

TOWN OF AVON, COLORADO
AVON REGULAR MEETING FOR TUESDAY, JANUARY 12, 2010
MEETING BEGINS AT 5:30 PM
AVON TOWN HALL, ONE LAKE STREET



PRESIDING OFFICIALS
MAYOR **RON WOLFE**
MAYOR PRO TEM **BRIAN SIPES**
COUNCILORS **RICHARD CARROLL, DAVE DANTAS, KRISTI FERRARO**
 AMY PHILLIPS, ALBERT "BUZ" REYNOLDS, JR.

TOWN STAFF
TOWN ATTORNEY: ERIC HEIL **TOWN MANAGER: LARRY BROOKS** **TOWN CLERK: PATTY MCKENNY**

ALL REGULAR MEETINGS ARE OPEN TO THE PUBLIC EXCEPT EXECUTIVE SESSIONS
COMMENTS FROM THE PUBLIC ARE WELCOME DURING CITIZEN AND COMMUNITY INPUT AND PUBLIC HEARINGS
PLEASE VIEW AVON'S WEBSITE, [HTTP://WWW.AVON.ORG](http://www.avon.org), FOR MEETING AGENDAS AND MEETING MATERIALS
AGENDAS ARE POSTED AT AVON TOWN HALL AND RECREATION CENTER, ALPINE BANK, AND AVON LIBRARY
THE AVON TOWN COUNCIL MEETS ON THE SECOND AND FOURTH TUESDAYS OF EVERY MONTH

1. **CALL TO ORDER AND ROLL CALL**
2. **INQUIRY OF THE PUBLIC FOR COMMENT AND APPROVAL OF AGENDA**
3. **DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST**
4. **COMMUNITY & CITIZEN INPUT**
5. **CONSENT AGENDA**
 - a. Minutes from December 8, 2009
 - b. Resolution No. 10-01, Series of 2010, Resolution approving the locations for posting the notices of public meetings (Patty McKenny, Town Clerk)
 - c. Monroe & Newell Engineers, Inc. – Nottingham Lake Fishing Pier Design Proposal (Shane Pegram, Engineer II) Approval of MNE's proposal to provide construction documents and construction observation for the Nottingham Lake Fishing Pier
6. **ORDINANCES**
 - a. **Public Hearing** on Ordinance No. 09-20, Series of 2009, Second Reading, Ordinance Approving and Accepting Mountain Star Conservation Easement (Eric Heil, Town Attorney) Review modifications of existing conservation easement so that easement is applied to open space areas but not to Tract AA which was dedicated to the Town for municipal purposes
 - b. Ordinance No. 10-01, Series of 2010, Ordinance Declaring a Moratorium on Medical Marijuana Dispensaries for 180 days and Declaring an Emergency (Eric Heil, Town Attorney) Proposed emergency moratorium ordinance on the issuance of business licenses for medical marijuana dispensaries for 180 days in order to prepare regulations for such businesses
7. **RESOLUTIONS**
9. **TOWN MANAGER REPORT**
10. **TOWN ATTORNEY REPORT**
11. **MAYOR REPORT**
12. **ADJOURNMENT**

FUTURE AGENDA DATES & PROPOSED TOPICS:

1/26/10: Final Deed Restricted Document for Gandorf PUD, Connect Avon Now Update, Audit Engagement Letter, Resolution Traer Creek Final Plat, Ordinance Addressing Residential Building Codes, Resolution addressing Com Dev Fees, Land Use Code Update, Park Pavilion Update

**MINUTES OF THE REGULAR MEETING OF THE AVON TOWN COUNCIL
HELD DECEMBER 8, 2009**

A regular meeting of the Town of Avon, Colorado was held at the Avon Municipal Building, One Lake Street, Avon, Colorado in the Council Chambers.

Mayor Ron Wolfe called the meeting to order at 5:30 PM. A roll call was taken and Council members present were Rich Carroll, Dave Dantas, Amy Phillips, Buz Reynolds and Brian Sipes. Kristi Ferraro was absent. Also present were Town Attorney Eric Heil, Town Manager Larry Brooks, Director Administrative Services Patty McKenny, Town Engineer Justin Hildreth, Planning Manager Matt Gennett, Assistant Town Manager Finance Scott Wright, Police Chief Brian Kozak, new Assistant Town Manager Community Development Sally Vecchio and Public Works and Transportation Director Jenny Strehler as well as members of the public.

INQUIRY OF THE PUBLIC FOR COMMENT AND APPROVAL OF AGENDA

Mayor Wolfe noted that the housing down payment assistance topic was not discussed at the executive session and council asked if the item should be placed on the consent agenda or if further discussion was required on the topic. It was suggested and agreed that an Executive Session would be held at the close of the regular meeting to discuss this topic.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Mayor Wolfe noted that Mayor Pro Tem Sipes would step down for the agenda item for Buck Creek's Resolution for the Final Plat and he would step down for the Mountain Star Conservation Easement.

COMMUNITY & CITIZEN INPUT

- a. ESRI's Southwest Award for Best Map on Bear Sighting Map produced by GIS Analyst Jenny Koenig, Community Development Department (Sally Vecchio, Assistant Town Manager Community Development)
- b. Special Event Update on "Icing on the Lake" (Danita Chirichillo, Special Events Supervisor)

CONSENT AGENDA

Mayor Wolfe asked for a motion on the consent agenda. Councilor Phillips moved to approve the consent agenda; Councilor Dantas seconded the motion and it passed unanimously by those present (Ferraro absent).

- a. Minutes from November 24, 2009
- b. Change Order 001 Elam Construction (Shane Pegram, Engineer II) Change order to adjust project quantities for the 2009 Street Improvement and Park Improvement projects to match those actually installed and add additional items required to complete the projects
- c. Change Order 1 - Benchmark Dam Service Spillway Improvements - Change Order with Ewing Trucking and Construction (Jeff Schneider, Project Engineer) CO to adjust quantities for construction of spillway improvements and project close-out
- d. Change Order 1 - Nottingham Puder Ditch Improvements - Change Order with Ewing Trucking and Construction (Jeff Schneider, Project Engineer) CO to adjust quantities for irrigation ditch improvements and project close-out
- e. Sale of Recreation Center's Spin Bicycles (Danita Chirichillo, Special Events Supervisor) Request approval of selling spin bikes to Southpark Recreation Center

NEW BUSINESS

Brian Kozak, Police Chief, presented the Intergovernmental Agreement for Animal Control Services which provided for continued animal control services from Eagle County. Councilor Carroll moved to approve the IGA for animal control services with Eagle County; Councilor Phillips seconded the motion and it passed unanimously by those present (Ferraro absent).

