more direction from the Commission, staff doesn't give us the direction on how to solve our issues.)

Mr. Mamula: We are like a court which we weigh your plans versus the code, all we are here to do is look at what we have here tonight and it is your job to work with staff to meet the code. We are different than the rest of the County in how the Town does it's planning, especially in the Historic District.

2. Did the Planning Commission agree with Staff that Priority Policy 8 is not being met? (Reinforce the visual unity of the block.)

All of the Planning Commissioner's agreed that this doesn't reinforce the visual unity of the block.

3. Did the Planning Commission believe that Priority Policy 80 is not being met? (Respect the perceived building scale established by historic structures within the relevant character area.)

Mr. Pringle: Ceiling to floor space is overly large; could this be compressed to help? (Mr. Thompson: Yes I think this because of the prefabricated boxes.) If there was more separation between front façade and L part there would be more set back.

Everybody agreed with staff on this point.

4. Did the Planning Commission believe that design standards in Priority Policy 80A (distance of separation provided by the connectors) are not being met? All the Planning Commission agreed 80A was not being met.

The design is going to be so different and so right now this is not met. All of these questions are interrelated.

Ms. McCormick: We thought this was a work session that would be conversational with the Planning Commission.

Ms. Dudney: I don't think I could imagine that we would go against staff in mathematical calculations. These need to be taken up with staff.

Ms. Christopher: What is in our packet is what we see. We don't expect new material that Staff has not had time to review.

5. Did the Planning Commission agree with Staff that Priority Policy 144 is not being met? (Front façade of a building may not exceed 30' in width.)

Planning Commission agreed with staff.

Mr. Mamula: Project 228 South High: 4 lots; we were very specific about the front facades these are good examples, don't look at the other structures on the block that were built before the code was created, look at PJ's house when you are trying to meet code, look at the surviving historic structures.

Mr. Pringle: The homes to the north of you are the direction to go and follow for design.

6. Does the Planning Commission agree that the front façade should be one or one and a half stories as required by Priority Policy 142 and that the current design does not meet this priority policy?

Ms. Dudney: Overall, we are behind the staff unanimously, it needs to follow the nice historic buildings on your block, which are one or one and a half stories.

Mr. Pringle: All the priority policies need to be met. When you have a list of 6 failing priority policies, hence failing 5/A Architectural Compatibility, you will need some major rethinking on the design.

Staff welcomed any additional comments.

Ms. Dudney: Even though code says max 23' you think what is important is 1 ½ stories? (Mr. Thompson: This is correct. 1 to 1 ½ stories is the historic character of the area.)

#### **TOWN PROJECT HEARINGS:**

1. Cucumber Gulch Wetland Channel Restoration (SR) PC#2013074

Mr. Reid presented that the Town is proposing to restore wetlands and beaver pond habitat in the Upper Cucumber Gulch area. The site is located immediately across Ski Hill Road from the Peak 8 Base Area development. As anticipated in 2012, Town staff is now focused on phase two of the wetland restoration which involves restoring the Boreas Creek stream channel. This proposed second phase is intended to:

1. Reduce the speed, and therefore erosive force, of the water flow in the incised Boreas Creek channel.
2. Raise the Boreas Creek channel elevation to reduce its draining effect on the adjoining wetlands.
3. Install log deadfall areas to stabilize the stream channel and reduce future erosion.
4. Create additional wetland habitat.
5. Protect the investment in the existing Cucumber wetland restoration by reducing erosion and sedimentation in the downstream beaver ponds.

The Breckenridge Open Space Advisory Commission (BOSAC) was made aware of this project and reviewed this concept in fall 2012, and more recently at its August 19<sup>th</sup> meeting. BOSAC unanimously recommended proceeding with the proposed channel restoration, and to pursue approval for a Town Project through the

Planning Commission and Town Council. BOSAC recommended prompt action be taken to address the ongoing concerns in Upper Cucumber Gulch.

Alternatives to channel restoration are 1) no action, 2) implement a more standard weir and drop-structure approach, or 3) implement portions of the proposal, but not the entirety. The Town's consultants (Ecometrics and Johnson Environmental, Inc.) have contributed their input into the proposal design, and have agreed that the proposed plan is the most appropriate course of action for this site.

This is a Town Project pursuant to the recently adopted ordinance amending the Town Projects Process (Council Bill No. 1, Series 2013), effective April 12, 2013. As a result, the Planning Commission is asked to identify any code issues they may have with this application. In addition, the Commission is asked to make a recommendation to the Town Council. Staff suggested that the Planning Commission recommend approval of the Cucumber Gulch Channel Restoration to the Town Council, PC#2013074, with the presented Findings.

*Commissioner Questions / Comments:*

No commissioner questions or comments.

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

Mr. Mamula made a motion to recommend the Town Council approve the Cucumber Gulch Wetland Channel Restoration, PC#2013074, with the presented Findings. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

2. Forest Health for MBJ and Wedge Parcels (SR) PC#2013075

Mr. Reid stated the Town is proposing a forest health treatment in Cucumber Gulch Preserve, specifically addressing standing dead lodgepole pines and deadfall on the former MBJ and Wedge parcels. These two parcels were acquired relatively recently by the Town and warrant tree removal in upland areas to reduce wildfire risk, diversify wildlife habitat, clean up a portion of the new open space, and remove standing dead tree hazards. The site is located immediately across Ski Hill Road from National Forest Lands and undeveloped private property. Protection of the Cucumber Gulch Preserve is a high priority for the Town of Breckenridge and its open space program. Town staff is working with qualified consultants to identify and address threats to the ecosystem health. The presented proposal is designed to fulfill that goal by improving forest health in Cucumber Gulch's dry uplands.

This is a Town Project pursuant to the recently adopted ordinance amending the Town Projects Process (Council Bill No. 1, Series 2013), effective April 12, 2013. As a result, the Planning Commission is asked to identify any code issues they may have with this application. In addition, the Commission is asked to make a recommendation to the Town Council. Staff suggested that the Planning Commission recommend approval of the MBJ/ Cucumber Wedge Forest Health Project to the Town Council, PC#2013075, with the presented Findings.

