

ORDINANCE NO. 9

Series 2000

AN ORDINANCE AMENDING THE TOWN OF BRECKENRIDGE LAND USE GUIDELINES BY ESTABLISHING THE CUCUMBER GULCH OVERLAY PROTECTION DISTRICT; AND MAKING AMENDMENTS TO THE BRECKENRIDGE DEVELOPMENT CODE RELATED THERETO

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

**Section 1. Findings.** The Town Council has heard and considered the evidence presented in support of and in opposition to the adoption of this Ordinance. Based upon the evidence presented to the Town Council in connection with its consideration of this Ordinance, as more fully set forth in the record of the proceedings in this matter, the Town Council of the Town of Breckenridge, Colorado hereby finds and determines as follows:

1. By Ordinance No. 3, Series 1987, the Town adopted the Breckenridge Land Use Guidelines ("Land Use Guidelines").

2. The Land Use Guidelines contain provisions governing the development of real property located within the various Land Use Districts of the Town and represent one component of the Town's general zoning restrictions with respect to real property located within the Town.

3. Ordinance No. 18, Series 1997, the Town Council adopted certain procedures to be followed to amend the Land Use Guidelines.

4. The amendment to the Land Use Guidelines made by this Ordinance is legislative in nature

5. The procedural requirements of Ordinance No. 18, Series 1997, with respect to a proposed legislative amendment to the Land Use Guidelines have been fully satisfied. Without limiting the generality of the foregoing, the Town Council finds that a public hearing was held by the Town Council of the Town of Breckenridge on December 14, 1999 to consider the adoption of this Ordinance. Notice of such hearing was published once in The Denver Rocky Mountain News, a newspaper of general circulation in the Town, on December 2, 1999 and once in The Summit County Journal, a newspaper of general circulation in the Town, on December 10, 1999, all as required by Ordinance No. 18, Series 1997. The Proof of Publication of such notice was admitted into evidence and made a part of the record in connection with the adoption of this Ordinance.

6. The amendment to the Land Use Guidelines contained in this Ordinance is consistent with the Town's adopted Master Plan and bears a reasonable relationship to the general welfare of the community.

**Section 2. Adoption of Cucumber Gulch Overlay Protection District.** The Town of Breckenridge Land Use Guidelines are hereby amended by the adoption of the following additional provisions:

CUCUMBER GULCH OVERLAY PROTECTION DISTRICT

1. **Authority.** These regulations ("Regulations") are adopted pursuant to the powers and authority conferred on home rule municipalities by the laws of the State of Colorado, including, but not limited to, Article 23 of Title 31, C.R.S. (municipal planning and zoning); Article 20 of Title 29 (Local Government Land Use Control Enabling Act); and Article XX of the Colorado Constitution.

2. **Compliance Required.** Compliance with the requirements of these Regulations is enforced through the application of Policy 2(Absolute) of the Town's Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code) for developments and Section 9-2-4-1(A) of the Town's Subdivision Ordinance (Chapter 2 of Title 9 of the Breckenridge Town Code) for subdivisions.

3. **Findings.** The Town Council of the Town of Breckenridge hereby finds and determines as follows:

A. The area of the Town of Breckenridge which is commonly referred to as "Cucumber Gulch" is a drainage located on the western edge of the Town and includes forests, herbaceous vegetation, an extensive wetlands complex, and open water bodies. The Cucumber Gulch area is an important and unique area deserving of special protection by the Town.

B. Cucumber Gulch provides habitat for over one hundred wildlife species, including the state-endangered southern Rocky Mountain boreal toad.

C. Cucumber Gulch also includes fen wetlands which are considered a Resource Category 1 by the United States Fish and Wildlife Service, and are considered to be an irreplaceable resource. The wetlands complex of Cucumber Gulch has been designated as an "Aquatic Resource of National Importance" by the United States Environmental Protection Agency.

D. Much of the area of Cucumber Gulch is either in the development process or is projected to be developed in the near future. Additionally, the Cucumber Gulch drainage is used extensively for both summer and winter recreation, including hiking, mountain biking, Nordic skiing and other activities. If not granted special protection by the Town, the unique and valuable assets associated with the Cucumber Gulch drainage area may be lost or irreparably damaged.

E. In adopting these Regulations the Town Council has relied upon the report entitled "Cucumber Gulch Resource Protection & Recreation Plan" which was prepared for the Town by Science Applications International Corporation and is dated October, 1998. Such report contains additional factual information concerning the Cucumber Gulch area which has been considered by the Town Council in connection with its decision to adopt these Regulations.