Matt Pielsticker, Planner II, presented the Nottingham Power Plant Contract with Colorado Mountain College Contract for Restoration of Avon's Waterwheel, a Contract to complete work on the stabilization of the power plant. Mayor Pro Tem Sipes moved to approve the Contract with CMC for the restoration; Councilor Phillips seconded the motion and it passed unanimously by those present (Ferraro absent).

Jenny Strehler, Director PW&T, presented the Intergovernmental Agreement between Board of County Commissioners of Eagle County acting through the Eagle County Regional Transportation Authority d/b/a ECO Transit and Town of Avon for Transit Parking Services IGA for services from 1/1/2010 ending 12/31/2010. She noted that the rate remained the same. Mayor Pro Tem Sipes moved to approve the Intergovernmental Agreement between Board of County Commissioners of Eagle County acting through the Eagle County Regional Transportation Authority d/b/a ECO Transit and Town of Avon for Transit Parking Services IGA for services from 1/1/2010 ending 12/31/2010. Councilor Phillips seconded the motion and it passed unanimously by those present (Ferraro absent).

Jenny Strehler, Director PW&T, presented the Fleet Maintenance Agreements, the Annual Fleet Service Agreements with Governmental Agencies as follows: Eagle River Fire Protection District, Beaver Creek Metro District Buses, Vail Resorts Dial-A-Ride, Eagle County Ambulance District, Eagle River Water & Sanitation District, Beaver Creek Metro Public Works, ECO Transit, Town of Minturn, Western Eagle County Ambulance District, Town of Redcliff, Vail Valley Foundation, Greater Eagle Fire Protection District, ECO Hazmat Team, and the Gypsum Fire District. She noted that the hourly rate has remained the same at \$105 / hour. Councilor Phillips moved to approve the Fleet Maintenance Agreements for the above referenced agencies; Mayor Pro Tem Sipes seconded the motion and it passed unanimously by those present (Ferraro absent).

RESOLUTIONS

Mayor Pro Tem Sipes stepped down due to a conflict of interest on this matter. Justin Hildreth, Town Engineer, presented Resolution No. 09-41, Series of 2009, Resolution Approving The Final Plat And Subdivision Improvement Agreements For Buck Creek Pud, A Resubdivision Of Lots 1, 2, 3 And 4, Wildwood Resort, A Resubdivision Of Lots 5, 52a, 52b, Block 1, Benchmark At Beaver Creek, Located In Section 1, Township 5 South, Range 82 West Of The Sixth Principal Meridian, Town Of Avon, Eagle County, Colorado. It was noted that this resolution approves the Buck Creek PUD Final Plat and the related Phase I and II Subdivision Improvement Agreements with a condition of inclusion of a trail easement on the plat. It was noted there will be two phases. Jay Petersen, representing the applicant, thanked the Town of Avon staff for their effort in reviewing this project. Councilor Carroll moved to approve Resolution No. 09-41, Series of 2009, Resolution Approving The Final Plat And Subdivision Improvement Agreements For Buck Creek Pud, A Resubdivision Of Lots 1, 2, 3 And 4, Wildwood Resort, A Resubdivision Of Lots 5, 52a, 52b, Block 1, Benchmark At Beaver Creek, Located In Section 1, Township 5 South, Range 82 West Of The Sixth Principal Meridian, Town Of Avon, Eagle County, Colorado. Councilor Dantas seconded the motion and it passed unanimously by those present (Ferraro absent).

Jeff Schneider, Senior Project Engineer, presented Resolution No 09-42, Series of 2009, Resolution Approving a Pipeline Crossing Agreement with Union Pacific Railroad at Mile Post 308.51, Tennessee Pass Subdivision, for Construction of the Community Heat Recovery Project. It was noted that there is a need to cross the railroad track in order to complete the project. An expenditure of approximately \$12K has been included in the budget for this project. Councilor Dantas moved to approved Resolution No 09-42, Series of 2009, Resolution Approving a Pipeline Crossing Agreement with Union Pacific Railroad at Mile Post 308.51, Tennessee Pass Subdivision, for Construction of the Community Heat Recovery Project. Councilor Reynolds seconded the motion and it passed unanimously by those present (Ferraro absent).

Sally Vecchio, Assistant Town Manager Community Development, presented Resolution No. 09-29, Series of 2009, Resolution Approving the Final Plat, Eagle River at Avon, A Resubdivision of Lots 1 and 2, Exemption Plat, Red House, Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian, Town of Avon, Eagle County, Colorado / Resolution tabled at November 10, 2009 Meeting. She spoke about the history on the review of the final plat related to the use of Tract 1 for general recreation activities in the area. She noted that staff proposed language and the applicant submitted a letter with its own proposed language. Shane Pegram presented a review of the construction of the Whitewater Park and the town's position to protect the uses for that park as identified in the Certificate of Dedication and Ownership. Mayor Pro Tem Sipes reiterated the town's need to keep those uses. Rick Pylman, representing Vail Resorts, Kim Martin, attorney, Rick Buchanon, Vail Resorts Development Company, noted that they would like a mutual agreement. Town Attorney Eric Heil noted that the project fails if the language cannot be agreed to in full. There was dialogue about what use was not agreeable to the applicant and it was noted that mostly the recreational activities along the shoreline. With no agreement made at this time, the topic was referred back to the attorneys and the following action was taken:

Councilor Carroll moved to table Resolution No. 09-29, Series of 2009, Resolution Approving the Final Plat, Eagle River at Avon, A Resubdivision of Lots 1 and 2, Exemption Plat, Red House, Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian, Town of Avon, Eagle County, Colorado. Councilor Phillips seconded the motion and it passed unanimously by those present (Ferraro absent).

Councilor Carroll moved to table Resolution No. 09-30, Series of 2009, Resolution Approving a Second Supplemental Water Lease Agreement With The Upper Eagle River Water Authority. Mayor Pro Tem Sipes seconded the motion and it passed unanimously by those present (Ferraro absent).

ORDINANCES

Shane Pegram, Engineer II, presented Ordinance No. 09-19, Series of 2009, Second Reading, An Ordinance Approving a Landscape Construction and Maintenance Easement Agreement between the Town and Vail Associates, Inc. Because the item was posted for a public hearing, Mayor Wolfe opened the public hearing, no comments were made, the hearing was closed. Councilor Carroll moved to table Ordinance No. 09-19, Series of 2009, Second Reading, An Ordinance Approving a Landscape Construction and Maintenance Easement Agreement between the Town and Vail Associates, Inc. Councilor Reynolds seconded the motion and it passed unanimously by those present (Ferraro absent).

