

# AGENDA

## CITY COUNCIL REGULAR MEETING

July 14, 2020

5:00 PM, City Council Chambers  
130 S Galena Street, Aspen



### I. CALL TO ORDER

### II. ROLL CALL

### III. SCHEDULED PUBLIC APPEARANCES

### IV. CITIZENS COMMENTS & PETITIONS

(Time for any citizen to address Council on issues NOT scheduled for a public hearing. Please limit your comments to 3 minutes)

Meeting number (access code): 126 577 6846

Meeting password: 81611

Tuesday, July 14, 2020

4:30 pm | (UTC-06:00) Mountain Time (US & Canada) | 5 hrs

+1-720-650-7664,,1265776846## United States Toll (Denver)

### V. SPECIAL ORDERS OF THE DAY

a) Councilmembers' and Mayor's Comments

b) Agenda Amendments

c) City Manager's Comments

d) Board Reports

### VI. CONSENT CALENDAR

(These matters may be adopted together by a single motion)

VI.A. Resolution #059, Series of 2020 - Eagle County Economic Assistance

VI.B. Resolution #060, Series of 2020 - APCHA Strategic Plan

VI.C. Draft Minutes of June 30th and July 1st

### VII. NOTICE OF CALL-UP

### VIII. FIRST READING OF ORDINANCES

### IX. PUBLIC HEARINGS

IX.A. Ordinance #09, Series of 2020 - Water Efficient Landscape Ordinance

IX.B. Ordinance #02, Series of 2020 - 949 W. Smuggler St. Lot Split

**X. ACTION ITEMS**

X.A. ISIS Operations and Financing

**XI. ADJOURNMENT**



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Sara Ott, City Manager

**DATE:** July 7, 2020

**RE:** **Authorization to execute an Intergovernmental Agreement with Eagle County, Colorado for the purposes of providing economic assistance in the Roaring Fork Valley, Resolution #59-2020**

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**SUMMARY:** Resolution #59, Series of 2020, authorizes the City Manager to execute an intergovernmental agreement (IGA) with Eagle County, Colorado for the purposes of reimbursing up to \$50,000 for economic assistance to Eagle County residents living in the Roaring Fork Valley experiencing housing, childcare and food insecurity due to the drastic reduction of employment opportunities resulting from the impacts of COVID-19.

A significant portion, over 65%, of Aspen's workforce resides beyond the City of Aspen, as evidence in the Roaring Fork Housing Study. The need to retain qualified and stable workforce is a key to Aspen's economic recovery, including many year-round employees residing in Eagle County.

These financial resources are proposed to be transferred to Eagle County Human Services to reimburse a portion of the County's economic assistance using its existing qualifications framework. This includes Eagle County verifying income, household size, needs, and leveraging eligibility for existing state and federal aid programs.

These funds may be eligible for reimbursement in the future through state and federal relief packages; however, there is no guarantee. Further, reimbursement processes take time, while Eagle County has already been providing aid to economically vulnerable residents.

This IGA aligns with COVID stimulus outcome #1.

Outcome #1: Increase economic security for vulnerable people by aiding in securing shelter, food, utilities, healthcare, childcare and transportation.

**BACKGROUND:** The City of Aspen has been under a local disaster emergency declaration since March 12, 2020 due to COVID-19. Since the declaration, several Public Health Orders from local and state public health officials, as well as an Executive Order from Governor Polis, halted most aspects of Aspen's hospitality economy. This has put some residents in immediate financial hardship for the most basic living needs as unemployment rises.

As of May 11 reporting, Eagle County had distributed \$43,977.25 in direct assistance in the Roaring Fork Valley.

**FINANCES:** Funding for this IGA is already appropriated within the \$6M COVID relief program.

**STAFF RECOMMENDATION:** Staff recommends approval of Resolution #59, Series 2020.



**RESOLUTION NO. 59  
(SERIES OF 2020)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO  
AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL  
AGREEMENT WITH EAGLE COUNTY, COLORADO IN RESPONSE TO COVID-19**

**WHEREAS**, the City of Aspen declared a local disaster emergency on March 12, 2020 pertaining to the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from COVID-19; and

**WHEREAS**, whereas the City of Aspen commenced and continues to support crisis response efforts (through both personnel and other resources) led by the Pitkin County Incident Management Team; and

**WHEREAS**, the Eagle County Board of Commissioners adopted emergency spending authority for its Public Health Emergency Response programs to provide additional resources for rental, food and childcare assistance for those experiencing financial distress as a result of the COVID-19 impact; and

**WHEREAS**, current resources dedicated within Eagle County's budget appropriation are likely to be insufficient to address the aggregate demands for relief, including those from Eagle County residents of the Roaring Fork Valley who regularly work within and participate in the City of Aspen community; and

**WHEREAS**, the City of Aspen wishes to contribute financial resources to retaining a skilled and qualified workforce in the Roaring Fork Valley to meet the needs of Aspen employers;

**NOW THEREFORE**, be it resolved by City Council, that the City of Aspen shall release up to \$50,000 to Eagle County. These additional resources shall be released to Eagle County under an Intergovernmental Agreement (IGA) for the purpose of providing direct financial assistance to Eagle County residents of the Roaring Fork Valley in the areas of rental, food and childcare assistance under the existing Eagle County qualification's structure for relief. City Council does hereby authorize the City Manager of the City of Aspen to execute such IGA on behalf of the City of Aspen, in the form attached hereto, subject to the final approval of the City Manager and the City Attorney

Adopted this 14th, day of July 2020.

\_\_\_\_\_  
Torre, Mayor

I, Nicole Henning, duly appointed and acting City Clerk of the City of Aspen, Colorado, do hereby certify that the foregoing is a true and accurate copy of the Resolution adopted by the City Council at its meeting held on the 14th day of July 2020.

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Nicole Henning, City Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN EAGLE COUNTY, COLORADO  
AND CITY OF ASPEN, COLORADO FOR THE PROVISION OF FINANCIAL  
ASSISTANCE RELATED TO THE LOCAL DISASTER EMERGENCY DECLARED  
REGARDING THE SPREAD OF COVID-19.**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the Board of County Commissioners of Eagle County, Colorado, whose address is 500 Broadway, Eagle, Colorado 81631 (“Eagle County”) and the City of Aspen, Colorado, whose address is 130 S. Galena St., Aspen, CO 81611 (“City of Aspen”).

**RECITALS**

WHEREAS, this Agreement is entered into pursuant to, *inter alia*, C.R.S. §§ 29-1-201, *et seq.*, and Article XIV, Section 18 of the Colorado Constitution, and;

WHEREAS, Eagle County and the City of Aspen wish to enter into an intergovernmental agreement for the purpose of allowing Aspen to contribute funds to assist in Eagle County’s COVID-19 Public Health Emergency Response; and

WHEREAS, both Eagle County and the City of Aspen are governments authorized to enter into agreements pursuant to C.R.S. § 29-1-203 for purposes including the provision of any function, service, or facility lawfully authorized to each; and

WHEREAS, the City of Aspen recognizes the City’s workforce resides throughout the Roaring Fork Valley including portions of Eagle County; and

WHEREAS, both Eagle County and the City of Aspen have issued declarations of local disaster emergency pursuant to state statute as a result of the spread of COVID-19; and

WHEREAS, as a result of orders issued by the Governor of the State of Colorado, the Colorado Department of Public Health and Environment, and Eagle County Public Health, there is an increasing burden on Eagle County residents, including those working in the City of Aspen. Eagle County and City of Aspen residents are experiencing economic and social hardships due to the impact of COVID-19. Examples of assistance to Eagle County and City of Aspen residents that may alleviate some of the hardship include but are not limited to rental/mortgage assistance, utility assistance, emergency food assistance, household supplies, and transportation assistance; and

WHEREAS, based on those increasing burdens Eagle County has authorized the expenditure of county dollars in the amount of \$1,150,000 for the purpose of providing emergency funding to Eagle County residents and community partners The City of Aspen wishes to provide an

additional \$50,000 to support the Public Health Emergency Response Fund for the benefit of Eagle County residents residing within the Roaring Fork Valley; and

WHEREAS, the Board of County Commissioners of Eagle County finds that it is in the best interests of the citizens of Eagle County, including those working in the City of Aspen, to accept the contribution of the City of Aspen to the Public Health Emergency Response Fund; and