F. The enforcement of these Regulations will significantly advance the purposes described in Paragraph 4 of these Regulations.

4. Purpose. These Regulations are adopted for the purpose of preserving and improving the public health, safety and general welfare of the citizens of the Town of Breckenridge. More specifically, it is the purpose of these Regulations to:

A. Limit human disturbance of Cucumber Gulch insofar as possible and to thereby keep the impacts associated with human intrusion as minimal as possible.

B. Establish a stewardship program which will be applied in a consistent, fair and area-wide fashion in order to provide appropriate maintenance of the special resources in Cucumber Gulch.

C. Establish a buffer area around the important natural resources portions of Cucumber Gulch, to be known as the "Preventive Management Area" or "PMA", where development and other activities are prohibited in order to maintain and enhance the aesthetics and bio-diversity of the area and to enable the natural resources of the area to function without being compromised.

D. Commit the Town to undertake, complete and consider further studies of the boreal toad habitat, wildlife corridors in upland areas, hydrology, and fen wetlands of Cucumber Gulch in order to better understand the existing conditions of Cucumber Gulch and to allow for the subsequent refinement of these Regulations pursuant to Paragraph 9 hereof.

E. Prohibit activities that could have a major or irreversible impact within the PMA.

F. Provide for the establishment and enforcement of wildlife movement corridors in upland areas of Cucumber Gulch.

G. Promote Best Management Practices (as hereafter defined) to provide a framework that ensures, insofar as possible, that activities in and around Cucumber Gulch are compatible with the protection of its resources.

H. Allow and promote recreational access to Cucumber Gulch to the extent that it is in keeping with study results, and the goals and purposes of these Regulations.

I. Establish the Town as the lead entity and as such the Town will work cooperatively with landowners in the District, government agencies and others to further the purposes of these Regulations.

J. Commit the Town to adopt Water Quality Protection Standards based on those developed by the Northwest Colorado Council of Governments for use in connection with any development which occurs within the drainage which feeds Cucumber Gulch.

5. Definitions. Except as otherwise provided in this Paragraph, terms used in these Regulations shall have the meanings provided in the Town of Breckenridge Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code). When used in these Regulations, the following terms shall have the following meanings:

**BEST MANAGEMENT PRACTICES**

Those practices described in Paragraph 12 of these Regulations which are intended to provide a framework that ensure activities in and around Cucumber Gulch are compatible with the protection of its resources.

**CUCUMBER GULCH**

The geographic area of the Town of Breckenridge which includes the District and the PMA, as depicted on Exhibit "A".

**DISTRICT**

The Cucumber Gulch Overlay Protection District as depicted on Exhibit "A".

**LAND USE GUIDELINES**

The Town of Breckenridge Land Use Guidelines as adopted by Ordinance No. 3, Series 1987, and as subsequently amended.

**PREVENTIVE MANAGEMENT AREA (PMA)**

That portion of the District which is identified as the PMA on Exhibit "A", and as amended from time to time based on wetlands delineations. The White Wolf subdivision and County Road 3 are exempted from the PMA.

**REGULATIONS**

The regulations adopted by Section 2 of this Ordinance, as amended from time to time.

**SUMMER TRAIL**

A recreational path intended for use only during the months when the trail is not normally covered by snow.

## WETLANDS

Those areas which are generally depicted as wetlands on Exhibit "A", and those other areas within the District subsequently identified as wetlands by others and approved by the U.S. Army Corp. of Engineers or otherwise accepted by the Town in accordance with the federal definition of wetlands (33CFR) and applicable law.

6. Overlay District Adopted. The Land Use Guidelines are hereby amended by the adoption of these Regulations, and the District is hereby created. Where the provisions of these Regulations conflict with the provisions of another section of the Land Use Guidelines or Development Code, the provisions of these Regulations shall control.

7. Area of Applicability. These Regulations shall apply only to the District. The boundaries of the District may be amended from time to time to include land which is annexed to the Town subsequent to the adoption of these Regulations and which the Town Council determines should be subjected to the provisions hereof in order to further the purpose and intent of these Regulations.

### 8. Preventive Management Area.

8.1 PMA Created. Within the District the PMA is hereby created.

8.2 PMA - General. In general terms, the PMA is intended to create a buffer area in which native vegetation is maintained, and human activities and disturbance of the PMA is kept to a minimum.