Mayor Wolfe stepped down at this time due to a conflict of interest on this matter. Mayor Pro Tem Sipes presented Ordinance No. 09-20, Series of 2009, First Reading, Ordinance Approving and Accepting Mountain Star Conservation Easement. Town Attorney Eric Heil noted that the only changes were made to the exhibits and to revise the future trails to only show the Buck Creek Trail in relation to the new Buck Creek PUD. He noted the comments he heard were that they were not interested in adding any other trails, which would have included the old road. The revisions addressed the existing conservation easement so that the easement is applied to open space areas but not to Tract AA which was dedicated to the Town for municipal purposes. This ordinance repeals the previously adopted Ordinance No. 09-11. Councilor Dantas moved to approve Ordinance No. 09-20, Series of 2009, First Reading, Ordinance Approving and Accepting Mountain Star Conservation Easement. Councilor Phillips seconded the motion and it passed unanimously by those present (Ferraro absent).

MAYOR REPORT

Mayor Wolfe noted that the multiparty land exchange is in the hands of the US Forest Service.

EXECUTIVE SESSION CONTINUED FROM WORK SESSION:

Councilor Reynolds exited the meeting at this time. Councilor Carroll moved to convene into Executive Session at 7:10 PM to discuss the following item which was not discussed earlier in the day:

- a. Housing Down Payment Assistance Program: For the purpose of receiving legal advice on specific legal questions pursuant to Colorado Revised Statute Section 24-6-402(4)(b) and for the purpose of discussing personnel matters pursuant to Colorado Revised Statute section 24-6-402(4)(f) specifically concerning housing down payment assistance Policies.

Councilor Phillips seconded the motion and it passed by those present (Ferraro and Reynolds absent).

There being no further business to come before the Council, the executive session and the regular meeting adjourned at 7:30 PM.

RESPECTFULLY SUBMITTED:

Patty McKenny, Town Clerk

APPROVED:

Rich Carroll _____

Dave Dantas _____

Kristi Ferraro _____


Amy Phillips _____

Albert "Buz" Reynolds _____

Brian Sipes _____

Ron Wolfe _____

Memo

To: Honorable Mayor and Town Council
Thru: Larry Brooks, Town Manager
From: Patty McKenny, Director Administrative Services 
Date: January 7, 2010
Re: Resolution No. 10-01, Series of 2010, Posting Locations

Summary: Resolution No. 10-01, Series 2010 is presented to Council for their approval of the four locations used for posting the notices of public meetings.

Previous Council Action: The Town Council adopts this type of resolution on an annual basis as required by Colorado Revised Statutes.

Background: The four locations have been as follows:

- ✓ Avon Town Hall, One Lake Street, Bulletin Board
- ✓ Avon Recreation Center, 325 Benchmark Road, Bulletin Board
- ✓ Alpine Bank, 10 W. Beaver Creek Boulevard, Bulletin Board
- ✓ Avon Public Library, 200 Benchmark Road, Front Area Bulletin Board

Discussion: Colorado Revised Statutes, Subsection 24-6-402 addresses the specific guidelines involved with the open meetings law and posting notices. Notices must be posted at least 24 hours prior to each meeting. Regular council meeting notices and planning & zoning meeting notices are posted on the Friday before the meeting and emailed to Avon's distribution list of several hundred-email addresses. In addition to the posting, the regular council meeting agendas are published in the Vail Daily on the Monday before the Tuesday meeting. These posting locations are also used for special meeting notices and public hearing notices for ordinances.

Town Manager Comments:

**TOWN OF AVON, COLORADO
RESOLUTION NO. 10-01
SERIES OF 2010**

**A RESOLUTION APPROVING THE LOCATIONS
FOR POSTING THE NOTICES OF PUBLIC MEETINGS**

Whereas, Local Public Bodies, including the Avon Town Council, are required by Subsection 24-6-402 (2)(c) C.R.S., to designate annually at the Town Council's first regular meeting of each calendar year, the place at which notice will be posted at least 24 hours prior to each meeting.

NOW, THEREFORE BE IT RESOLVED BY THE AVON TOWN COUNCIL AS FOLLOWS:

Notice of meetings of the Town Council required pursuant to Section 24-6-401, et seq., C.R.S. shall be posted within the boundaries of the Town at least 24 hours prior to each meeting at the following locations:

Avon Town Hall, One Lake Street, Bulletin Board
Avon Recreation Center, 90 Lake Street, Bulletin Board
Alpine Bank, 10 W. Beaver Creek Boulevard, Bulletin Board
Avon Public Library, 200 Benchmark Road, Front Area Bulletin Board

ADOPTED THIS 12TH DAY OF JANUARY 2010.

**TOWN COUNCIL
TOWN OF AVON, COLORADO**

Ronald C. Wolfe, Mayor

Attest:

Patty McKenny, Town Clerk

Memo

To: Honorable Mayor and Town Council
Thru: Larry Brooks, Town Manager
Legal Review: Eric Heil, Town Attorney
Approved by: Sally Vecchio, Assistant Town Mgr/Director of Comm. Dev.
From: Justin Hildreth, P.E., Town Engineer
Shane Pegram, P.E., Engineer II
Date: January 6, 2010
Re: Monroe & Newell Engineers, Inc. – Nottingham Lake Fishing Pier Design Proposal

Initials

JH/HV SCV
JH/HV
SP

Summary: Monroe & Newell Engineers, Inc. (MNE) has provided a proposal (Exhibit A) for design, shop drawing review and construction observation for the Nottingham Lake Fishing Pier. MNE's total base service fee is \$9,875, and is not to be exceeded without prior written approval.

Discussion: In 2008 and 2009 the Colorado Division of Wildlife (DOW) approved the Town of Avon's (TOA) application for grant funding through the DOW's "Fishing is Fun" program. The total TOA project budget is \$180,000. The DOW grant will reimburse the town up to \$101,700, but reimbursements will not exceed 64% of total project costs. The DOW has received approval from the United States Fish and Wildlife Service and the Town will be required to enter into a contract with the DOW for those funds.

The approved project includes construction of a 'T' shaped fishing pier on the north side of Nottingham Lake that will extend 60' into the lake (Exhibit B). An asphalt access path will also be constructed from the existing path located on the north side of Nottingham Park. The fishing pier and access path will be American's with Disabilities Act (ADA) compliant.

Design services can be undertaken prior to execution of the DOW contract, but will not be reimbursed until the contract has been executed. TOA's Engineering Department requested MNE to provide a design proposal for structural design of the fishing pier along with architectural renderings to support a Planning and Zoning Commission presentation.