*Commissioner Questions / Comments:*

Ms. Dudney: We appreciate all of your efforts.

Mr. Pringle: Prescribed burning used here? (Mr. Reid: No, these logs will be hauled out with a little left.)

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

Mr. Mamula made a motion to recommend the Town Council approve the Forest Health for MBJ and Wedge

Parcels, PC#2013075, with the presented Findings. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

**OTHER MATTERS:**

Anyone interested in the State APA conference it is coming in early October in Vail. Ms. Dudney will not be here for first meeting in October.

Mr. Mamula: Other retailers in town have made comments that sign enforcement is not being followed. We have strayed from intent.

**ADJOURNMENT:**

The meeting was adjourned at 9:30 pm.

---

Gretchen Dudney, Chair

## Town Council Staff Report

- Subject:** Cucumber Gulch Preserve Channel Restoration  
(Town Project, Hearing, PC#2013074)
- Proposal:** The Town is proposing to restore wetlands and beaver pond habitat in the Upper Cucumber Gulch (UCG) area.
- The work described in the Application is a “Town Project” as defined in Section 9-14 of the Town Code.
- Date:** September 4, 2013 (for meeting of September 10, 2013)
- Project Manager:** Scott Reid, Open Space and Trails Planner
- Applicant/Owner:** Town of Breckenridge
- Address:** 1522 Ski Hill Road
- Legal Description:** Tract A, Peaks 7 & 8 Perimeter, Public Open Space
- Site Area:** 55.79 acres
- Land Use District:** 1: Low Density Residential, Recreational
- Site Conditions:** The site is undeveloped and contains a groundwater and surface water-fed wetland complex.
- The site is located immediately across Ski Hill Road from the Peak 8 Base Area, and adjacent to the detention pond associated with the Peak 8 Base Area development.
- Adjacent Uses:** North: Protected open space in Cucumber Gulch Preserve  
South: Detention Pond and Ski Hill Road  
East: Protected open space in Cucumber Gulch Preserve  
West: Ski Hill Road, Peak 8 Base Area

### Item History

Cucumber Gulch Preserve (“the Preserve”) is highly valued by the Town and its citizens due to its valuable wetland complex and associated wildlife biodiversity. Cucumber Gulch has been identified as an Aquatic Resource of National Importance (ARNI) by the U.S. Environmental Protection Agency because the area contains rare peat-forming, groundwater-fed fen wetlands, as well as surface water-fed wetlands that support a rich biodiversity of animals, birds and plants. The Town and its citizens have committed significant resources to acquiring, protecting, and appropriately managing this sensitive wetland ecosystem.

Since 2001, the Town has conducted biological and hydrological resource monitoring in the Preserve to better understand, and therefore manage, the wetland ecosystem. In 2011, water quality monitoring received additional focus and resources because: 1) Town Council and BOSAC directed staff to conduct

a more thorough wetland and water quality review; and 2) A record snowpack followed by significant runoff and rain events prompted drainage issues throughout the Upper Blue basin. Those elevated water flows stressed the overall hydrologic system and exacerbated existing drainage issues (e.g. Sawmill Creek and Coyne Valley Road).

The 2011 water quality monitoring report, developed by EcoMetrics and Johnson Environmental on behalf of the Town, indicated that overall health of the wetlands in the Preserve was good. However, significant issues were identified in the Upper Cucumber Gulch Preserve, below the base of Peak 8. Specifically, an altered water flow regime, an altered sediment budget, and the loss of beaver habitat were identified as potential issues in Upper Cucumber Gulch. In addition, stream channelization and significant head cutting occurred in Boreas Creek during the 2011 runoff, prompting changes in the water table and an overall loss of wetlands in the area.

Based on these findings, BOSAC and Town Council directed Town staff to identify and pursue potential solutions to the issues outlined in the 2011 wetland report. In 2012, a proposal developed by Claffey Ecological Consulting and Five Rivers Inc. was designed and implemented under a PMA variance granted by both the Planning Commission and Town Council. That project included several actions to stabilize the water inflows, expand wetland areas, improve beaver habitat, and reduce head cutting in the Boreas Creek channel. To date, the bioengineering structures installed in fall 2012 have functioned well and achieved the stated project objectives.

As anticipated in 2012, Town staff is now focused on phase two of the wetland restoration which involves restoring the Boreas Creek stream channel. This proposed second phase is intended to:

1. Reduce the speed, and therefore erosive force, of the water flow in the incised Boreas Creek channel.
2. Raise the Boreas Creek channel elevation to reduce its draining effect on the adjoining wetlands.
3. Install log deadfall areas to stabilize the stream channel and reduce future erosion.
4. Create additional wetland habitat.
5. Protect the investment in the existing Cucumber wetland restoration by reducing erosion and sedimentation in the downstream beaver ponds.

As with the 2012 wetland restoration project, bioengineering techniques are proposed to be used to accomplish this channel restoration. Bioengineering methods involve the use of mostly local, native materials to mimic desirable natural processes to accomplish long-term goals. In this case, the design consultant, Claffey Ecological Consulting, has proposed the installation of multiple log deadfall zones in the channel to both raise the channel elevation and slow the pace of the water flow.

The logs will be harvested locally from area deadfall and standing dead trees. Rock from the recent Sawmill Creek restoration project will be used to raise the stream channel level where necessary, and coir fabric installations will be filled with area soil and plugged with native vegetation to help establish more naturally functioning dams to slow and redistribute the water flows. Wherever possible, and in at least two locations, historical beaver dams will be reconstructed to reestablish a terraced pond structure that will accomplish the stated goals above and provide an opportunity for beavers to recolonize and maintain the dam structure over time.

The Army Corps of Engineers (ACOE) staff has reviewed this proposal in the field and indicated general support for the approach. The federal agency is currently reviewing the stream channel restoration proposal. No action would occur without the approval of the ACOE.