WHEREAS, the parties are willing to enter into this agreement to provide direction on the receipt and administration of the funds provided by the City.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual promises and agreements of the parties and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Upon the execution of this agreement, the City of Aspen will deliver to Eagle County up to \$50,000 for use by the Public Health Emergency Response Fund on such conditions as set forth herein. Through additional appropriations from the City of Aspen, or through donations that are received by the City of Aspen from private sources for contribution to this fund, the City of Aspen may provide additional sums to Eagle County for use by the Public Health Emergency Response Fund on such conditions as set forth herein.
2. The funds provided by the City of Aspen shall be used to offset emergency assistance allocations to individuals who are residing within the Roaring Fork Valley portion of Eagle County to alleviate the hardships associated with the spread of COVID-19 and upon proper application and review by Eagle County, consistent with the means tested rules provided by Eagle County for distribution of its funds.
3. Assignability. This agreement is not assignable by either party.
4. Modification. This Agreement may be changed or modified only in writing by an agreement approved by the respective governing bodies of the Governments and signed by authorized officers of each party.
5. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and all other promises and agreements relating to the subject of this Agreement, whether oral or written, are merged herein.
6. Severability. Should any one or more sections or provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement, the intention being that the various sections and provisions hereof are severable.
7. Termination Prior to Expiration of Term. Any Party has the right to terminate or

withdraw from this Agreement, with or without cause, by giving written notice to the other Parties of such termination and specifying the effective date thereof. Such notice shall be given at least ten (10) days before the effective date of such termination. Termination of the Agreement relieves the cancelling or withdrawing Party of any further responsibility under this Agreement except for specifically identified obligations of a continuing nature. If there is a balance of unused funds at the time of the effective date of termination, such funds shall be returned to the City, unless the parties agree that the County can continue the distribution of the balance of the funds under the terms set forth herein.

8. Notice. Any notice required or permitted under this Agreement shall be in writing and shall be provided by electronic delivery to the e-mail addresses set forth below *and* by one of the following methods 1) hand-delivery or 2) registered or certified mail, postage pre-paid to the mailing addresses set forth below. Each party by notice sent under this paragraph may change the address to which future notices should be sent. Electronic delivery of notices shall be considered delivered upon receipt of confirmation of delivery on the part of the sender. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

**To: Eagle County With copies to:**

**Director of Human Services**

P.O. Box 850  
500 Broadway  
Eagle, CO 81631

[@Eaglecounty.us](mailto:@Eaglecounty.us)

**Eagle County Attorney's Office**

P.O. Box 850  
500 Broadway  
Eagle, Colorado 81631

[bryantreu@eaglecounty.us](mailto:bryantreu@eaglecounty.us)

**To: City of Aspen**

**City Manager**

Sara Ott

[Sara.ott@cityofaspen.com](mailto:Sara.ott@cityofaspen.com)

**City of Aspen Attorney's Office**

James R. True

[jim.true@cityofaspen.com](mailto:jim.true@cityofaspen.com)

9. Government Immunity. The parties agree and understand that both parties are relying on, and do not waive by any provisions of this Agreement, the monetary limitations or terms or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as from time to time amended or otherwise available to the parties or any of their officers, agents, or employees.

10. Current Year Obligations. The parties acknowledge and agree that any payments provided for hereunder or requirements for future appropriations shall constitute only currently budgeted expenditures of the parties. The parties' obligations under this Agreement are subject to each individual party's annual right to budget and appropriate the sums necessary to provide the services set forth herein. No provision of this Agreement shall be construed or interpreted as creating a multiple fiscal year direct or indirect debt or other financial obligation of either or both parties within the meaning of any constitutional or statutory debt limitation. This Agreement shall not be construed to pledge or create a lien on any class or source of either parties' bonds or any obligations payable from any class or source of each individual party's money.

11. Binding Rights and Obligations. The rights and obligations of the parties under this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

12. No Third Party Beneficiary. The Parties, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of this IGA, and no other person or entity is so intended.

13. Amendments. Amendments to this IGA may be made with consent in writing by all the Parties.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Facsimile signatures shall be acceptable and binding on all parties.

15. Agreement made in Colorado. This Agreement shall be construed according to the laws of the State of Colorado, and venue for any action shall be in the District Court in and for Eagle County, Colorado.

16. Attorney Fees. In the event that legal action is necessary to enforce any of the provisions of this Agreement, the substantially prevailing party, whether by final judgment or out of court settlement, shall recover from the other party all costs and expenses of such action or suit including reasonable attorney fees.

17. No Waiver. The waiver by any party to this Agreement of any term or condition of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

18. Authority. Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

In Witness whereof, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CITY OF ASPEN

APPROVED AS TO FORM

By: \_\_\_\_\_  
Torre, Mayor

By: \_\_\_\_\_  
James R. True, City Attorney

Manager Approval:

By: \_\_\_\_\_  
Sara G. Ott, City Manager

BOARD OF COUNTY COMMISSIONERS  
OF EAGLE COUNTY, COLORADO

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

By: \_\_\_\_\_  
Bryan Treu, County Attorney

Manager Approval:

By: \_\_\_\_\_  
Jeff Shroll, County Manager



## MEMORANDUM

To: Mayor and City Council  
From: James R. True, City Attorney  
Date: July 10, 2020  
RE: Resolution #60, Series of 2020 (Ratifying Aspen Pitkin County Housing Authority 2021 – 2025 Strategic Plan)

**Request of Council:** To consider the adoption of Resolution #60, Series of 2020, which would ratify Aspen Pitkin County Housing Authority 2021 – 2025 Strategic Plan.

**Background:** A work session was held on July 7, 2020, in which the Aspen Pitkin County Housing Authority 2021 – 2025 Strategic Plan was presented and considered by City Council. Pursuant to the City of Aspen and County of Pitkin Intergovernmental Agreement (IGA) adopted on or about May 13, 2019, the City of Aspen and County of Pitkin must ratify the strategic plan adopted by the APCHA. This strategic plan was adopted by APCHA on June 3, 2020.

**Discussion:** The memo from the July 7, 2020, work session, as well as the Aspen Pitkin County Housing Authority 2021 – 2025 Strategic Plan are attached hereto. Staff has no additional presentation or discussion.

**Recommendation:** City staff recommends adoption of Resolution #60, Series of 2020.



**RESOLUTION #60**  
**(Series of 2020)**

**A RESOLUTION OF THE CITY OF ASPEN RATIFYING THE ASPEN PITKIN  
COUNTY HOUSING AUTHORITY 2021 – 2025 STRATEGIC PLAN**

**WHEREAS**, there has been submitted to the City Council the Aspen Pitkin County Housing Authority 2021 – 2025 Strategic Plan, adopted by the Aspen Pitkin County Housing Authority (APCHA) on or about June 3, 2020, a copy of which is attached hereto, and

**WHEREAS**, pursuant to the City of Aspen and County of Pitkin Intergovernmental Agreement (IGA) adopted on or about May 13, 2019, the City of Aspen and County of Pitkin must ratify the strategic plan adopted by the APCHA, and

**WHEREAS**, the City Council reviewed the Strategic Plan at a work session on July 7, 2020, and

**WHEREAS**, the City Council finds that it is in the best interests of the citizens of the City of Aspen County to ratify the Aspen Pitkin County Housing Authority 2021 – 2025 Strategic Plan.

**NOW, THEREFORE BE IT RESOLVED** that the City Council hereby ratifies the Aspen Pitkin County Housing Authority 2021 – 2025 Strategic Plan, a true and correct copy of which is attached hereto.

**FINALLY**, adopted, passed and approved by the City Council of the City of Aspen on the 14<sup>th</sup> day of July 2020.

\_\_\_\_\_  
Torre, Mayor

I, Nicole Henning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held on the day hereinabove stated.

\_\_\_\_\_  
Nicole Henning, City Clerk

## COVER MEMO

**TO:** Mayor Torre and Aspen City Council  
**FROM:** Mike Kosdrosky, Executive Director  
**MEETING DATE:** July 7, 2020  
**RE:** Review the 2021-2025 APCHA Strategic Plan and schedule for Ratification

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### **PURPOSE**

Under the 2019 amended Intergovernmental Agreement (IGA) governing APCHA, the Board and Executive Director are required to adopt a Strategic Plan to be ratified by City Council and the Board of County Commissioners, respectively. The Strategic Plan is intended to inform future annual work plans and budgets for APCHA.

### **BACKGROUND**

The Sixth Amended and Restated IGA requires a Strategic Plan, updated at least once every five years, to define the overall mission, vision, values and key objectives/goals of the Aspen Pitkin County Housing Authority (APCHA). The Strategic Plan must be adopted and ratified within the first year of the new IGA.

Over the course of April and May 2020 and based on previous input and conversations from the Board's 2019 daylong fall retreat (in-person) and 2020 daylong spring retreat (via Zoom), the following document was created. The Board officially adopted the Strategic Plan at a regular public meeting on June 3, 2020.