Financial Implications:

MNE's total base service fee is \$9,875, and is not to exceed this amount without prior written approval. The Town of Avon 2010 Budget includes \$180,000 for design and construction of the Nottingham Lake Fishing Pier. The DOW grant will reimburse TOA a maximum of \$101,700 or 64% of total project costs. The proposed design service fees fit within the project budget. As part of the contract approval the Town Manager will be authorized to sign amendments to the contract within the approved \$12,000 design budget (Table 1).

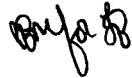
Table 1

Budget Item	Proposed Budget
Pier Design	\$ 12,000
Pier Construction	\$ 150,000
Pier Access Trail	\$ 15,000
Soil Investigation	\$ 3,000
Total	\$ 180,000

Recommendation: Approve the Monroe & Newell Engineering proposal for design, shop drawing review, and site observation services for a fee not to exceed \$9,875 without prior written approval.

Proposed Motion: I move to approve the Monroe & Newell Engineering proposal for design, shop drawing review, and construction observation services for a fee not to exceed \$9,875 without prior written approval.

Town Manager Comments:

A handwritten signature in black ink, appearing to read "W. J. [unclear]", is centered below the "Town Manager Comments:" heading.

Attachments:

Exhibit A – Monroe and Newell Engineers, Inc. proposal, dated January 6, 2010
Exhibit B – Nottingham Lake Site Plan

Monroe & Newell Engineers, Inc.

A Contract for the Provision of Structural Engineering Professional Services

Between Town of Avon
 PO Box 975
 Avon, CO 81620

Attn: Mr. Shane Pegram

and Monroe & Newell Engineers, Inc.
 PO Box 1597
 Avon, CO 81620

Dated January 6, 2010

For Nottingham Lake Fishing Pier

Location Avon, Colorado

1. Scope of Services:

We propose to do the engineering for the referenced project including design, shop drawing review and site observations as described below:

- A. Design - Included in our engineering services will be design calculations and construction documents. In the preparation of design and construction documents, we will work closely with your office for consultation and coordination of our drawings with your requirements.
- B. Shop Drawing Review - After the contract has been let and material orders have been placed, we will review shop drawings which are forwarded to us.
- C. Site Observations - During construction, we will provide consultation services for questions, and we will make periodic observations to the site to observe the general progress construction. Approximately, four (4) site observations are included in the fee arrangement below. Such observations will not be either continuous or exhaustive and we assume no responsibility for failure of the contractor to complete the project in accordance with applicable plans and specifications and sound workmanship. We must be notified when critical work has been completed and be allowed sufficient time to observe uncovered work to make our observations.

2. Client Responsibilities:

We shall be supplied with the appropriate drawings including civil, site, and landscape in a timely manner as required for us to complete each phase of our design and documents.

It is necessary that we be provided a current soils report and recommendations by a Registered Professional Soils Engineer. We need to receive, for our files, certification from the soils engineer that the foundation system, as constructed, bears on proper soil as defined in the soils report. We shall be entitled to rely upon the accuracy and sufficiency of all soils reports, recommendations, inspections, designs, certifications, test results, and the like provided by others for the project and we assume no responsibility for the same.

3. **Fee:**

We will provide the aforementioned engineering services at our standard hourly rates and as follows:

Principals	\$ 170.00 /hour	Associate Principal	\$130.00/hour
Engineer	\$ 90.00 /hour	Project Engineer	\$110.00/hour
Technician	\$ 70.00 /hour	Consulting Architect:	\$125.00/hour

Our total fee shall not exceed Nine Thousand Eight Hundred Seventy-five Dollars (\$9,875.00) without additional authorization.

4. **Basis of Fee:**

Our fee includes the architectural and structural design of a lake pier of approximately 60 feet long with a 40 foot wide end, all of which is 8 feet wide. The pier will be of timber construction with a wood railing style. Anchorage at shore will be a cast-in-place concrete abutment and the foundation system in the lake may be concrete footings, concrete piers or helical steel piers.

Our fee includes an allowance of \$1,500.00 for rendering services in support of a presentation package. Our fee anticipates that all presentations to Town Planning Commission and/or Town Council will be done by your office.

5. **Reimbursable Expenses:**

Actual out-of-pocket expenses incurred for reproductions, out of town travel expenses, long distance toll charges and the like will be billed at our cost plus ten percent. Fees for additional services beyond those mentioned above will be charged at our standard hourly rates.

If you are in agreement with the above, please return a copy signed by your authorized representative for our files, and we will be available to proceed as required. The above will then govern our arrangements unless otherwise modified in writing.

Submitted by,

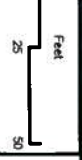
MONROE & NEWELL ENGINEERS, INC.