The Breckenridge Open Space Advisory Commission (BOSAC) was made aware of this project and reviewed this concept in fall 2012, and more recently at its August 19<sup>th</sup> meeting. BOSAC unanimously recommended proceeding with the proposed channel restoration, and to pursue approval for a Town Project through the Planning Commission and Town Council. BOSAC recommended prompt action be taken to address the ongoing concerns in Upper Cucumber Gulch. At its September 3<sup>rd</sup> meeting, the Planning Commission also unanimously approved proceeding to Town Council for approval of this channel restoration project. Staff now seeks Council approval.

### **Staff Comments**

Protection of the wetland values in Cucumber Gulch Preserve is a high priority for the Town of Breckenridge and its open space program. Town staff is working with qualified consultants to identify and address threats to the wetland ecosystem health. The stream channel restoration proposal is designed to fulfill that goal by restoring the wetlands and improving water flow in Upper Cucumber Gulch.

**Land Use (Policies 2/A & 2/R):** The Cucumber Gulch Overlay Protection District is an amendment to the Land Use Guidelines. Within the Preventive Management Area (PMA), most development activities are prohibited, including:

*“C: Placement of material such as soil or gravel.”*

*“D: Removal or excavation of material such as soil, gravel or vegetation.”*

In order to move forward with this channel restoration project, the Town Council would need to approve the Town Project as proposed. Town staff, BOSAC and Town consultants believe that the overall health of wildlife and vegetation in and near Cucumber Gulch, and water quality conditions will all be improved through this project. Town projects are typically evaluated against the Development Code to determine their conformance with Code requirements. In this situation, the most relevant Code requirements are included in the Cucumber Gulch Overlay Protection District ordinance (Ordinance 9, Series 2000) in the form of Relief Procedures. As this is a Town Project, a variance is not required; however, in accordance with the Town Project ordinance, the application has been reviewed under the Cucumber Gulch variance criteria.

Following is the variance language from [Ordinance 9, Series 2000](#):

#### *14. Relief Procedures.*

*A. The Planning Commission or Town Council may grant a variance, exception or waiver of any requirement of these Regulations (collectively, “variance”) upon a written request by a developer or owner of property subject to these Regulations. A variance shall be granted only upon finding that (a) a strict application of these Regulations would, when regarded as a whole, result in compensable taking of the property; or (b) the purposes of these Regulations will be adequately served by an alternative proposal or requirement (including any required mitigation, which shall be within the District), and (i) the granting of the variance will not result in a substantial degradation of the natural and wildlife features of Cucumber Gulch, and (ii) there is no other practical alternative. No variance by itself or in combination with other variances shall have the effect of nullifying the intent and purpose of these Regulations. Section 9-1-11 of the Breckenridge Development Code is not applicable to the granting of a variance under these Regulations. (Emphasis added)*

Planning staff believes that if this application was not a Town Project and required a variance, the application would meet the variance criteria.

### **Alternatives to Channel Restoration**

Some alternatives to the proposed wetland restoration include:

1. No action. Leave the site “as-is”: Leaving the channel as is would likely prompt additional headcutting and channel incision, potentially yielding increased sediment and water flows and in subsequent dam breaches in Lower Cucumber Gulch and beyond.
2. Implement a more standard weir and drop-structure approach: The goal to slow the water flows and raise the channel elevation could also be accomplished via the placement of large boulders and concrete weir structures in the Boreas Creek channel. This approach would conflict with the Cucumber Gulch Preserve goal of encouraging natural processes and minimizing excavation in the area. It is also likely that the Army Corps of Engineers staff would not approve this approach.
3. Implementing portions of the proposal, but not the entirety: This approach would not achieve the desired outcome. By repairing a portion of the channel reach, but not the entirety, channel headcutting would almost certainly result within the untreated portions. In addition, restricting the number of equipment incursions into Cucumber Gulch is preferable. Completing a portion of the channel restoration would increase the likelihood of additional access by heavy equipment to either repair or complete the restoration work.

The Town’s consultants (Ecometrics and Johnson Environmental, Inc.) have contributed their input into the proposal design, and have agreed that the proposed plan is the most appropriate course of action for this site.

**Drainage (27/A & 27/R)**: The proposed channel restoration is designed to improve drainage function in Cucumber Gulch. The intent is to slow the water that is currently channelized in Boreas Creek, to reestablish a cascading set of beaver ponds and wetlands to improve water quality and distribution.

**Erosion Control**: Best Management Practices will be utilized in this project, pursuant to the requirements of the Army Corps of Engineers. Measures will include temporary diversion of water flows, installation of wattles, creation of logjams, and reconstruction of beaver dams utilizing local fill material and native plant plugs.

**Point Analysis (Section: 9-1-17-3)**: Staff finds no reason to assign positive or negative points under any Relative policies of the Development Code. We find that the project meets all Absolute policies, with the exception of Policy 2/A-Land Use as it relates to the Cucumber Gulch Overlay Protection District, for which a variance is requested.

**Conformance with Relief Procedures**: Staff believes that the proposed channel restoration work meets variance criteria “b” under the Relief Procedures of the Cucumber Gulch Overlay Protection District. We find that the proposal will adequately serve to meet the intent of the regulations designed to protect Cucumber Gulch Preserve. Specifically, staff finds that the proposed wetland restoration will better protect water quality in the Preserve and prevent additional wetland deterioration or loss. The proposal will not result in substantial degradation of the natural and wildlife features in Cucumber Gulch (criteria b.i.) and there is no practical alternative (criteria b.ii.), as discussed in the “Alternatives” discussion above.