### **DISCUSSION**

See Strategic Plan

### **ACTION REQUESTED**

The APCHA Board and Staff are recommending the City Council approve the 2021-2025 Strategic Plan and schedule for formal ratification of the document.

###

# Aspen Pitkin County Housing Authority

## 2021 – 2025 Strategic Plan

### **Mission:**

APCHA supports affordable workforce housing for a sustainable community and a prosperous economy.

We accomplish our mission through equitable policies, accountable management, and innovative development to meet the changing needs of APCHA residents and the community. We effectively communicate and partner with the community to accomplish this mission.

### **Vision:**

APCHA aspires to cultivate the country's most vibrant mountain community – diverse, connected, healthy, and thriving.

### **Values:**

Public Trust	Do what is ethical and in the public's interest. Protect the housing program's integrity and accountability. Demonstrate equal opportunity, fairness, and consistency in all actions.
Quality Service	Provide respectful, friendly, timely, consistent, and proactive customer service. Provide fair and compassionate service. Increase program simplicity and clarity to improve the customer experience.
Transparency	Communicate frequently and accurately to increase public awareness and understanding of the program, its rules, and decisions.
Accountability	Promote inventory and occupancy integrity. Adopt organizational best practices. Create a culture of continuous improvement and accountability. Demonstrate excellent financial stewardship and governance.
Efficiency and Effectiveness	Implement state-of-the-art systems, processes, and policies that will increase customer and staff efficiency. Demonstrate value and verifiable results to public and decision makers through reliable data and reporting.
Equity	Provide equal opportunity of access to housing for qualified workers at various income levels. Provide consistent and even-handed enforcement of the housing regulations.
Innovation	Foster creative solutions to solve problems and increase cooperation in the community. Be open to new and more effective ways of doing business. Have a long-term vision and strategy for success.

## **Goals**

Goals to achieve APCHA's mission will be used to establish annual priorities and workplans. Strategies identified as potential priorities for fiscal year 2021 are indicated by an asterisk. As the 2021 work plan and budget is developed, these priorities might change. In addition, the tactical elements for each strategy will be developed within the annual workplan.

### **I. Pursue organizational excellence**

An organization maintains and enhances its institutional structure and credibility through financial and professional integrity, strong governance, and excellent decision-making. Strong organizational capacity will allow APCHA to fulfill its mission and vision, create value by providing a broad range of products and services, and innovate to maintain our relevance.

#### **STRATEGIES:**

1. Improve the governance and operational infrastructure\*
2. Ensure success and full implementation of HomeTrek

### **II. Ensure financial and housing stock wellbeing within the current financial realities of the city and county**

The financial strength of APCHA relies on excellent management and a robust, well-cared for housing inventory.

#### **STRATEGIES:**

1. Develop, approve, and implement capital reserve policies for deed-restricted property owners\*
2. Expand (including identifying additional/independent) APCHA funding sources
3. Develop innovative ways to deliver housing

### **III. Assure the integrity of the social compact with the community and our resident**

Since its inception, APCHA has been a key component of the upper Roaring Fork Valley community, entering into a social compact not only with its residents, but with the community at large. That social compact requires open, transparent communication between APCHA, our residents, and the community. The integrity of that social compact is critical to assure the achievement of APCHA's mission and vision.

#### **STRATEGIES:**

1. Increase clarity of eligibility, residency requirements, and rights of tenants/owners\*
2. Review and align deed restrictions to fully convey expectations, responsibilities, and obligations of deed-restricted home ownership
3. Improve understanding of and compliance with a renewed social compact with APCHA residents and the community\*
4. Improve the appeals process

#### **IV. Earn and maintain the public trust**

Housing stability is a critical component of a thriving community, and APCA serves a critical role in this regard. As a service program that relies on the public's support, APCA must be able to earn and maintain that public's trust to achieve its mission and vision.

##### **STRATEGIES:**

1. Identify opportunities to improve program participation\*
2. Improve the effectiveness of public outreach

#### **V. Apply housing expertise to help build community**

Over its long history, APCA has become nationally and internationally recognized for its expertise in assuring affordable workforce housing. As the workforce ages and retires, and as the way we work continues to change, APCA can apply its expertise and policies to assuring the community addresses those changing needs.

##### **STRATEGIES:**

1. Optimize occupancy in APCA properties
2. Examine opportunities to broaden housing eligibility for special circumstances
3. Formalize a plan for participation in regional housing issues

At 4:00 PM Mayor Torre called the special meeting to order with Councilmember Ward Hauenstein, Councilmember Skippy Mesirow, Councilmember Ann Mullins, Councilmember Rachael Richards via video conference.

Ordinance #11, Series of 2020 - Time of Closure for Businesses.

Mayor Torre stated that this is a special meeting regarding the first reading of Ordinance #11 and no public comment will be heard. Mayor Torre said the second reading will be the following night after the APCA meeting.

Jim True, City Attorney introduced Ordinance #11. Mr. True outlined the three main points to the emergency ordinance. First being mandatory closure of business at 12:00 AM. The second point outlined face coverings and requirements while in a business. The final point allows the City of Aspen to be able to suspend a liquor license or business license if there is a failure to comply.

Mayor Torre suggested the removal of the second sentence in section two referring to times of last seating for restaurants.

Councilwoman Mullins asked why they should have a designated time to close the kitchen if they are not serving food.

Mr. True stated that there are establishments that could sell right up until 12:00 AM. Mr. True further explained that the ordinance calls for no patrons in the establishment after midnight.

Councilwoman Richards stated that she agrees with Councilman Hauenstein and reiterated that the key component to this ordinance is that patrons are out of the establishment by midnight.

Councilman Mesirow requested an update about the Board of Health meeting.

Mayor Torre stated that the medical advisory team brought forth the information that loading reopening does not pose the same health concerns that bars & restaurants do. Mayor Torre further explained the discussion of restaurant curfew has been talked about for a few weeks. Councilwoman Mullins stated that lodges can help with the education of visitors with our current health policies. Councilwoman Mullins stated that the state has said bars could open up to 25% but the Pitkin County Board of Health decided that was not an option. Councilman Mesirow asked if the curfew was intended to be a substitute for closing bars. Councilwoman Mullins restated that bars are still closed per Pitkin County health order. Councilman Mesirow stated that he does not see the point of the curfew if the ordinance will have enforcement components to it. Councilman Mesirow stated that this decision will also hurt those following the rules.

Councilwoman Richards stated that this is a true balancing act for the Aspen community. Councilwoman Richards said after living here for 40 years most restaurants after 12:00 AM turn into night clubs. Councilwoman Richards explained that at a certain point with loud music and

drinks masks will come off and social distancing won't be followed. Councilwoman Richards stated that a curfew is far better than a shutdown.

Councilman Mesirow stated that he does not understand why the City would tell businesses not to operate rather than educate them to fulfill the five pints of containment and/or risk a loss of business or liquor license.

Councilman Hauenstein stated that not all restaurants are complying and morphing into bars and putting the public at risk. Councilman Hauenstein said that they were elected to govern the City of Aspen and not pass this responsibility to Pitkin County. Councilman Hauenstein further explained that it is their responsibility to keep the economy open and suppress COVID-19. Councilman Hauenstein stated that there has been outreach from restaurants for this measure, and further stated that this will help avoid something catastrophic. Councilman Hauenstein stated that this does not mean people need to be home and lock their rooms at midnight, this only applies to business will be closed by midnight.

Councilman Mesirow asked if the curfew applies to the individual person.

Mr. True stated as it is written all business must close by midnight.

Mayor Torre said the convenience store in town may have reduced hours since. Mayor Torre asked for more information about the locals' corner convenience store.

Councilman Mesirow asked if this ordinance will affect babysitters from watching children after midnight.

Mr. True stated how the language is written that locals' corner and others would be affected. Mr. True said if the council would like to expand and look at the language this is a possibility.

Councilwoman Mullins urged that there needs to be a provision to let kitchens stay open until 11:30. Councilmember Mullis said that this ordinance needs to be as clear and understandable as possible.

Mayor Torre stated that this ordinance is not here to dictate the hours one works but when patrons can and cannot be in an establishment.

Councilman Hauenstein motioned to have Ordinance #11 read.

Roll call vote: Councilmember Hauenstein, Yes; Councilmember Mesirow, Yes; Councilmember Mullins, Yes; Councilmember Richards, Yes; Mayor Torre, Yes. All in favor. Motion carries

City Clerk Nicole Henning read Ordinance #11.

Councilman Mesirow asked Police Chief Richard Pryor about his observation of the ordinance.