Peter Monroe , P.E.
Principal

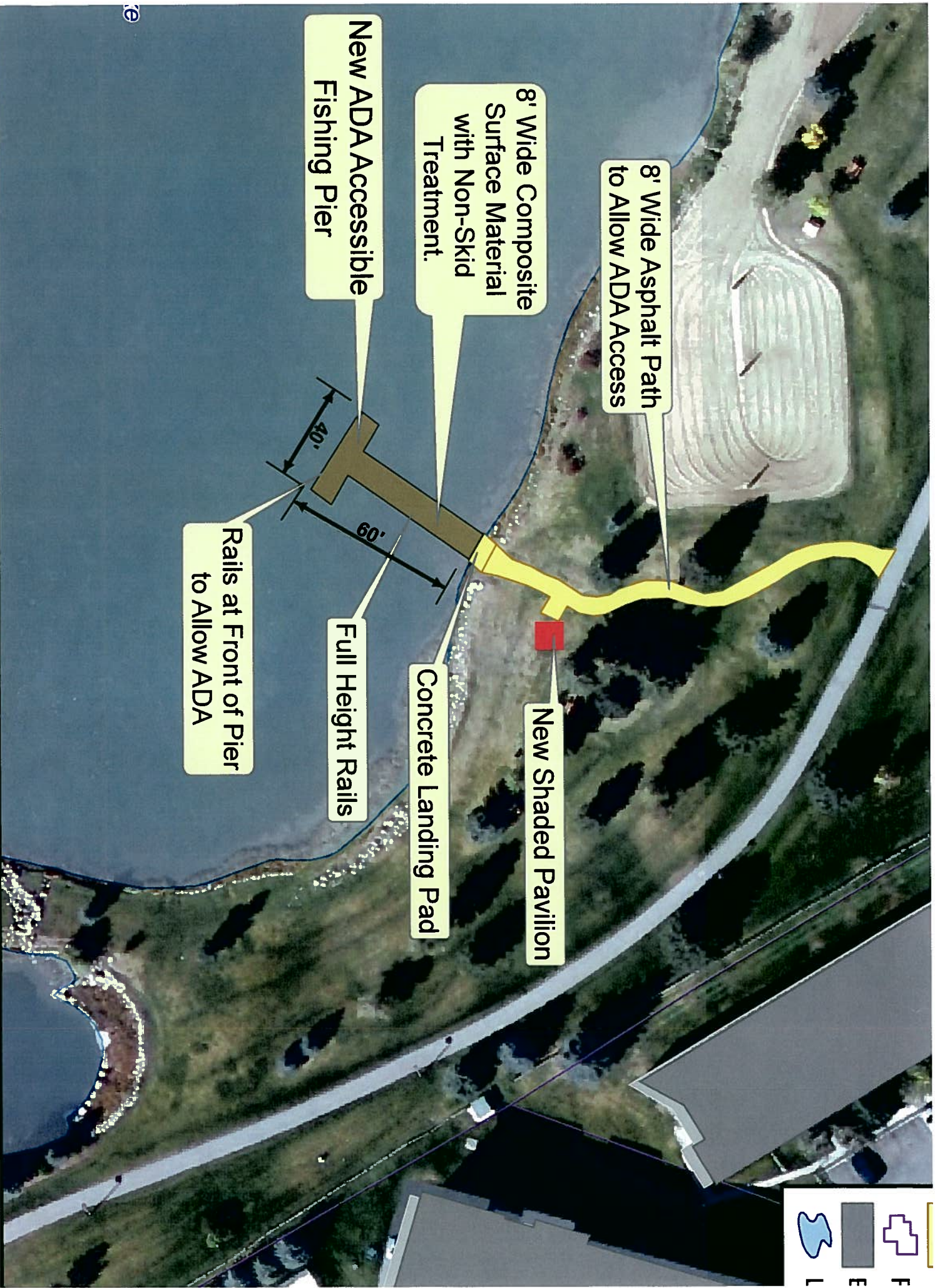
Accepted by:

Title:



Town of Avon

SITE



8' Wide Asphalt Path to Allow ADA Access

8' Wide Composite Surface Material with Non-Skid Treatment.

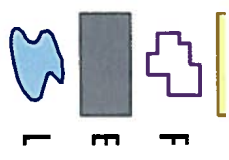
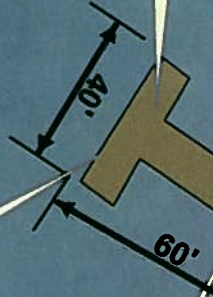
New ADA Accessible Fishing Pier

New Shaded Pavilion

Concrete Landing Pad

Full Height Rails

Rails at Front of Pier to Allow ADA



MEMORANDUM

TO: Honorable Mayor Wolfe and Town Council members
CC: Larry Brooks, Town Manager
FROM: Eric Heil, Town Attorney
THROUGH: Larry Brooks, Town Manager
DATE: January 7, 2010
SUBJECT: Revised Mountain Star Conservation Easement

Summary: Town Staff was asked to modify the existing conservation easement with Mountain Star so that the conservation easement applied to open space areas but not to Tract AA which was dedicated to the Town for municipal purposes. The Town Council approved Ordinance No. 09-11 APPROVING AND ACCEPTING THE MOUNTAIN STAR CONSERVATION EASEMENT last spring with the addition of future trails. The Mountain Star Owner's Association did not support the addition of the future trails except to the extent reflected in the revised conservation easement attached to this ordinance. The revised conservation easement is presented for your approval. Town Council passed first reading of the ordinance at the December 8, 2009 regular meeting. Ordinance No. 09-20 is presented for second and final reading.

Background: Mountain Star, LLC granted a conservation easement ("Original Conservation Easement") to the Town of Avon in 1994, then conveyed Tract AA to the Town in 1995 for municipal purposes. The Original Conservation Easement erroneously included Tract AA. Due to the restrictions on use of lands subject to the Original Conservation Easement, the Town desires to amend the described easement area to exclude Tract AA. The method of accomplishing this change is to terminate the Original Conservation Easement and execute a new conservation easement with the correct easement area description.

Ordinance No. 09-20 APPROVING AND ACCEPTING THE MOUNTAIN STAR CONSERVATION EASEMENT is presented for Council consideration on second and final reading. The amended conservation would exclude Tract AA and Tract Y (another parcel not intended for inclusion in the original conservation easement area and currently owned by TCL Avon, LLC). The new conservation easement reflects the changes in ownership that have occurred since the execution of the Original Conservation Easement.

Included with this memorandum are the following:

- Ordinance No. 09-20
- Exhibit A: Deed of Conservation Easement

Requested Action: Approval of Ordinance No. 09-20.

Town Manager Comments:

**TOWN OF AVON
ORDINANCE NO. 09-20
SERIES OF 2009**

**AN ORDINANCE APPROVING AND ACCEPTING THE
MOUNTAIN STAR CONSERVATION EASEMENT**

WHEREAS, the Town of Avon (“Town”) previously accepted a conservation easement (“Original Conservation Easement”) granted by Mountain Star Limited Liability Company, a Wyoming limited liability company, dated April 1, 1995, recorded with the Eagle County Clerk and Recorder at Book 636, Page 287, and re-recorded at Book 656, Page 841; and

WHEREAS, the Original Conservation Easement erroneously included Tract Y, Second Amendment, Mountain Star Filing No. 2, recorded in the Office of the Eagle County Clerk and Recorder, Colorado in Book 670, Page 990 (“Tract Y”), and Tract AA, Second Amendment, Mountain Star Filing No. 2, recorded in the Office of the Eagle County Clerk and Recorder, Colorado in Book 670, Page 990 (“Tract AA”); and

WHEREAS, the parties to the Original Conservation Easement desire to correct the erroneous description of the easement area by vacating and terminating the Original Conservation Easement and executing the conservation easement attached hereto as **Exhibit A: Deed of Conservation Easement** (“Easement”); and

WHEREAS, Section 18.4 of the Avon Home Rule Charter provides that the Town Council may accept gifts and donations and Colorado Revised Statutes § 38-30.5-101, *et. seq.*, provides authority to accept conveyances of real property to establish conservation easements for the protection of open land, environmental quality and life-sustaining ecological diversity; and

WHEREAS, a public hearing was conducted in accordance with Section 6.5(d) of the Avon Home Rule Charter on January 12, 2010 and the Town Council considered all comments prior to considering final adoption of this ordinance; and

WHEREAS, the Town Council previously approved Ordinance No. 09-11 Approving and Accepting the Mountain Star Conservation Easement; however, the form of the conservation easement was revised and is now presented for approval in the form attached to this Ordinance; and

WHEREAS, the Town Council finds that accepting the Easement will promote Goal H.1 of the Town of Avon Comprehensive Plan and will thereby promote the health, safety and general welfare of the Avon community; and

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the Town Council desires to comply the requirements of the Avon Home Rule Charter by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on first reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this ordinance;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF AVON HEREBY ORDAINS:

SECTION 1. ORDINANCE NO. 09-11 REPEALED. Ordinance No. 09-11 is hereby repealed in its entirety.