**Planning Commission Recommendation**

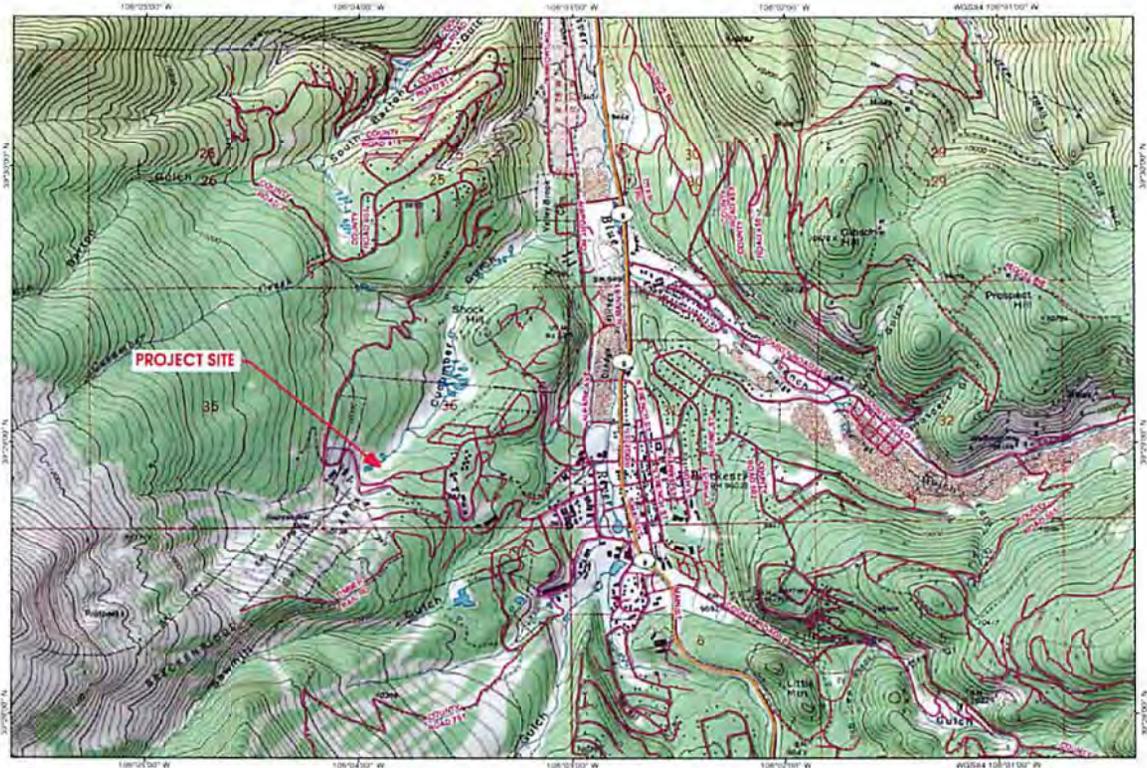
This is a Town Project pursuant to the recently adopted ordinance amending the Town Projects Process (Council Bill No. 1, Series 2013), effective April 12, 2013. The BOSAC reviewed the project and recommended its implementation at its August 19 meeting. At its September 3 meeting, the Planning Commission reviewed this application and unanimously recommended Town Council approval of the project, with the attached findings.

## TOWN OF BRECKENRIDGE

**Cucumber Gulch Preserve Channel Restoration**  
Tract A, Peaks 7 & 8 Perimeter, Public Open Space  
**PERMIT #2013074**

### FINDINGS

1. This project is “Town Project” as defined in Section 9-14-1 of the Breckenridge Town Code because it involves the planning, repair, maintenance, and improvement of a public project.
2. The process for the review and approval of a Town Project as described in Section 9-14-4 of the Breckenridge Town Code was followed in connection with the approval of this Town Project.
3. The Planning Commission reviewed and considered this Town Project on **September 3, 2013**. In connection with its review of this Town Project, the Planning Commission scheduled and held a public hearing on September 3, 2013, notice of which was published on the Town’s website for at least five (5) days prior to the hearing as required by Section 9-14-4(2) of the Breckenridge Town Code. At the conclusion of its public hearing, the Planning Commission recommended approval of this Town Project to the Town Council.
4. The Town Council’s final decision with respect to this Town Project was made at the regular meeting of the Town Council that was held on September 10, 2013. This Town Project was listed on the Town Council’s agenda for the September 10, 2013 agenda that was posted in advance of the meeting on the Town’s website. Before making its final decision with respect to this Town Project, the Town Council accepted and considered any public comment that was offered.
5. Before approving this Town Project the Town Council received from the Director of the Department of Community Development, and gave due consideration to, a point analysis for the Town Project in the same manner as a point analysis is prepared for a final hearing on a Class B development permit application under the Town’s Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code).
6. The Town Council finds and determines that the Town Project is necessary or advisable for the public good, and that the Town Project shall be undertaken by the Town.



 <p><b>Aqua Services, LLC</b> 1122 BRIDGEWAY, STE 204 BRECKENRIDGE, CO 80424</p>	<p><b>CUCUMBER GULCH BEAVER POND RESTORATION PROJECT BRECKENRIDGE, CO</b></p>	<p><b>SITE MAP: PROJECT AREA</b></p>		Date: 7/29/13	No: 1	▲ REV:	<p><b>FIG 1</b></p>
				Drawn by: rjo	Ckd by: rjo	▲ REV:	
				File: 03.04.13	Loc: DF/A/MO	▲ REV:	