8.3 PMA Boundaries. Exhibit "A" generally depicts the PMA boundary. To precisely locate the PMA boundary on a specific tract or parcel of land, the Town may require a wetland delineation to be performed as part of a development proposal. The Town will share equally with the developer or landowner in the costs of the wetland delineations when needed for the purpose of determining compliance with these Regulations. The PMA boundary may be amended from time to time based on wetlands delineations.

In all cases the PMA boundary shall be:

A. 300 feet--from the edges of wetlands containing principal water bodies, but in no event further than the edge of the District boundary; and

B. 100 feet--from the edges of all other wetlands, but in no event further than the edge of the District boundary.

8.4 Prohibitions Within the PMA. The following are prohibited within the PMA, unless specifically approved by the Town pursuant to Paragraph 14 of these Regulations:

A. New building construction, erection or placement, or increase in size of an existing building footprint.

B. New road construction.

C. Placement of material such as soil or gravel.

D. Removal or excavation of material such as soil, gravel or vegetation.

E. The commencement of any new recreational use of land. This includes, without limitation, the commencement of use and/or the construction of any new trail.

F. The use of any existing summer trail within the wetlands.

G. Pets.

H. Fishing.

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.

J. Storage or spillage of hazardous materials/waste.

K. Construction of any water quality facility, including, but not limited to detention ponds and monitoring stations, unless located on non-wetland areas of the PMA as approved by the Town. Town approval shall involve the consideration of an analysis of the least environmentally damaging practicable alternative, including alternative sites outside the PMA. Approval by applicable regulatory agencies must be obtained.

8.5 Maintenance of any existing structure or facility is exempt from the provisions of Sub-paragraph 8.4. Disturbance to the PMA from the maintenance of any existing structure or facility, or from construction on an existing foundation, shall be limited to 10' from the existing structure, facility or foundation. Sediment from any detention pond must be disposed of outside of the District boundary and in compliance with applicable regulations.

8.6 Existing trails within the Breckenridge Nordic Center trail system are exempt for the provisions of Sub-paragraph 8.4.

9. Further Studies. The Town may conduct, or may cause to be conducted, further studies, including resource mapping, of the hydrology of Cucumber Gulch, the boreal toad habitat of the area, wildlife corridors, and the description of fen wetlands. The results of such studies and any other studies acceptable to the Town may be used by the Town to revise these Regulations as appropriate.

10. Permit Conditions. In connection with the approval of a Development Permit for development within the District the Planning Commission and the Town Council shall have the power to impose such conditions of approval as may be reasonably necessary to implement the purposes of these Regulations. Such conditions may include, without limitation, a requirement that an applicant impose upon its property restrictive covenant(s) that adequately protect the special natural resources of Cucumber Gulch. Such covenants shall be acceptable in form and substance to the Town Attorney, and the Town shall be party to and shall have the authority to enforce such covenants.

11. Development Standards: Development within the District shall be subject to the following standards:

A. New roads constructed within the District shall have passageways to provide for wildlife movement, unless such passageways are not required by the Town. The location, size and interval of such passageways shall require approval by the Town in consultation with the Colorado Department of Wildlife or other qualified biologists.

B. Modifications to the hydrology shall not result in detrimental effects to the resources of the District.

C. Where vegetation is proposed to be disturbed, the applicant shall submit a plan to restore such areas in a manner that provides similar biological functions, based on percent cover and type of species. Revegetation shall consist of native plants that are found in the vicinity.

D. Any trail approved within the Recreation Plan pursuant to Paragraph 13, shall be designed to discourage unauthorized use.

E. New recreation uses shall utilize plantings, boulders and other natural features to route visitors away from sensitive areas.

F. Construction activities shall employ effective methods to minimize soil erosion and resulting sedimentation, including silt fences, temporary re-vegetation of long-term construction sites, avoidance of slopes greater than 30%, and management of storm water run-off, and other methods.

G. Components consistent with the Town's adopted water quality standards shall be incorporated in construction activities to address potential impacts from stormwater run-off, snow storage, and impervious surfaces.

H. Permanent fencing shall be avoided, unless specifically designed to allow for wildlife movement.

I. Exterior lighting shall be designed so that no direct rays impact the PMA.

J. Use of exterior loudspeakers that can be heard from the PMA is prohibited, including but not limited to music speakers.

K. The area of soil and vegetation disturbance on each building site shall be limited to that required for construction and landscaping.