Mr. Pryor stated that essentially this would be the same process as closing bars at 2:00 AM. Councilman Mesirow asked at the second reading will the police have a process ready for infractions.

Mr. Pryor stated that when an officer makes contact with a check-in there is always a record. Mr. Pryor further explained that the first contact is to educate after that any other infractions is enforcement.

Councilman Mesirow asked what challenges the Aspen Police Department will face by implementing a 12:00 AM closure.

Mr. Pryor stated that time and the amount of staff will be the main obstacle. Mr. Pryor said that on top of night checks of business there are other obligations the officers have.

Mayor Torre moved the conversation to section two stating strengthening the obligation of businesses that are open to the public, not to permit individuals in without masks.

Councilwoman Mullins stated that it would be a good idea for the individual businesses to have the option of providing masks to the person if needed. Councilwoman Mullins stated that in the language of section two references bars and should be taken out since bars are not permitted to be open. Councilwoman Mullins asked what side of ten minutes does this order fall on less than or more than, referencing the time limit of the congregation of individuals without masks.

Mayor Torre stated that it is the same as the Pitkin County Health Order, more than 10 minutes.

Mr. True stated that under state and county rule any business with a tavern license is considered a bar and can be open if it has the ability and does serve food.

Councilwoman Richards stated that language for bars should be put in place so when they do open, they are immediately covered.

Councilman Hauenstein said he agreed with Councilwoman Richards and further stated that the language is fine as it stands and will cover bars once they are allowed to open.

Mayor Torre said he doesn't want anyone to get the wrong impression and further stating that the goal is not to increase the burden on these businesses but to support them and strengthen the business through the compliance of their patrons.

Councilwoman Richards stated that adding a clear and clean definition of what makes a mask will be helpful, that there are a lot of interpretations like using socklet that is given when trying on shoes.

Councilman Mesirow stated that he is in favor of section two.



Mayor Torre stated that the Aspen Chamber Resort Association has begun helping with outreach to businesses and restaurants for the input and commits in preparation for the second reading.

Councilman Hauenstein stated that he would like to see the language change that mask will stay in place until City Council deems it ok to remove mandate. Councilman Hauenstein said the re-upping every 30 days takes away the gravity and seriousness of the situation.

Mayor Torre moved the discussion on to section three.

Mr. True stated that section three allows the City of Aspen to access both liquor and business licenses and gives the power to the City Manager to suspend a license up to 15 days. Mr. True further explained that a hearing before the City Council, which shall be at the earliest possible date following notice of suspension will conclude termination of the suspension, extension of the suspension, or revocation of the license of the business.

Councilman Mesirow stated that he is in support of this section and asked that the City Manager meets with the Chief of Police to discuss how this process will come forward.

Councilman Hauenstein stated that the language used makes it very difficult or even impossible for the City to prove that there was a deliberate and willful violation of the health order. Councilman Hauenstein further explained that this language gives City Council judicial duties. Councilman Hauenstein asked if these keywords could be taken out. Councilman Hauenstein stated that he would like the language added about the individual business ability to have an appeal process.

Mr. True stated that there is an avenue for the individual to go to court if they believe they were not fairly heard by the council. Mr. True explained that the council will be stepping into a quasi-judicial role. Mr. True addressed the concern about the language stating that this language helps meet the legal requirements and that all steps are properly being taken and that all evidence is in place.

Councilwoman Mullins stated that the deliberate and willful violation language is needed, or the council will see unattended violations cases and that is not needed.

Councilman Hauenstein asked if individual amendments need to happen during the first reading or will they be accepted at the second reading.

Mr. True stated that amendments can be accepted during the first reading.

Councilman Hauenstein motioned to adopt Ordinance #11 with the amendment to section one striking sentence two. Councilwoman Richards seconded. Councilwoman Mullins asked Councilman Hauenstein if he would accept a friendly amendment of the insertion of coworkers in section three. Councilwoman Richards asked Councilman Hauenstein if he would accept a

friendly amendment of the insertion of the language about handing out fresh masks in section two. Councilwoman Richards asked Councilman Hauenstein if he would accept a friendly amendment stating that section four does not get repealed with other sections and becomes part of the City of Aspen's code.

Councilman Mesirow stated that he does not want to leave this discussion about masks and public health open-ended, rather a constant everchanging and growing discussion.

Councilman Mesirow asked staff for more information about the box-it-in program. Councilman Mesirow stated that he would like to see the city ramp up the mask program with more effective masks like an N95 style for the public and asked staff to investigate this and come back with an update.

City Manager Sara Ott stated that the masks that the city has been handing out are within CDC guidelines for face coverings. Ms. Ott said that she is still waiting for an update about the box-it-in program from the county and will update soon.

Councilman Mesirow restated that he would like to see the City of Aspen provides a more efficient mask that well help in public health rather than a cloth buff.

Councilwoman Richards stated that she would like to see a definition of who should be getting these provided masks, is it locals, guests, or a mix. Councilwoman Richards said that there is a need for clear face shields that could be given out for those hard of hearing and need to read lips.

Ms. Ott pointed out that the face shields do not meet the public health order that the council passed.

Mayor Torre called for a roll call vote for Ordinance #11 first read.

Roll call vote: Councilmember Hauenstein, Yes; Councilmember Mesirow, Yes; Councilmember Mullins, Yes; Councilmember Richards, Yes; Mayor Torre, Yes. 5-0, motion carried.

Councilmember Hauenstein motioned for second reading for Ordinance #11 for July 1st, 2020. Councilwoman Mullins seconded the motion.

Roll call vote: Councilmember Hauenstein, Yes; Councilmember Mesirow, Yes; Councilmember Mullins, Yes; Councilmember Richards, Yes; Mayor Torre, Yes 5-0, motion carried.

Councilwoman Mullins motioned to adjourn. Councilmember Hauenstein seconded

Roll call vote: Councilmember Hauenstein, Yes; Councilmember Mesirow, Yes; Councilmember Mullins, Yes; Councilmember Richards, Yes; Mayor Torre, Yes. 5-0, motion carried.

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Nicole Henning, City Clerk

At 4:00 PM Mayor Torre called the special meeting to order with Councilmember Ward Hauenstein, Councilmember Skippy Mesirow, Councilmember Ann Mullins, Councilmember Rachael Richards via video conference.

Jim True City of Aspen Attorney reintroduced Ordinance #11-2020, Mandatory Closing Time for Business, for the second reading. Mr. True reviewed the amendments council had requested for the ordinance.

Councilman Hauenstein asked for clarification on when the ordinance will take effect. Mr. True stated that the ordinance will take effect immediately if four councilmembers vote in favor. He pointed out that each section could start at different times if the council see that necessary.

Councilman Hauenstein suggested this go into effect the morning of July 2nd, so individuals are not caught off guard.

Mayor Torre stated that the council will discuss each section, starting with section one.

Mayor Torre asked Chief of Police Richard Pryor about what the enforcement side of this ordinance will look like.

Mr. Pryor stated that this will be a bright line and will be easier to see if a business is breaking this rule and to document. He further said that the 12:00 AM checks will look like our 2:00 AM checks prior to COVID times. Mr. Pryor said the officers have their body cameras recording to document every encounter.

**PUBLIC COMMENT:** None

Councilman Mesirow stated that there is a path for council to support all the measures with a small alteration. He said that he was in support of sections 2 and 3 of the ordinances and liked focusing on the accountability aspect. Councilman Mesirow stated that he questioned section 1 about curfews and said this will do harm to some business. He raised questions about the box-it-in strategy and where is and isn't being enforced hotels, bars, social gatherings. Councilman Mesirow stated that he spoke to the hospital about the matrix that is used to determine the level of emergency in relation to COVID-19. He further explained that with rising cases in Aspen, the matrix is moving from a comfort level to a cautions level. Councilman Mesirow stated he would be in favor of a one-month curfew with an appeal option for those businesses that are doing no harm and practicing the box it in strategy.

Councilwoman Mullins suggested that the ordinance take effect the morning of July 2nd. She said that she has gotten numerous emails from restaurants in support. She said she likes an end date, so the council can go back and reevaluate to extend or expirer. She stated that we can review mid-August. Councilwoman Mullins reiterated that she supports the curfew to take effect the morning of July 2nd and in effect till mid-August.

Councilman Hauenstein stated that there needs to be some clarification on some of the language. He said he is in support of the suggested edits that Mr. True put forth. He stated his support for

the start date beginning July 3rd and suggested the order goes to September 9th. Councilman Hauenstein said that restaurants need to help enforce the wearing of masks, this is not a political issue but a public health issue. He asked that gross negligence should be added to section 3 paragraph A.