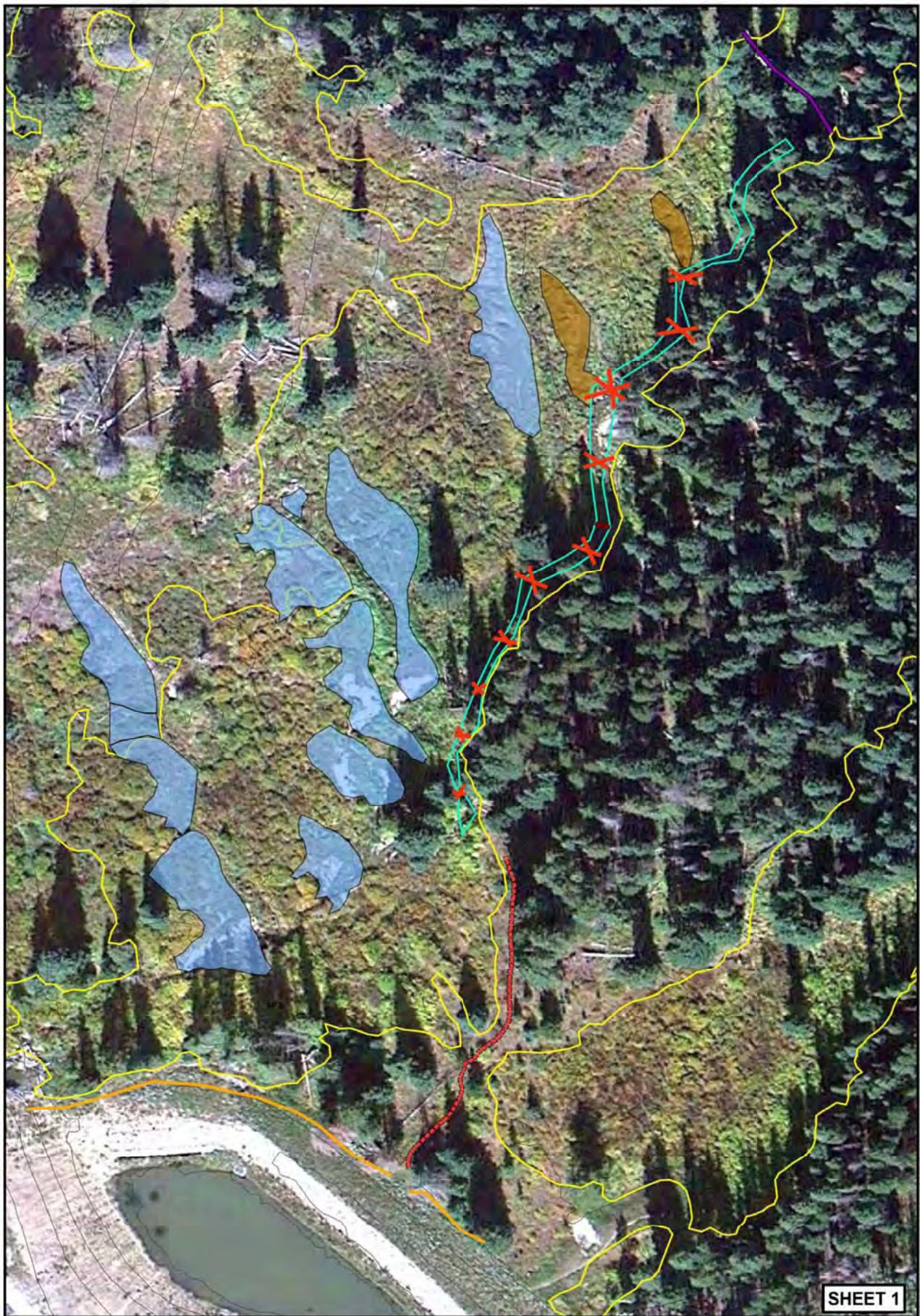


CUCUMBER GULCH  
 BEAVER POND RESTORATION PROJECT  
 BRECKENRIDGE, CO

PLAN VIEW:  
 BOREAS CREEK

Date: 7/29/13	No: 1	▲ REV:
Drawn by: rjo	Ckd by: rjo	▲ REV:
File: 03.04.13	Loc: DF/A/MO	▲ REV:

FIG  
 2



**SHEET 1**



August 2013

**UPPER CUCUMBER GULCH  
Phase 3 Restoration  
Boreas Creek Restoration  
BRECKENRIDGE SKI RESORT**

50 25 0 50 Feet  
1 Inch = 50 Feet

Datum: NAD\_1983\_UTM\_Zone\_13N  
Source: Google Earth 2011 Orthophoto  
GIS Prepared by Suzanne Claffey

**Claffey Ecological Consulting, Inc.**

**Legend**

- Wetlands 2011
- Ponds Restored 2012
- Boreas Creek Channel
- Log Skier Bridge
- Pedestrian Bridge
- Beaver Ponds
- Structures
- Access Route
- Wattles
- CG 5ft Contour

Photo B.



In this picture, flow is toward the viewer. Note the cross-channel log creating the small waterfall (grade control) in the middle of the photograph. On the right side of the photograph, you can see the gravel bar that is associated with the grade change, and you can also envision how the loss of this log might cause the channel to erode in the upstream direction. The log laying across the channel is actually being assisted by another log that is laying at an angle to the flow and the log.

Photo G.



View looking upstream at a large combination log and debris jam. Probably the result of the last very large event, you can see how the material has closed off the previous channel, and created a new channel that is not visible in the photograph. Such avulsions are also part of the natural order in the drainage; sometimes these changes in direction result in positive results and other times not so positive. In this respect, it is important to understand that temporal variation is normal, and without it, Cucumber Gulch would not have the habitat value it has today.

Photo F.



This photograph illustrates the result of overland sheet flow through the forest canopy. In this case, the dry waterfall and nascent channel in center left are the result of a log jam which forces very large flows into the riparian area. Features such as these should be monitored and erosional forces checked if they present risk to valuable habitat elements elsewhere.