L. Buildings should be designed and sited to minimize disturbance to topography and vegetation.

12. Best Management Practices. The Best Management Practices set forth in this Paragraph shall be applied to any development constructed within the boundaries of the District. Such Best Management Practices shall be implemented by the landowner executing and recording with the Summit County Clerk and Recorder one or more restrictive covenant(s) which is acceptable in form and substance to the Town Attorney. The Town shall be party to and shall have the authority to enforce such covenant(s). Owners of development existing at the time of adoption of these Regulations, are encouraged to record such covenants.

The Best Management Practices to be applied as set forth in this Paragraph shall be determined by the Town Council and Planning Commission based upon the goals and purposes of the Regulations and may include but are not limited to the following:

A. Undeveloped common areas of a development shall be managed to retain natural and habitat values. Vegetative clearing shall be avoided within identified wildlife movement corridors. Turf in common areas shall be limited to those areas used for active recreation.

B. Landscaping shall consist primarily of native vegetation. Property owners shall consult with the Colorado Division of Wildlife to determine appropriate native plants. Invasive weeds shall be removed.

C. The use of fertilizer, herbicides and pesticides shall be prohibited, except to protect forest health as approved by the Town in consultation with forest and wildlife resource management agencies. In such instances, the principles of integrated pest management shall be used.

D. Human-made trails shall not be established unless approved by the Town within the Recreation Plan pursuant to Paragraph 13. Trails not approved by the Town shall be closed using signage and other physical measures; obscured using natural materials; and revegetated using native plants.

E. Activities in wetlands or within stream banks shall be prohibited.

F. Pets shall be leashed or contained within enclosures, at all times to avoid disturbance of and interference with wildlife.

G. Trash and other material that could attract wildlife shall be stored in animal-proof containers.

H. The intentional feeding of wild animals is prohibited.

13. Recreation Plan. A plan identifying approved recreation activities (including trails) and locations within the District shall be adopted by the Town, in conjunction with other applicable agencies, based in part on the results of the studies described in Paragraph 9 of these Regulations. Consistent with the study results, specific criteria and conditions shall be established for the placement and management of any future alpine skiway or gondola. Recreation uses may be approved outside the PMA on a case by case basis, so long as such uses are consistent with the goals and policies of these Regulations. Recreation uses approved within the recreation plan must comply with the other provisions of this ordinance, including variance provisions if required. Such variance procedure and recreation plan or amendment thereto may be processed concurrently with any application or approval.

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.

B. Any person who contests the location of the boundary line of the District or PMA shall be provided with a reasonable opportunity to present his case to the Town Council. Such person shall submit sufficient technical data from reliable sources in support of his case. The Town Council shall not exclude a parcel of real property, or any portion thereof, from the District or PMA unless the technical information presented clearly and conclusively establishes that the mapped location is incorrect or inappropriate or that, in a special geographical area, the purposes of these Regulations would not be served by the inclusion of such area within the District or PMA.

Section 3. Continued Effect of Land Use Guidelines. Except as specifically amended hereby, the Breckenridge Land Use Guidelines, as adopted by Ordinance No. 3, Series 1987, shall continue in full force and effect.

Section 4. Development Code Definition Added. Section 9-1-5 of the Breckenridge Town Code is hereby amended by the inclusion of the following additional definition:

**CUCUMBER GULCH OVERLAY OVERLAY PROTECTION DISTRICT**

The geographic area of the Town identified as the Cucumber Gulch Overlay Protection District in the Land Use Guidelines, as amended from time to time.

Section 5. Policy 5 (Absolute) Amended. There is hereby added to Policy 5 (Absolute) of Section 9-1-19 of the Breckenridge Town Code, entitled "Architectural Compatibility", a new Paragraph D, which shall read in its entirety as follows:

D. Within the Cucumber Gulch Overlay Protection District: Within the Cucumber Gulch Overlay Protection District building materials and exterior colors shall blend with the natural landscape. Structures shall be constructed of wood, stone and other natural materials. The use of highly reflective materials is prohibited.