Mayor Torre asked Councilman Hauenstein what about the businesses that are being safe and complying in reference to extending this through the summer.

Councilman Hauenstein said it becomes a slippery slope when you start saying these businesses need to follow curfew and these businesses do not. He thinks that it should apply to all businesses.

Councilwoman Richards stated that the United States in general has done a poor job in response to this pandemic. She said it has been announced that US citizens cannot travel to Europe now. She said think of how this will affect our ski industry. She stated that we cannot separate the good behaviors from the bad behaviors we are one community and one bad behavior can bleed over to others and negate all our efforts. She said we are so focused on the economic recovery, but we're not prepared as a community for reopening. She stated that 80% of the community is complying, but not our guests, and we cannot let a group of bad apples ruin the bunch. She stated that she agrees with Councilman Hauenstein's analogy about cigarette smoking in the restaurants. She said she agrees with closing date Councilwoman Mullins suggested, it is a compromise between Councilman Mesirow and Councilmember Hauenstein.

Mayor Torre asked Councilman Mesirow to explain a little bit further about the appeals process he is referring to.

Councilman Mesirow stated that this will be an exception from early closing for certain businesses if the 5 commitments are met. He said there are many other businesses we have not thought of yet and doesn't want to punish unnecessarily. He said the appeals process will help these businesses continue operations safely.

Councilwoman Richards asked what if that doesn't work. She said that this is a risk she's not willing to take. She stated that if a babysitter exemption needs to be put into this ordinance, she will do it. She doesn't feel that there are a bunch of other examples.

Councilwoman Mullins thanked Councilmember Richards for her comments and stating that they are right on. She said we're doing what we were elected to do, working for the health and safety of our community. Councilwoman Mullins stated that we are in a real crisis right now. She said people are coming here because Aspen is safe, but they are going to make it unsafe for us. She stated that she does not want to begin to think about whether we are going to overwhelm the healthcare system or not, she further stated that we need to be incredibly strict and stringent. Councilwoman Mullins stated that she can't support an appeals process. She said that the community is concerned about enforcement and how to enforce it. She said that it is time to be black and white and not cut corners and stands by August 25th.

Councilman Hauenstein stated that this is the time to take action and protect Aspen. He said he does not support an appeals process and is willing to add an amendment for babysitters. He said that he agrees with Mr. True's suggestion of the time change for businesses to open back up at 5:00 AM. Councilman Hauenstein stated that he would prefer this ordinance to go through September 9th.

Councilman Hauenstein moved to adopt Ordinance #11, Series of 2020 with a start date of July 3rd through September 9th, 2020. Councilwoman Mullins seconded the motion.

Councilman Mesirow stated that he supports August 17th for his end date choice.

Mayor Torre said August 17th is 6 weeks away and Councilmember Mullins' date is 8 weeks away.

Councilwoman Richards stated that this conversation is getting too narrowly focused on our city limits and there needs to be more focus on the national level where our visitors are coming from. She said that this dissection boils down to two hours, where there is no food being served and drinks are being served and masks come down. She stated that it's important to have some consistency so the public can follow. She stated that she is ok with an August 25th end date.

Councilwoman Richards asked Councilman Hauenstein if he would accept a friendly amendment to change the end date to August 25th, 2020. Councilman Hauenstein accepted the friendly amendment, and Councilwoman Mullins seconded.

Councilman Mesirow asked Councilman Hauenstein if he would accept a friendly amendment to split this ordinance into two. Councilman Hauenstein did not accept the friendly amendment.

Mayor Torre asked if a business gets a first offense is it immediately subjugated to losing their license.

Mr. True stated that it will be up to the City Manager's discretion on how to proceed.

Councilman Mesirow asked if food delivery would be affected by the ordinance.

Mr. True stated that yes it will since that is a function of the restaurant.

Councilman Mesirow asked Councilman Hauenstein if he would accept a friendly amendment to add the exception for a hotel food delivery to a hotel room. Councilman Hauenstein accepted the friendly amendment, and Councilwoman Mullins seconded.

Mr. True outlined the amendments that have been made for Ordinance #11

Mayor Torre stated that this is an ongoing conversation and that council needs to be prepared to discuss this topic again and again.

Mayor Torre called for a roll call vote for Ordinance #11-2020

Roll call vote: Councilmember Hauenstein, Yes; Councilmember Mesirow, Yes; Councilmember Mullins, Yes; Councilmember Richards, Yes; Mayor Torre, Yes 5-0, motion carried.

Councilwoman Richards motioned to adjourn. Councilmember Hauenstein seconded

Roll call vote: Councilmember Hauenstein, Yes; Councilmember Mesirow, Yes; Councilmember Mullins, Yes; Councilmember Richards, Yes; Mayor Torre, Yes. 5-0, motion carried.

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Nicole Henning, City Clerk



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Lee Ledesma, Utilities Finance & Admin Manager  
Rick Magill, Landscape Ordinance Plans Reviewer

**THROUGH:** Tyler Christoff, Utilities Director  
Scott Miller, Public Works Director

**MEMO DATE:** July 6, 2020

**MEETING DATE:** July 14, 2020

**RE:** Water Efficient Landscape Ordinance – Public Hearing --  
Proposed Enhancements to Water Efficient Landscaping  
Standards

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**REQUEST OF COUNCIL:** Staff requests approval of Ordinance #9, Series of 2020, representing enhancements to the Water Efficient Landscaping Standards, (WELS). Recommended changes include: two new exemptions to WELS review, a variance to the WELS for projects with outdoor pools/spas and a relatively small irrigated area, and updated permit language for triggering WELS compliance review. These amendments are outlined in Exhibits A and B and are the same as those presented during the May 19, 2020 Worksession and as presented at First Reading on June 23, 2020.

**SUMMARY AND BACKGROUND:** The Water Efficient Landscape Ordinance provides the Aspen community a mechanism to continuously improve outdoor water efficiency. Conservation is a key component of Aspen's Integrated Water Supply System, and effective conservation practices enable the City to manage water supplies more efficiently. These proposed enhancements help the staff and the community with the ability to continue to successfully implement this program.

Council adopted the Water Efficient Landscape Ordinance pilot program on May 22, 2017, which went in effect on June 22, 2017 and applied to all city and county parcels served by City of Aspen water.

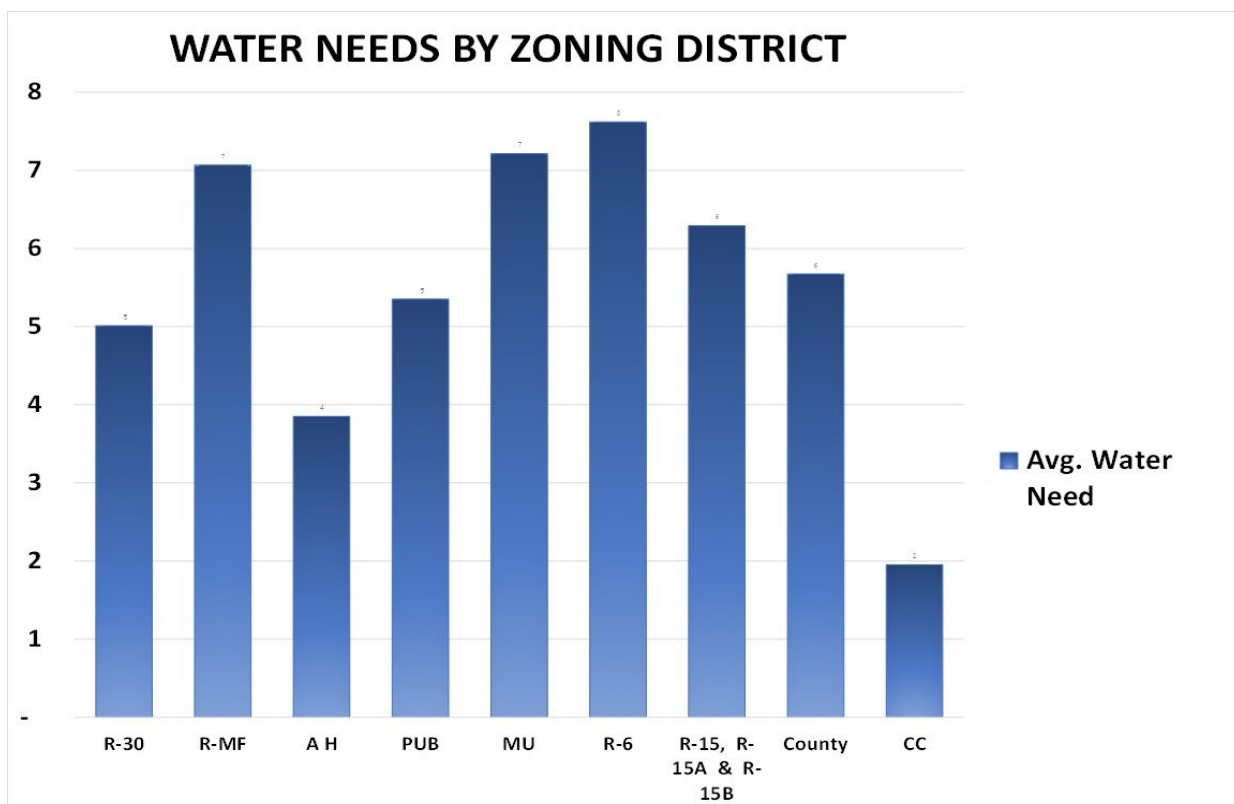
In August of 2018, Council approved Ordinance #17, which extended the previously adopted pilot program of the Landscape Ordinance to 18 months, ending December 31, 2018. This pilot phase allowed the Utility to collect data on current applications, provided additional time for community outreach, and allowed staff to work through pain-points in the proposed process.