## Town Council Staff Report

- Subject:** MBJ/ Cucumber Wedge Forest Health Project  
(Town Project, Hearing, PC#2013075)
- Proposal:** The Town is proposing a forest health treatment in Cucumber Gulch Preserve, specifically addressing standing dead lodgepole pines and deadfall on the MBJ and Wedge parcels. These two parcels were acquired relatively recently by the Town and warrant tree removal in upland areas to reduce wildfire risk, diversify wildlife habitat, clean up a portion of the new open space, and remove standing dead tree hazards.
- The work described in the Application is a Town Project as defined in Section 9-14 of the Town Code.
- Date:** September 4, 2013 (for meeting of September 10, 2013)
- Project Manager:** Scott Reid, Open Space and Trails Planner
- Applicant/Owner:** Town of Breckenridge
- Address:** 1522 Ski Hill Road
- Legal Description:** Sections of the Wildcat, Groundhog and Nugget Lodes, Public Open Space
- Site Area:** 34.03 acres
- Land Use District:** 1: Low Density Residential, Recreational
- Site Conditions:** The site is undeveloped and is an upland portion of the Cucumber Gulch Wildlife Preserve. An existing access road from Ski Road constructed by the previous owners provides good access with minimal impact to the project site.
- The site is located immediately across Ski Hill Road from National Forest Lands and undeveloped private property.
- Adjacent Uses:** North: Residential, single-family lots in the Zeppelin Subdivision  
South: Protected open space in Cucumber Gulch Preserve  
East: Protected open space in Cucumber Gulch Preserve and private property  
West: Ski Hill Road, U.S. Forest Service Lands and private property

### Item History

Cucumber Gulch Preserve (“the Preserve”) is highly valued by the Town and its citizens due to its valuable wetland complex and associated wildlife biodiversity. Cucumber Gulch has been identified as an Aquatic Resource of National Importance (ARNI) by the U.S. Environmental Protection Agency because the area contains rare peat-forming, groundwater-fed fen wetlands, as well as surface water-fed wetlands that support a rich biodiversity of animals, birds and plants. The Town and its citizens have

committed significant resources to acquiring, protecting, and appropriately managing this sensitive wetland ecosystem.

Since 2001, the Town has conducted extensive resource monitoring in the Preserve to better understand, and therefore manage, its ecosystem. In 2012, the Town contracted with Eric Petterson of Rocky Mountain Ecological Services (RMES) to evaluate forest health on the recently acquired MBJ and Cucumber Wedge portions of the Preserve.

Portions of the attached “*Forest Management Prescription for the Town of Breckenridge’s MBJ & Wedge Parcels*”, developed by RMES on behalf of the Town, recommends treating approximately 5.4 acres of forest with salvage and thinning for stand health improvement, and increased stand diversity for wildlife habitat improvement. The prescription recommends all MPB-killed trees, deadfall materials and approximately 30% of large living lodgepole pine to be removed to improve forest health and stand diversity. All healthy spruce or subalpine fir trees will be retained.

The Breckenridge Open Space Advisory Commission (BOSAC) was made aware of this project and reviewed this concept in spring 2013, and more recently at its August 19<sup>th</sup> meeting. BOSAC unanimously recommended proceeding with the proposed forest health prescription, and to pursue approval for a Town Project through the Planning Commission and Town Council. BOSAC recommended the treatment take place this fall to be consistent with RMES recommendation of conducting the treatment in late summer or fall months, after the ground has dried, and nesting bird activities have ceased. The Planning Commission also reviewed this project proposal at its September 3<sup>rd</sup> meeting and unanimously recommended Town Council consideration and approval of the proposed project.

### Staff Comments

Protection of the Cucumber Gulch Preserve is a high priority for the Town of Breckenridge and its open space program. Town staff is working with qualified consultants to identify and address threats to the ecosystem health. The attached proposal is designed to fulfill that goal by improving forest health in Cucumber Gulch’s dry uplands.

**Land Use (Policies 2/A & 2/R):** The Cucumber Gulch Overlay Protection District is an amendment to the Land Use Guidelines. Within the Preventive Management Area (PMA), most development activities are prohibited, including:

*“D: Removal or excavation of material such as soil, gravel or vegetation.”*

*“I. Vegetative cutting or clearing, **except for:** (i) maintenance of trails approved within the recreation plan pursuant to Paragraph 13 and existing Breckenridge Nordic Center trails; (ii) maintenance of forest health as determined by the Town in consultation with forest resource management agencies; and (iii) the uses referenced in Sub-paragraph K of this 8.4 Paragraph.” (emphasis added)*

The proposed project qualifies for an exception as “*maintenance of forest health as determined by the Town in consultation with forest resource management agencies*”. The Town’s consultant (Rocky Mountain Ecological Services) has contributed their input into the prescription, and has agreed that the proposed treatment is the most appropriate course of action for this particular area. The proposed project complies with the regulations of the Cucumber Gulch PMA.

**Point Analysis (Section: 9-1-17-3):** Staff finds no reason to assign positive or negative points under any Relative policies of the Development Code. We find that the project meets all Absolute polices, including Policy 2/A-Land Use as it relates to the Cucumber Gulch Overlay Protection District.