Section 6. Policy 5 (Relative) Amended. The second unnumbered subparagraph of Paragraph A of Policy 5 (Relative) of Section 9-1-19 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

Exterior building materials and colors should not unduly contrast with the site's background. The use of natural materials, such as logs, timbers, wood siding and stone, are strongly encouraged because they weather well and reflect the area's indigenous architecture. Stucco or brick, provided an earth-tone color is selected, are acceptable building materials on smaller building elements, or as a secondary/accent material. Roof materials should be nonreflective and blend into the site's backdrop as much as possible. Inappropriate exterior building materials include, but are not limited to, untextured exposed concrete, untextured or unfinished masonry, highly reflective glass, reflective metal roof and unpainted aluminum window frames. This Section applies only to areas outside of the Historic District, but does not apply to the Cucumber Gulch Overlay Protection District (see Paragraph D of Policy 5(Absolute)).

Section 7. Development Code Amendment. Policy 37 (Relative) of Section 9-1-19 of the Breckenridge Town Code, entitled "Special Areas", is hereby amended by the inclusion of a new Paragraph D, which shall read in its entirety as follows:

D. Cucumber Gulch Overlay Protection District: Within the Cucumber Gulch Overlay Protection District and the Protective Management Area, as defined in the Land Use Guidelines:

2 x (0/+2) Development should be designed to maximize the distance between disturbances and the PMA. Buildings and landscaping should be concentrated to maximize areas left undisturbed as potential habitat.

1 x (0/-2) Impervious surfaces should be minimized.

Section 8. Police Power Finding. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 9. Intent. This Ordinance is not intended, nor shall it be construed, to impair any vested property right, or any currently enforceable contractual right creating similar legal protection, if any, which exist at the time of the adoption of this Ordinance. Notwithstanding the provisions of Section 10, this Ordinance shall not apply to the owner of any lot or tract or similar subdivided parcel of land in a subdivision which is platted within any current or extended vested property right period, and such owner may construct improvements upon such lot or tract or similar subdivided parcel of land in accordance with (and subject to) the provisions of the Breckenridge Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code), without being subject to these Regulations.

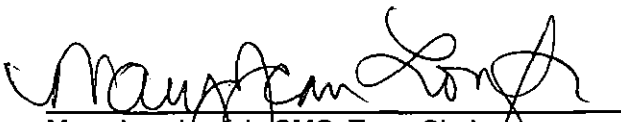
Section 10. Applicability. Except as provided in Section 9, this Ordinance shall apply to all development permit applications first filed after the effective date of this Ordinance.

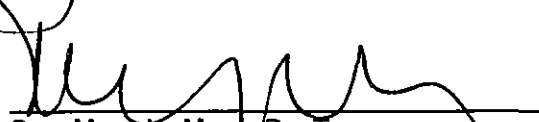
Section 11. Effective Date. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 23<sup>rd</sup> day of November, 1999. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 14<sup>th</sup> day of December, 1999, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC, Town Clerk

  
Sam Mamula, Mayor Pro Tem

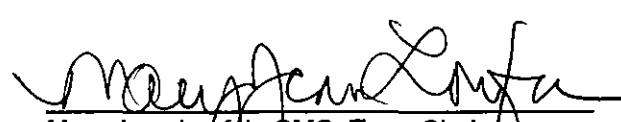
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on December 3, 1999.

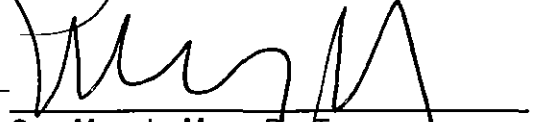
A public hearing on this Ordinance was held on February 22, 2000, the date to which such hearing was lawfully continued.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL, this 22<sup>nd</sup> day of February, 2000. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC, Town Clerk