SECTION 2. CONSERVATION EASEMENT ACCEPTED. The Town Council hereby authorizes and approves execution and acceptance of the Easement.

SECTION 3. MAYOR AND TOWN CLERK AUTHORIZATION. The Mayor and Town Clerk are hereby authorized to execute and sign the conservation easement in the form attached hereto as **Exhibit A: Deed of Conservation Easement** and take such other actions as may be necessary or implied to implement the provisions of this Ordinance.

SECTION 4. SEVERABILITY. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect seven days after public notice following final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

SECTION 6. SAFETY CLAUSE. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

SECTION 7. PUBLICATION BY POSTING. The Town Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on final reading by title in at least three public places within the Town and posting at the office of the Town Clerk, which notice shall contain a statement that a copy of the ordinance in full is available for public inspection in the office of the Town Clerk during normal business hours.

[remainder of page intentional left blank – signature page follows]

INTRODUCED, APPROVED, PASSED ON FIRST READING, ORDERED POSTED AND REFERRED TO PUBLIC HEARING and setting such public hearing for 5:30 p.m. on January 12, 2010 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Colorado, on December 8, 2009.

Ronald C. Wolfe, Mayor

Published by posting in at least three public places in Town and posting at the office of the Town Clerk at least seven days prior to final action by the Town Council.

ATTEST:

APPROVED AS TO FORM:

Patty McKenny, Town Clerk

Eric Heil, Town Attorney

INTRODUCED, FINALLY APPROVED, AND PASSED ON SECOND READING, AND ORDERED PUBLISHED BY POSTING on January 12, 2009.

Ronald C. Wolfe, Mayor

Published by posting by title in at least three public places in Town and posting by title at the office of the Town Clerk.

ATTEST:

Patty McKenny, Town Clerk

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Easement") is entered into by and between Mountain Star Association, a Colorado non-profit corporation ("Grantor"), and the Town of Avon, a Colorado home rule municipality ("Grantee") this _____ day of _____, 2009, and amends and restates that certain Conservation Easement, dated February 25, 1994, and recorded in the Office of the Eagle County Clerk and Recorder, Colorado, at Reception Number 532340, Book 636, Page 287 (pages 1 through 7) (the "Original Conservation Easement").

WITNESSETH:

WHEREAS, Mountain Star Limited Liability Company, a Wyoming limited liability company ("Original Grantor"), and Grantee previously entered into the original conservation easement granting a conservation easement ("Original Conservation Easement") to Grantee. By instrument dated April 1, 1995, Grantor accepted and assumed all rights and obligations of the Original Grantor arising under the Original Conservation Easement;

WHEREAS, Exhibit B to the Original Conservation Easement was intended to specifically describe and locate areas within the Property within which Harrington penstemon were known to exist or where the plant could be expected to exist, it did so in inadequate general terms such that the exhibit could not be used to actually bound an actual conservation area within the broad region defined in Exhibit A as "The Property Subject to this Conservation Easement." Exhibit A to the Original Conservation Easement can also be erroneously interpreted as being the conservation area rather than a region within which the inadequately defined areas of Exhibit B are contained. Consequently, two tracks of land were inadvertently subject to being interpreted as being included in the definition of Easement Area, such tracks being (a) Tract Y, Second Amendment, Mountain Star Filing No. 2, recorded in the Office of the Eagle County Clerk and Recorder, Colorado in Book 670, Page 990 ("Tract Y"), and (b) Tract AA, Second Amendment, Mountain Star Filing No. 2, recorded in the Office of the Eagle County Clerk and Recorder, Colorado in Book 670, Page 990 ("Tract AA"). Grantor and Grantee desire to correct such inadvertent inclusion and to exclude Tract Y and Tract AA from inclusion and coverage within the terms of the Original Conservation Easement and to correct the inadequately defined habitat by redefining the Conservation Easement area as being the entire redefined Property; and

WHEREAS, in addition to Grantor and Grantee, all current owners of the real property which is subject the Original Conservation Easement (the "Owners") are signatories to this Easement, thereby consenting to and authorizing this Easement as amending and wholly restating the Original Conservation Easement so as to exclude Tract Y and the Tract AA and to continue the protections of populations of Harrington penstemon (*Penstemon harringtonii*), which is not a federally listed threatened or endangered species but which is listed as a U.S. Forest Service Region 2 sensitive species, under certain revised terms and conditions as set forth in this Easement; and

WHEREAS, Grantor, Grantee and the undersigned Owners desire to vacate, terminate and extinguish the Original Conservation Easement and to adopt this Deed of Conservation Easement to fully replace the Original Conservation Easement.

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained here, pursuant to the laws of Colorado and in particular Colorado Revised Statutes §38-30.5-101, *et.seq.*, Grantor and the Owners hereby voluntarily convey to Grantee a Conservation Easement in Gross (“Easement”) consisting of rights hereinafter enumerated, over and across that certain real property, situated in Eagle County Colorado, more particularly described on **Exhibit A: Easement Area** (“Easement Area”), and grants title to the same, subject to the terms and conditions set forth herein.