**Planning Commission Recommendation**

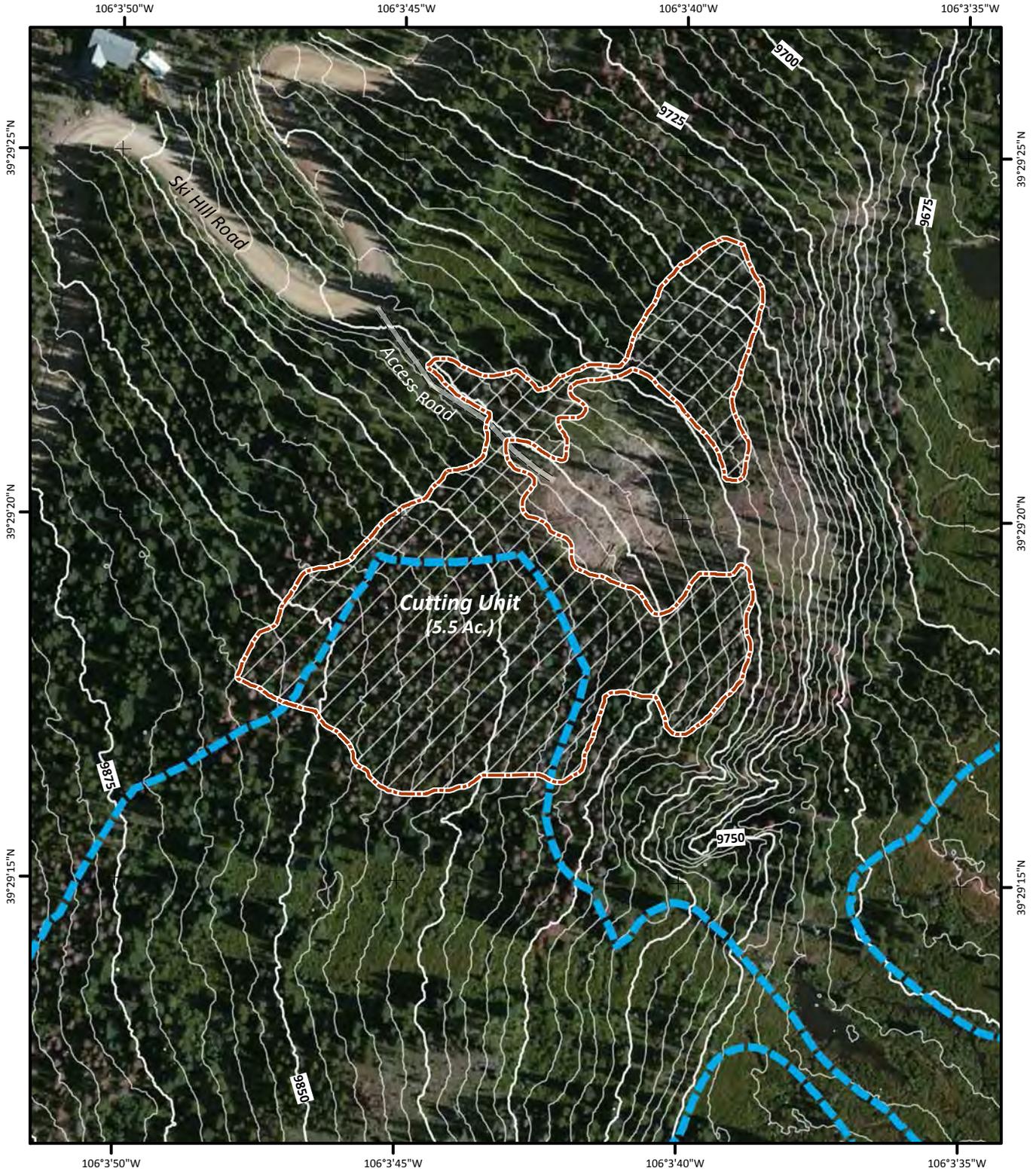
This is a Town Project pursuant to the recently adopted ordinance amending the Town Projects Process (Council Bill No. 1, Series 2013), effective April 12, 2013. BOSAC and the Planning Commission have both recommended Town Council review and approve this proposed forest health project, the MBJ/Cucumber Wedge Forest Health Project, PC#2013075, under the Town Project approval process with the attached Findings.

## TOWN OF BRECKENRIDGE

### MBJ – Cucumber Wedge Forest Health Project Sections of the Wildcat, Groundhog and Nugget Lodes PERMIT #2013075

#### FINDINGS

1. This project is “Town Project” as defined in Section 9-14-1 of the Breckenridge Town Code because it involves the planning, design, maintenance of a public project.
2. The process for the review and approval of a Town Project as described in Section 9-14-4 of the Breckenridge Town Code was followed in connection with the approval of this Town Project.
3. The Planning Commission reviewed and considered this Town Project on **September 3, 2013**. In connection with its review of this Town Project, the Planning Commission scheduled and held a public hearing on September 3, 2013, notice of which was published on the Town’s website for at least five (5) days prior to the hearing as required by Section 9-14-4(2) of the Breckenridge Town Code. At the conclusion of its public hearing, the Planning Commission recommended approval of this Town Project to the Town Council.
4. The Town Council’s final decision with respect to this Town Project was made at the regular meeting of the Town Council that was held on September 10, 2013. This Town Project was listed on the Town Council’s agenda for the September 10, 2013 agenda that was posted in advance of the meeting on the Town’s website. Before making its final decision with respect to this Town Project, the Town Council accepted and considered any public comment that was offered.
5. Before approving this Town Project the Town Council received from the Director of the Department of Community Development, and gave due consideration to, a point analysis for the Town Project in the same manner as a point analysis is prepared for a final hearing on a Class B development permit application under the Town’s Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code).
6. The Town Council finds and determines that the Town Project is necessary or advisable for the public good, and that the Town Project shall be undertaken by the Town.