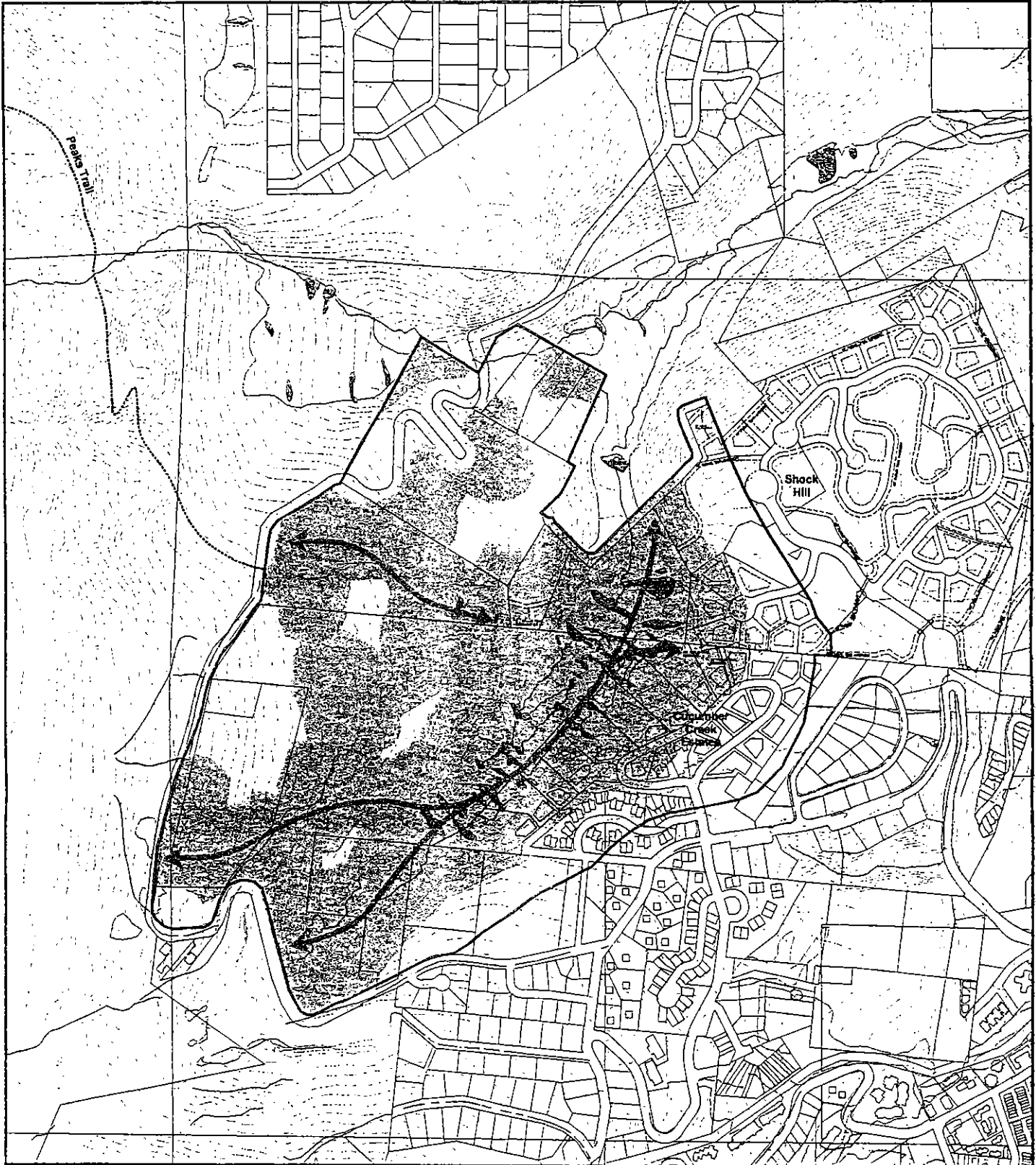
  
Sam Mamula, Mayor Pro Tem

APPROVED IN FORM:

  
Town Attorney







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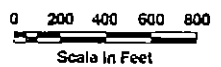
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on March 3, 2000.



File Name: ExhibitA.dwg 2/18/00

**Legend**

- |   |                             |   |                                  |
|---|-----------------------------|---|----------------------------------|
|  | Overlay Protection District |  | Preventive Management Area (PMA) |
|  | Streams                     |  | Wildlife Movement Corridors      |
|  | Principal Water Bodies      |  | Wetlands                         |



Information for this map was provided electronically by Summit County, Van Associates (through SNO engineering), and Breckenridge Lands. The combination of multiple basemaps and data sources results in slight mapping inaccuracies for road and wetland boundaries. Wetland mapping reflects that provided by private land owners where available (Van Associates, Cucumber Creek Estates, and Breckenridge Lands) and Summit County easements. Where discrepancies in wetland mapping occur between data sources, the more extensive wetland coverage was used. Wetland boundaries were not field verified for this study and should be considered approximate. Jurisdictional determinations of wetlands and other waters of the United States must be approved by the U.S. Army Corps of Engineers. Summit County wetland mapping is based on aerial photo interpretation and may not represent the extent of wetlands in this exhibit. Adjustment of the watershed boundary at Shack Hill was based on mapping provided by Breckenridge Lands, Inc.

**Exhibit A**  
**Exhibit A For Cucumber Gulch Overlay Protection District Ordinance**