1. **Purpose.** It is the purpose of this Easement to maintain, preserve, protect and enhance the existing populations of Harrington penstemon in the Easement Area.
2. **Vacation and Termination of Original Conservation Easement.** Grantor and Grantee hereby fully and absolutely vacate, terminate, extinguish, release and quit claim to each other all rights and interest in the Original Conservation Easement such that the Original Conservation Easement is hereby null and void and of no further force or effect.
3. **Affirmative Rights Conveyed.** The affirmative rights conveyed by this Easement to the Grantee are the following:
 - (a) To preserve and protect the species the Harrington penstemon so long as the species remains listed as a U.S. Forest Service Region 2 sensitive species, or a U.S. Fish and Wildlife Service Category II plant, or is reclassified as a federally threatened or endangered species under the provisions of the Endangered Species Act.
 - (b) To enter upon the property to inspect and to enforce the rights herein granted in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such entry.
 - (c) Except as expressly provided in this Easement, Grantor retains exclusive access to and use of the Property.
4. **Permitted Uses and Practices.** This Easement shall confine and restrict the future use of the Easement Area to non-development uses such as open space, preservation of wildlife habitat, hiking and other pedestrian, non-motorized recreational uses. The following uses and practices permitted under this Easement are not precluded, prevented or limited by this Easement:
 - (a) Maintenance and repair of existing fences, trails and other improvements. In the event of destruction, deterioration or obsolescence of any said fences, trails or related improvements, Grantor may replace the same with improvements of similar size, function, capacity and location.

- (b) Operation of maintenance of Buck Creek Road.
 - (c) Utilize the Easement Area for hiking and other dispersed non-motorized recreational uses by Grantor, its successors, invitees and assigns, provided such use is confined to established, mapped and maintained trails as depicted in **Exhibit B: Existing Conditions** or a potential future trail as indentified on the attached **Exhibit C: Future Buck Creek Trail**, subject to the terms stated in Section 5.(c) below.
5. **Prohibited Uses and Practices.** The following uses and practices are inconsistent with the purposes of this Easement and shall be prohibited upon or within the Easement Area:
- (a) The change, disturbance, alteration, or impairment of Harrington penstemon within the Easement Area without prescribed mitigation as described in Section 6 below.
 - (b) The construction of permanent structures other than the Buck Creek Road.
 - (c) The construction of new trails in addition to those depicted in **Exhibit B: Existing Conditions**, except for the potential future trail identified on the attached **Exhibit C: Future Buck Creek Trail**. The Future Buck Creek Trail may be proposed to the Mountain Star Association in the future as a public amenity to better connect the Town to the current Buck Creek trailhead, without having to use a vehicle, and with USFS land to the north, along a more sustainable and scenic route. The Future Buck Creek Trail shall be subject to a separate agreement between the Town and the Mountain Star Association which shall address construction, maintenance, liability and restoration of any abandoned portion of the existing Buck Creek Trail situated on property owned by the Mountain Star Association, which agreement shall be subject to approval by the Mountain Star Association in the sole discretion of the Mountain Star Association.
 - (d) The hardening of existing trails with impermeable and/or non-native natural materials.
 - (e) Hunting, cross country skiing, horseback riding, mountain biking, motor bikes, snow mobiles and all other motorized uses.
6. **Mitigation Practices.** If any proposed activity within the Easement Area may change, disturb, alter, impair or otherwise damage the Harrington penstemon, avoidance shall be the preferred form of mitigation. Other mitigation may include collection seeds and redistribution in appropriate habitat and/or relocating plants to appropriate habitat when and if encountered across the entire newly defined Easement Area during any new or changed permitted use. Other than activities expressly permitted per Section 4 above, activities which may change, disturb, alter, impair otherwise damage the Harrington penstemon shall not commence without prior written approval of the Grantee.
7. **Enforcement Rights of Grantee and Restoration.** The Grantee shall have the following rights:

- (a) Upon the violation of any term, condition, covenant, or restriction contained in this Easement, after notice of violation to the Grantor and providing a reasonable opportunity to cure such violation (which in no case shall exceed a total of three hundred sixty five (365) days), the Grantee may institute a suit to enjoin by temporary and/or permanent injunction such violation, or may take such other lawful action, excluding claims for damages as it deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this Easement; provided, however, that any failure to so act by the Grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant or purpose of this Easement in the future.
- (b) Should a court of competent jurisdiction determine that any prohibited activity be undertaken on the Property, the Grantee shall have the right to cause the restoration of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. In such case, the cost of such restoration shall be borne by the Grantor, its successors or assigns. Notwithstanding the foregoing, if the Grantee discovers or objects to any action taken by the Grantor more than three years after such prohibited activity takes place, the Grantor shall not be held financially responsible for restoring the Property to its original condition.
- (c) Nothing contained herein shall be construed to preclude the Grantor from exhausting its legal remedies in determining whether that proposed activity to which the Grantee has objected it consistent with this Easement.
8. **Costs and Taxes.** Grantor agrees to bear all costs of operation, upkeep and maintenance of the Easement Area and Grantee shall have no obligation therefore. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property or on this Easement.
9. **Access.** Nothing contained herein shall be construed as affording the general public physical access to any portion of the Property subject to this Easement. Nothing in this Easement shall be construed to preclude Grantor's right to grant access to third parties across the property, provided that such access is allowed in a reasonable manner that is consistent with the purposes of this Easement. Nothing contained herein shall be deemed to be a gift or dedication of all or any portion of the Property to or for the general public, or for any public use or purpose whatsoever; it being the express intention and understanding of the Grantor and Grantee that this Agreement shall be strictly limited to and for the purposes herein expressed, solely for the parties hereto, their successors and assigns.
10. **Assignment of Grantee's Interest.** The parties covenant and agree that the Grantee may transfer its interest in this easement only to a "qualified organization," within the meaning of Section 170(h) of the Internal Revenue Code or any subsequent legislation; provided, however, that the Grantee, as a condition of such transfer, shall expressly

require that the transferee covenant to continue to carry out the conservation purposes which this Easement was intended to advance.

11. **Term of Easement Grant.** The Easement herein granted shall be a burden upon and shall run with the Property so long as Harrington penstemon is listed as a U.S. Forest Service Region 2 sensitive species, or a U.S. Fish and Wildlife Service Category II plant, or is reclassified as a federally threatened or endangered species under the provisions of the Endangered Species Act. In the event the Harrington penstemon is removed from the U.S. Forest Service Region 2 sensitive species list and the U.S. Fish and Wildlife Service Category II list, and is not listed as a federally threatened or endangered species under the provisions of the Endangered Species Act, then this Easement shall automatically terminate and all rights, grants, obligations and conditions of this easement shall cease and terminate, with or without notice from the Grantee, and the Grantor shall hold the Property, as the same may then be, free from the rights granted herein.

12. **Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

 To Grantor: Mountain Star Association
 c/o East West Resorts LLC
 P.O. Box 5480
 Avon, CO 81620

 To Grantee: Town of Avon
 P.O. Box 975
 Avon, CO 81620

13. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Eagle County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.

14. **Miscellaneous.**
 - (a) The terms "Grantor" and "Grantee," whenever used herein, and any pronouns used in place thereof, shall mean and include the above named Grantor and its successors and assigns and the above named Grantee and its successors and assigns.