Cutting Unit



Temporary Access Road

Nordic Ski Trail

## Town of Breckenridge

### MBJ & Wedge Parcels Forest Management Project



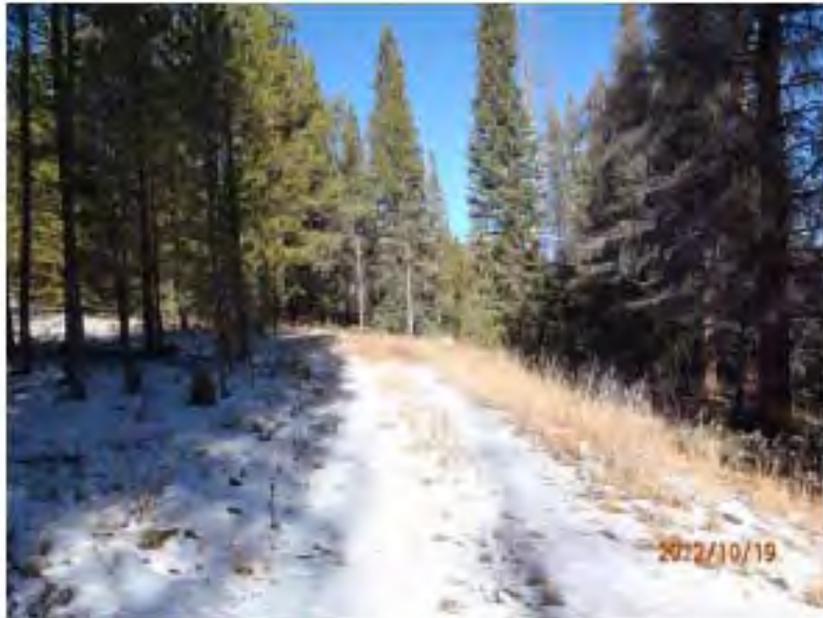
1 inch = 200 feet



Date: December 2012

**Disclaimer:**

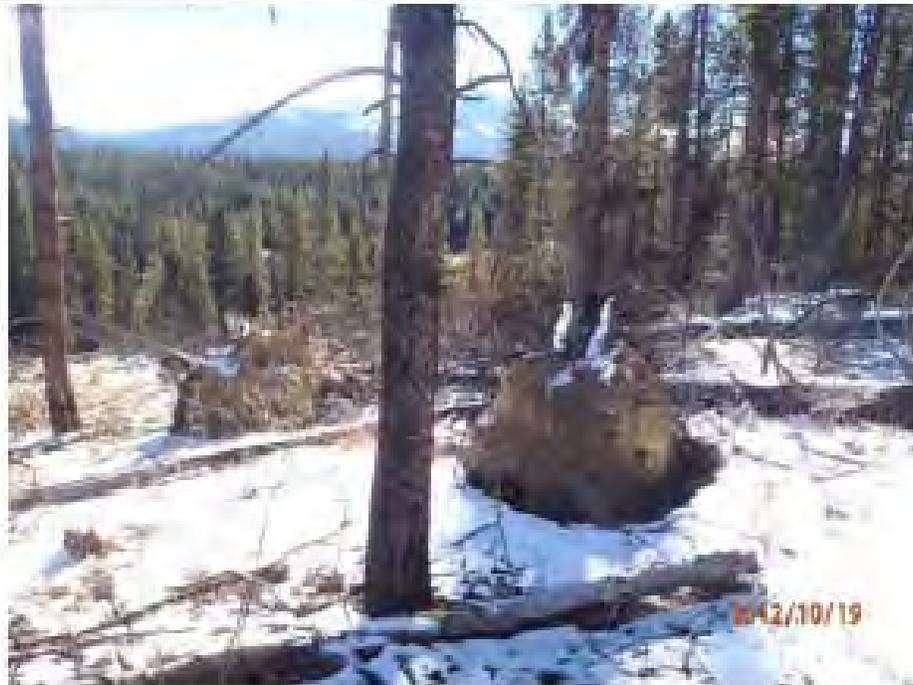
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. The maps are distributed "AS-



Existing access road from Ski Hill Road



Typical stand conditions



Recently blown-down trees at eastern edge of unit should be assessed for removal, or some trees may also be left for small mammal and subnivean habitats



The site already has a recently used log-landing area, which should be used again, scarified and reclaimed using a native grass seed mix.



## Scheduled Meetings, Important Dates and Events

**Shading indicates Council attendance – others are optional**

*The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them. All Council Meetings are held in the Council Chambers, 150 Ski Hill Road, Breckenridge, unless otherwise noted.*

### SEPTEMBER 2013

Tuesday, September 10, 2013; 3:00/7:30 pm	First Meeting of the Month
Friday, September 13 – Sunday, September 15, 2013; Times Variable	Breckenridge Oktoberfest
Thursday, September 19 – Sunday, September 22, 2013; Times Variable	Breckenridge Festival of Film
Friday, September 20, 2013; 8:00-9:00 am; Clint’s Bakery and Coffeehouse	Coffee Talk
Tuesday, September 24, 2013; 3:00/7:30 pm	Second Meeting of the Month

### OCTOBER 2013

Tuesday, October 8, 2013; 3:00/7:30 pm	First Meeting of the Month
Friday, October 11, 2013; 8:00-9:00 am; TBD	Coffee Talk
Tuesday, October 22, 2013; 3:00/7:30 pm	Second Meeting of the Month
Friday, October 29, 2013; 8:30 am-5:00 pm	Council Budget Retreat

### NOVEMBER 2013

Friday, November 8, 2013; 8:00-9:00 am; TBD	Coffee Talk
Tuesday, November 12, 2013; 3:00/7:30 pm	First Meeting of the Month
Tuesday, November 26, 2013; 3:00/7:30 pm	Second Meeting of the Month

### OTHER MEETINGS

1 <sup>st</sup> & 3 <sup>rd</sup> Tuesday of the Month; 7:00 p.m.	Planning Commission; Council Chambers
1 <sup>st</sup> Wednesday of the Month; 4:00 p.m.	Public Art Commission; 3 <sup>rd</sup> floor Conf Room
2 <sup>nd</sup> & 4 <sup>th</sup> Tuesday of the Month; 1:30 p.m.	Board of County Commissioners; County
2 <sup>nd</sup> Thursday of every other month (Dec, Feb, Apr, June, Aug, Oct) 12:00 noon	Breckenridge Heritage Alliance
2 <sup>nd</sup> & 4 <sup>th</sup> Tuesday of the month; 2:00 p.m.	Housing/Childcare Committee
2 <sup>nd</sup> Thursday of the Month; 5:30 p.m.	Sanitation District
3 <sup>rd</sup> Monday of the Month; 5:30 p.m.	BOSAC; 3 <sup>rd</sup> floor Conf Room
3 <sup>rd</sup> Tuesday of the Month; 9:00 a.m.	Liquor Licensing Authority; Council Chambers
4 <sup>th</sup> Wednesday of the Month; 9:00 a.m.	Summit Combined Housing Authority
4 <sup>th</sup> Wednesday of the Month; 8:30 a.m.	Breckenridge Resort Chamber; BRC Offices
4 <sup>th</sup> Thursday of the Month; 7:00 a.m.	Red White and Blue; Main Fire Station
3 <sup>rd</sup> Monday of the Month; 1:00 p.m.	Breckenridge Marketing Advisory Committee; Breck PD Training Room

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