As of January 1, 2019, all building permit applications that trigger WELS compliance review need to demonstrate alignment with the maximum annual irrigation water need of



7.5 gallons/sq. ft./irrigation season and obtain a 3<sup>rd</sup> party audit from a certified landscape irrigation auditor prior to issuance of a Certificate of Occupancy. This audit ensures landscape and irrigation installations comply with WELS and the approved plans.

To date, there have been 85 building permits within the city and county that have triggered compliance to WELS since 2018. These projects involved a total of 762,764 irrigated sq. ft. The average water budgets from the 85 submittals since 2018 is 6.4 gallons/sq. ft./irrigation season, exceeding the desired reduction (of gallons per square foot) envisioned in the Standards by nearly 15 percent. These proposed projects equate to an estimated savings of more than 6,500,000 gallons. Additionally, there are currently 18 WELS submittals under review and in preapproval status. The table below shows the average water budget by zoning districts.



**DISCUSSION:** Based on applicants' input and reviewers' observations of potential inconsistencies in the ordinance and standards, staff is requesting changes summarized in list below. It is important to note components of the requested changes are contained in both the Municipal Code Title 25, Chapter 25.30, as well as in our currently adopted Water Efficient Landscaping Standards. The proposed changes stem from input from applicants, observations of City staff and Council feedback. (A full draft of amendments can be found in Exhibits A and B):

- **WELS Exemption -** Staff proposes adding exemption language to WELS document (section 2.2). This update would apply to: a) projects with less than 250 sq. ft. of total irrigated area, including any adjoining irrigated City

right-of-way; and, b) projects with greater than 75 percent of the total irrigated area occurring within an adjoining City right-of-way. These proposed changes will allow certain low-impact projects to not trigger compliance with WELS or be required to submit a complete landscape and irrigation documentation packet.

- **WELS Variance** - Staff proposes adding a variance to the WELS document (section 2.2.5.). This update would apply to projects that are comprised of outside pools and/or spas with a relatively small area of irrigated landscape that currently makes it difficult, if not impossible, to meet the water budget. Staff proposes this additional variance for applicants to ease the burden of WELS compliance for certain non-irrigation water uses.
- **WELS Revision** - Staff proposes updating WELS, Section 4.3.2(l)(m) regarding limitations of disturbance caused by development under existing trees. Current Standards are not specific enough to mitigate potential damage to root systems due to disturbance within existing tree driplines and often conflict with recommendations of the City Forester. The proposed update to the Standards will allow the City Forester to review each project on a case-by-case basis and require a tree permit for significant disturbance under trees.
- **WELS Trigger Threshold** – Staff proposes replacing the current WELS trigger threshold of ‘greater than 50 percent internal demolition of existing structure’ with ‘an increase of 50 percent or more in total water use capacity on a property, as measured in Equivalent Capacity Units, (ECUs).’ Staff recommends this update to align the trigger threshold for distinguishing between substantial and insubstantial remodel projects as identified in Title 25, Section 25.12.070(c) of the Municipal Code. The “substantial vs. insubstantial remodel/rebuild” trigger language is currently being utilized by the Engineering department review teams. This recommended revision to the second WELS compliance trigger allows for consistency between the three water review teams across the Utilities, Engineering, and Parks departments.
- **WELS Definitions** - Other relatively minor clarifications and revisions to the WELS Definitions and Sections.

**FINANCIAL IMPACTS:** No direct financial impacts are anticipated as a result of the outlined recommended changes to the Water Efficient Landscaping Standards.

**ENVIRONMENTAL IMPACTS:** The City of Aspen's Landscape Code revision is an example of how local efforts tie into larger statewide efforts to reduce outdoor water use in Colorado. Comprehensive landscape codes are key to reducing outdoor demand and 'building it smart from the start'. WELS promotes the values and benefits of healthy landscapes while recognizing the need to invest in efficiency. The adopted water budget of 7.5 gallons/sq. ft./season is estimated to reduce irrigation water demand by 14 percent

as compared to new plan submittals sampled prior to WELS implementation. And, when compared to typical existing homes, there is a potential landscape water use savings of up to 60 percent when these properties update their landscaping and irrigation systems. Using a water budget of 7.5 gallons/sq. ft./irrigation season (14 percent savings) would put the City on target to achieve the Council-adopted 2015 City of Aspen Municipal Water Efficiency Plan projection of 50 acre-feet per year of water savings by 2035. Note: Link to our Municipal Efficiency Plan can be found at: <https://cityofaspen.com/203/About-Aspen-Water>.

**ALTERNATIVES:** Council may elect not to adopt Ordinance #9 which cover the proposed enhancements to the Water Efficient Landscape Ordinance and Standards.

**RECOMMENDATIONS:** Staff recommends adoption of Ordinance #9, Series of 2020, which modifies existing Water Efficient Landscaping Standards 30 days after this action.

**CITY MANAGER COMMENTS:**

**ATTACHMENTS:**

Exhibit A – Ordinance #9, Series of 2020

Exhibit B – Water Efficient Landscaping Standards – Proposed Changes

## CHAPTER 25.30. - WATER EFFICIENT LANDSCAPING STANDARDS

### Sec. 25.30.010. - Purpose.

- (a) Promote the values and benefits of healthy landscapes while recognizing the need to invest water and other resources as efficiently as possible.
- (b) Establish a structure for planning, designing, installing, maintaining and managing water-efficient landscapes in new construction and renovated/rehabilitated projects.
- (c) Use water efficiently without waste by setting a Maximum Applied Water Budget as an upper limit for water use and reduce water use to the lowest practical amount.

( [Ord. No. 16-2017](#) ; [Ord. No. 28-2018](#) )

### Sec. 25.30.020. - Adoption of City of Aspen Water Efficient Landscaping Standards

Pursuant to the powers and authority conferred by the laws of the State of Colorado and the Charter of the City of Aspen, there is hereby adopted and incorporated herein by reference as if fully set forth the City of Aspen Water Efficient Landscaping Standards as may be amended from time to time by City Council Ordinance. At least one (1) copy of the City of Aspen Water Efficient Landscaping Standards shall be available for inspection at the City of Aspen Utilities Department, the City of Aspen Parks department, and City of Aspen Community Development Department.

( [Ord. No. 16-2017](#); [Ord. No. 28-2018](#) )

### Sec. 25.30.030. - Applicability.

- (a) After June 22, 2017, the City of Aspen Water Efficient Landscaping standards shall apply to the following projects that use City of Aspen potable water:
  - (1) Landscaping, grading, installing or disturbing hardscapes, additions to structures, etc. that has a disturbance area greater than one thousand (1,000) square feet and greater than twenty-five percent (25%) of the entire ~~site~~lot or parcel.
  - (2) All building permits that trigger a "substantial remodel" per Title 25 of the Municipal Code, defined as the increase by~~All new construction with internal work only that demolishes greater than fifty percent (50%) or more in the water using capacity of new water using devices or fixtures installed on a property, as measured by the ECU rating of the existing and proposed structure(s) of the existing structure, (based on the entire square footage of rooms where floors, ceilings, or walls are exposed over the square footage of the structure).~~

(Ord. No. 18-2002 § 3 [part]; [Ord. No. 17-2018](#) ; [Ord. No. 28-2018](#) )

### Sec. 25.30.040. - Review Authority.

Utilities Director, or designee, is authorized to make and enforce the rules and regulations contained in the Water Efficient Landscaping Standards in order to carry out the intent of the standards and this Chapter.