 - (b) If any provisions of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Deed of Conservation Easement and the application of such provisions to persons of circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

- (c) The Grantor and the Owners shall use reasonable effort to make reference to this Easement and in any subsequent deed, or other legal instrument, by means of which it conveys any interest in the real property subject to this Easement (including a leasehold interest) and to attach a copy of this Deed of Conservation Easement thereto.
- (d) This Easement may be executed in counterparts which, when taken together, shall constitute a binding instrument subjecting the Easement Area to this Easement.

[signature pages follow]

OWNER OF TRACT Y:

TCL Avon LLC, Colorado limited liability company

By: _____
Title: _____ Date _____

STATE OF COLORADO }
 } ss
COUNTY OF EAGLE }

The foregoing instrument was acknowledged before me this ____ day of _____,
200__ by _____ as _____ of TCL Avon,
LLC, a Colorado limited liability company.

My commission expires: _____ Witness my hand and official seal.

Notary Public

OWNER OF LOT 90:

Stephen D. Johnson

Date

STATE OF _____ }
 } ss
COUNTY OF _____ }

The foregoing instrument was acknowledged before me this ____ day of _____,
200__ by Stephen D. Johnson.

My commission expires: _____

Witness my hand and official seal.

Notary Public

EXHIBIT A: Easement Area

Legal Description of Easement Area

Tract X, Tract W, Tract Z, Lot 89 & Lot 90, Mountain Star Filing No. 2, according to the plat recorded on May 4, 1994, in Book 639 at Page 487, County of Eagle, State of Colorado.

Lot 91, Mountain Star Filing No 2, First Amendment, according to the Plat recorded February 22, 1995, in Book 661 at Page 913, County of Eagle, State of Colorado.

Tract V, Mountain Star Filing No 2, Second Amendment, according to the Plat recorded July 7, 1995, in Book 670 at Page 989, County of Eagle, State of Colorado.

Tract BB, Mountain Star Filing No. 3, according to the plat recorded on January 23, 1997, in Book 717 at Page 2, County of Eagle, State of Colorado.

Graphic Illustration of Easement Area

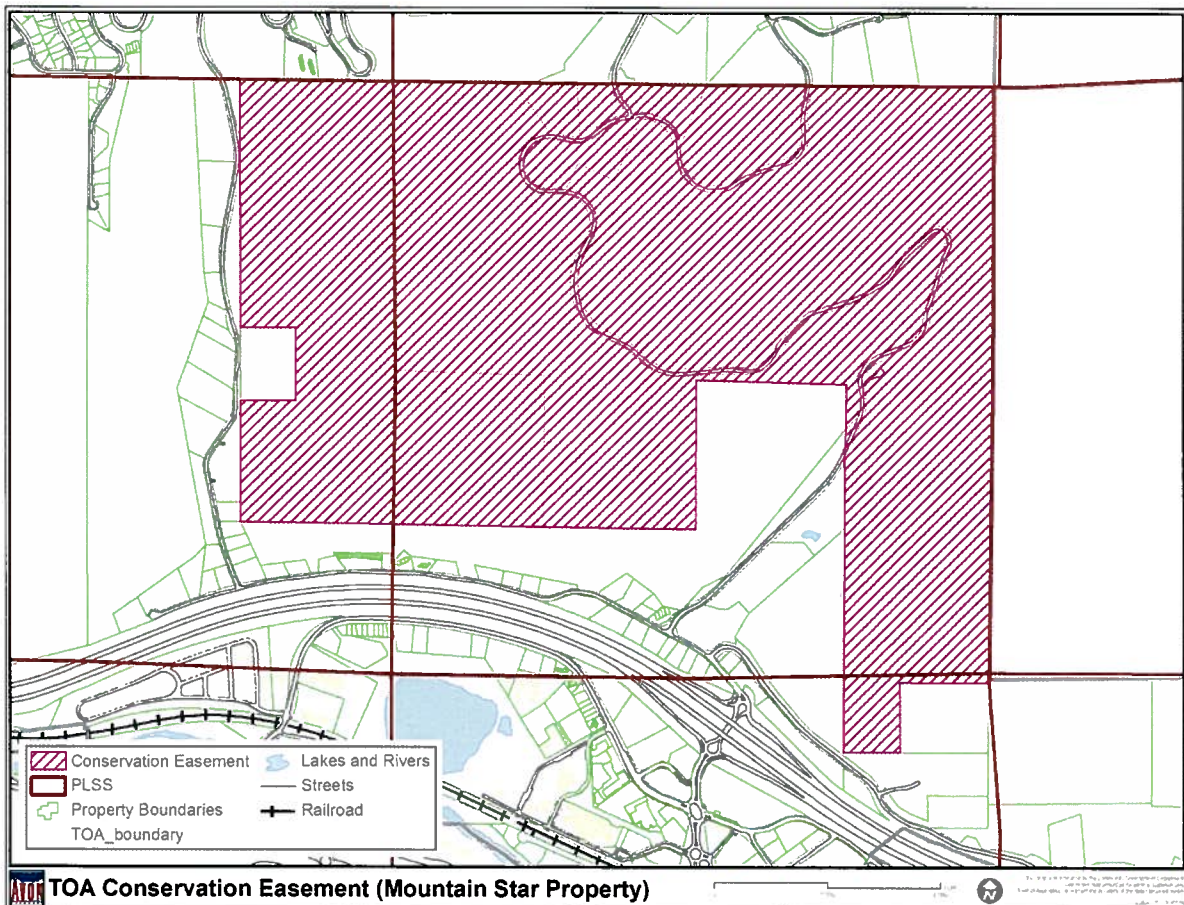


EXHIBIT B: EXISTING CONDITIONS

EXHIBIT C: FUTURE BUCK CREEK TRAIL

MEMORANDUM

TO: Honorable Mayor Wolfe and Town Council members
CC: Larry Brooks, Town Manager
FROM: Eric Heil, Town Attorney
DATE: January 7, 2010
SUBJECT: Medical Marijuana Dispensaries

Summary: A recent Arapahoe County Court ruling held that a home rule municipality could not prohibit medical marijuana dispensaries. The case involved the City of Centennial and the ruling was issued on December 30, 2009. Other municipalities which have denied business license applications for medical marijuana dispensaries are proposing and adopting ordinances enacting moratoria on issuing business licenses for medical marijuana dispensaries until appropriate regulations can be prepared and adopted.

An emergency ordinance enacting a moratorium on the issuance of business licenses for medical marijuana dispensaries is being prepared and will be provided to Town Council and the general public no later than Monday morning.