Where no specific or applicable rules, regulations, or standards appear to be set forth in the Water Efficient Landscaping Standards, other rules, regulations, or standards, and recommended practices, as published by professional associations, technical organizations, model code groups, and similar entities, may be used by the City for guidance.

( [Ord. No. 16-2017](#) ; [Ord. No. 28-2018](#) )

Sec. 25.30.050. - Review Procedure.

- (a) *Review Process.* The Utilities Director shall have the authority on behalf of the City of Aspen to determine that all design and construction is completed to a level that is equal to or exceeds the requirements set forth in this Chapter and the Water Efficient Landscaping Standards.

( [Ord. No. 16-2017](#); [Ord. No. 28-2018](#) )

Sec. 25.30.060. - Variances.

- (a) The City may grant variances to the Water Efficient Landscaping Standards when practical difficulties or unnecessary hardships exist that cause inconsistencies with the purpose and intent of the standards.
- (b) Requests for variances from the standards, policies, or submittal requirements of this document shall be submitted in writing with appropriate documentation and justification to the City Utilities Director. Variance requests must, at a minimum, contain the following:
  - (1) Criteria under which the applicant seeks a variance;
  - (2) Justification for not complying with the standards;
  - (3) Proposed alternate criteria or standards to comply with the intent of the criteria;
  - (4) Supporting documentation, including necessary calculations;
  - (5) The proposed variance's potential adverse impacts for adjacent landowners; and,
  - (6) An analysis of the variance request, signed by a qualified landscape professional or qualified irrigation design professional, depending on the topic of the request.
- (c) Upon receipt of a complete application for a variance, the City Utilities Director shall prepare a statement to recommend that the variance be approved or denied or to request a modification of the proposed variance.

( [Ord. No. 16-2017](#) ; [Ord. No. 28-2018](#) )

Sec. 25.30.070. - Existing Compliance.

- (a) The City may grant a determination of compliance for existing projects or portions of existing properties in sufficient compliance meeting the minimum standards.
- (b) Requests for determination of compliance shall be submitted in writing with appropriate documentation and justification to the City Utilities Director. Requests for determination of existing compliance must, at a minimum, contain the following:
  - (1) Landscape and Irrigation Documentation Package; and
  - (2) Irrigation audit report performed by a ~~third~~-third-party certified landscape irrigation auditor.
- (c) Upon receipt of a complete application for a determination of existing compliance, the City Utilities Director shall prepare a statement to recommend that the determination be approved or denied or to request a modification of the proposed determination.

( [Ord. No. 16-2017](#); [Ord. No. 28-2018](#) )

Sec. 25.30.080. - Deposit Requirements for Temporary Certificates of Occupancy.

In accordance with the Water Efficient Landscaping Standards, Section 5.8.3, The City of Aspen shall: (a) Receive the signed Approval Letter from the project applicant; (b) Approve or deny the Approval Letter. If the Approval Letter is denied, the City of Aspen shall provide information to the project applicant regarding reapplication, appeal, or other assistance; (c) If a certificate of occupancy is issued in winter months when landscaping and irrigation systems cannot be inspected for compliance, Aspen Water Department will require a deposit equal to the identified cost to complete the landscaping and irrigation plan. Once compliance has been confirmed, the deposit will be returned in full.

Therefore, if a property owner, or their representative, requests a Temporary Certificate of Occupancy prior to complete installation of the landscape and irrigation, followed by a ~~3<sup>rd</sup>~~ third-party audit, and final City of Aspen Approval Letter, the property owner will submit an estimate to complete the remaining irrigation and landscaping work and pay a deposit as set out below prior to issuance of the Temporary Certificate of Occupancy.

Deposit Schedule for Landscaping and Irrigation	
<u>Project cost estimate</u>	<u>Deposit</u>
\$0—50,000	50%
\$50,000—100,000	25%
Over \$100,000	15%

(Ord. No. [24-2019](#), § 1, 11-26-2019)

Sec. 25.30.090. - Appeals.

- (a) *Initiation.* An applicant aggrieved by an order, requirement, decision, or determination of the City Utilities Director may file an appeal with the Administrative Hearing Officer, pursuant to the procedures set out in Chapter 26.316 of this Code except to the extent set forth herein. The notice of appeal shall be filed with the City Utilities Director within fifteen (15) days following the date of such order, requirement, decision, or determination. The notice of appeal shall state in detail the action appealed, the grounds for the appeal, and the relief sought. Failure to file such a notice of appeal within the prescribed time shall constitute a waiver of any rights under this Section to appeal any order, requirement, decision, or determination.
- (b) *Effect of Filing an Appeal.* The filing of a notice of appeal shall stay any proceedings in furtherance of the action appealed from unless the City Utilities Director certifies in writing to the Administrative Hearing Officer that a stay poses an imminent peril to life or property, in which case the appeal shall not stay further proceedings. The Administrative Hearing Officer may review such certification and grant or deny a stay of proceedings.
- (c) *Timing of Appeal.* The Administrative Hearing Officer shall consider the appeal within thirty (30) days following the date of filing the notice of appeal, or as soon thereafter as is practical under the circumstances.

- (d) *Action by Administrative Hearing Officer.* The Administrative Hearing Officer shall review the record of the action taken by the City Utilities Director, and provide a decision to the Applicant in writing. The Administrative Hearing Officer may reverse or affirm wholly or partly the order, requirement, decision or determination appealed from and shall enter such order, as they deem appropriate under the circumstance.

( [Ord. No. 16-2017](#); [Ord. No. 28-2018](#); Ord. No. [24-2019](#), § 1, 11-26-2019)

**Editor's note**— Ord. No. [24-2019](#), § 1, adopted Nov. 26, 2019, added a new § 25.30.080 and in doing so renumbered former § 25.30.080 as § 25.30.090, as set out herein.

ORDINANCE NO. 09

Series 2020

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AMENDING TITLE 25 OF THE MUNICIPAL CODE OF THE CITY OF ASPEN--UTILITIES TO UPDATE CHAPTER 25.30 ENTITLED: WATER EFFICIENT LANDSCAPING STANDARDS.

WHEREAS, the City owns and operates a public water system; and

WHEREAS, implementation of Aspen's water efficient landscaping standards will fulfill certain recommendations identified in the City of Aspen's Municipal Water Efficiency Plan, the Roaring Fork Regional Efficiency Plan, and the Roaring Fork Watershed Plan; and

WHEREAS, water conservation and efficiency has been identified as an important component of Aspen's Integrated Water Supply System; and

WHEREAS, the Water Efficient Landscaping Standards, as adopted by City Council on May 22, 2017, Ordinance #16, Series 2018, provide policies, guidelines, and minimum landscaping design, installation, maintenance, and management criteria to governmental agencies, design professionals, private developers, community groups, and homeowners for new development and significant remodels; and

WHEREAS, staff has made enhancements to existing Water Efficient Landscaping Standards based on community and staff input and requests adoption of modified Standards and Ordinance; and,

WHEREAS, these standards promote efficient development and use of water within the City of Aspen's water service area; and,

WHEREAS, the City Council finds that this ordinance furthers, and is necessary for, the promotion of the public health, safety, and welfare.



NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ASPEN, COLORADO:

**Section 1.**

That Chapter 25.30--Water Efficient Landscaping Standards--of the Municipal Code of the City of Aspen, Colorado, is hereby amended to read as follows:

**CHAPTER 25.30**

**WATER EFFICIENT LANDSCAPING STANDARDS**

**Sec. 25.30.010. - Purpose.**

- (a) Promote the values and benefits of healthy landscapes while recognizing the need to invest water and other resources as efficiently as possible.
- (b) Establish a structure for planning, designing, installing, maintaining, and managing water-efficient landscapes in new construction and renovated/rehabilitated projects.
- (c) Use water efficiently without waste by setting a Maximum Applied Water Budget as an upper limit for water use and reduce water use to the lowest practical amount.

( [Ord. No. 16-2017](#) ; [Ord. No. 28-2018](#) )

**Sec. 25.30.020. - Adoption of City of Aspen Water Efficient Landscaping Standards**

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( [Ord. No. 16-2017](#); [Ord. No. 28-2018](#) )

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(Ord. No. 18-2002 § 3 [part]; [Ord. No. 17-2018](#); [Ord. No. 28-2018](#).)

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( [Ord. No. 16-2017](#); [Ord. No. 28-2018](#) )

### **Sec. 25.30.050. - Review Procedure.**

- (a) *Review Process.* The Utilities Director shall have the authority on behalf of the City of Aspen to determine that all design and construction is completed to a level that is equal to or exceeds the requirements set forth in this Chapter and the Water Efficient Landscaping Standards.

### **Sec. 25.30.060. - Variances.**

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- (b) Requests for variances from the standards, policies, or submittal requirements of this document shall be submitted in writing with appropriate documentation and justification to the City Utilities Director. Variance requests must, at a minimum, contain the following:
  - (1) Criteria under which the applicant seeks a variance;
  - (2) Justification for not complying with the standards;
  - (3) Proposed alternate criteria or standards to comply with the intent of the criteria;
  - (4) Supporting documentation, including necessary calculations;
  - (5) The proposed variance's potential adverse impacts for adjacent landowners; and,

- (6) An analysis of the variance request, signed by a qualified landscape professional or qualified irrigation design professional, depending on the topic of the request.
- (c) Upon receipt of a complete application for a variance, the City Utilities Director shall prepare a statement to recommend that the variance be approved or denied or to request a modification of the proposed variance.

( [Ord. No. 16-2017](#) ; [Ord. No. 28-2018](#) )

#### **Sec. 25.30.070. - Existing Compliance.**

- (a) The City may grant a determination of compliance for existing projects or portions of existing properties in sufficient compliance meeting the minimum standards.
- (b) Requests for determination of compliance shall be submitted in writing with appropriate documentation and justification to the City Utilities Director. Requests for determination of existing compliance must, at a minimum, contain the following:
  - (1) Landscape and Irrigation Documentation Package; and
  - (2) Irrigation audit report performed by a third-party certified landscape irrigation auditor.
- (c) Upon receipt of a complete application for a determination of existing compliance, the City Utilities Director shall prepare a statement to recommend that the determination be approved or denied or to request a modification of the proposed determination.

( [Ord. No. 16-2017](#) ; [Ord. No. 28-2018](#) )

#### **Sec. 25.30.080. - Deposit Requirements for Temporary Certificates of Occupancy.**

In accordance with the Water Efficient Landscaping Standards, Section 5.8.3, The City of Aspen shall: (a) Receive the signed Approval Letter from the project applicant; (b) Approve or deny the Approval Letter. If the Approval Letter is denied, the City of Aspen shall provide information to the project applicant regarding reapplication, appeal, or other assistance; (c) If a certificate of occupancy is issued in winter months when landscaping and irrigation systems cannot be inspected for compliance, Aspen Water Department will require a deposit equal to the identified cost to complete the landscaping and irrigation plan. Once compliance has been confirmed, the deposit will be returned in full.

Therefore, if a property owner, or their representative, requests a Temporary Certificate of Occupancy prior to complete installation of the landscape and irrigation, followed by a third-party audit, and final City of Aspen Approval Letter, the property owner will submit an estimate to complete the remaining irrigation and landscaping work and pay a deposit as set out below prior to issuance of the Temporary Certificate of Occupancy.

Deposit Schedule for Landscaping and Irrigation	
<u>Project cost estimate</u>	<u>Deposit</u>
\$0—50,000	50%
\$50,000—100,000	25%
Over \$100,000	15%

(Ord. No. [24-2019](#), § 1, 11-26-2019)

### **Sec. 25.30.090. - Appeals.**

- (a) *Initiation.* An applicant aggrieved by an order, requirement, decision, or determination of the City Utilities Director may file an appeal with the Administrative Hearing Officer, pursuant to the procedures set out in Chapter 26.316 of this Code except to the extent set forth herein. The notice of appeal shall be filed with the City Utilities Director within fifteen (15) days following the date of such order, requirement, decision, or determination. The notice of appeal shall state in detail the action appealed, the grounds for the appeal, and the relief sought. Failure to file such a notice of appeal within the prescribed time shall constitute a waiver of any rights under this Section to appeal any order, requirement, decision, or determination.
- (b) *Effect of Filing an Appeal.* The filing of a notice of appeal shall stay any proceedings in furtherance of the action appealed from unless the City Utilities Director certifies in writing to the Administrative Hearing Officer that a stay poses an imminent peril to life or property, in which case the appeal shall not stay further proceedings. The Administrative Hearing Officer may review such certification and grant or deny a stay of proceedings.
- (c) *Timing of Appeal.* The Administrative Hearing Officer shall consider the appeal within thirty (30) days following the date of filing the notice of appeal, or as soon thereafter as is practical under the circumstances.
- (d) *Action by Administrative Hearing Officer.* The Administrative Hearing Officer shall review the record of the action taken by the City Utilities Director and provide a decision to the Applicant in writing. The Administrative Hearing Officer may reverse or affirm wholly or partly the order, requirement, decision, or determination appealed from and shall enter such order, as they deem appropriate under the circumstance.

( [Ord. No. 16-2017](#) ; [Ord. No. 28-2018](#) ; Ord. No. [24-2019](#), § 1, 11-26-2019)

**Editor's note**— Ord. No. [24-2019](#), § 1, adopted Nov. 26, 2019, added a new § 25.30.080 and in doing so renumbered former § 25.30.080 as § 25.30.090, as set out herein.

## **Section 2.**

Any and all existing ordinances or parts of ordinances of the City of Aspen covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

## **Section 3.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City of Aspen hereby declares that it would have adopted this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases thereof be declared invalid or unconstitutional.

## **Section 4.**

This Ordinance shall take effect thirty (30) days after passage, adoption and publication thereof as provided by law.

## **Section 5.**

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinance repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

**FIRST READING OF THIS ORDINANCE WAS INTRODUCED, READ, ORDERED AND PUBLISHED** as provided by law, by the City Council of the City of Aspen on the 23rd day of June 2020.

Attest:

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Nicole Henning, City Clerk

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Torre, Mayor

**FINALLY, adopted, passed, and approved this 14th day of July 2020.**

Attest:

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Nicole Henning, City Clerk

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Aspen Torre, Mayor

Approved as to form:

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James R. True, City Attorney

## MEMORANDUM

**TO:** Mayor Torre and Aspen City Council

**FROM:** Phillip Supino, Community Development Director

**MEMO DATE:** July 8, 2020

**MEETING DATE:** July 14, 2020

**RE:** Minor Subdivision - Lot Split – 949 West Smuggler Street, Ordinance No. 002, Series of 2020. 1<sup>st</sup> Reading

**APPLICANT:** 949 West Smuggler Street, LLC

**REPRESENTATIVE:** Chris Bendon, BendonAdams, LLC

**LOCATION:** 949 West Smuggler Street

**CURRENT ZONING:** Split Zoning; Residential - 6 (R-6) on eastern portion of the lot and Residential – 30 (R-30) on the western portion of the lot.

**SUMMARY OF REQUEST:** The Applicant requests Minor Subdivision – Lot Split approval to subdivide the subject property into Lot 1 and Lot 2. No development is proposed at this time and Lot Split approval is only requested. Power Plant Road traverses the subject property and its ownership is unclear. The Applicant proposes to dedicate a Power Plant Road right of way (ROW) to the City during this subdivision process.

**STAFF RECOMMENDATION:** Staff recommends that City Council approve Ordinance No. 002, Series of 2020.



Figure 1. Aerial photo of subject property



**REQUEST OF CITY COUNCIL:** The Applicant requests a Minor Subdivision - Lot Split review pursuant to draft Ordinance 002, Series of 2020 to create two (2) separate and distinct parcels. This request will be reviewed in accordance with Land Use Code Section 26.480.060.A and Land Use Code Section 26.480.040. ***City Council is the final review authority.***

**LOCATION/BACKGROUND:**

The property is located in the “West End” area of Aspen and is comprised of a metes and bounds portion of land and nine (9) Aspen Townsite lots. The property is bound by West Smuggler Street to the north and North 8<sup>th</sup> Street to the East. This portion of the property contains a flat meadow where a non-designated historic single-family residence was constructed in 1946. The historical significance and architecture of this residence make it a strong candidate for designation to the Aspen Modern program, however, designation is not sought by the applicant at this time.



Two (2) existing sheds located along the southern property boundary reside within the rear yard setbacks for the Lot. These sheds retain similar 1940's Chalet style as the residence and are both historically significant to the property. The western portion of the property is bisected by Power Plant Road and contains steep slopes that are partially a result of the existing road cut and subsequent

**Figure 2: Façade of 949 W. Smuggler Residence**

layback of grading. Together, the metes and bounds area and Townsite lots merge to result in a total property size of 1.417 acres. The property is not subject to any previous land use decisions.

**REQUEST:**

The Applicant requests Minor Subdivision - Lot Split approval to subdivide the property into two lots. The eastern portion of the property would be identified as Lot 2 and be comprised of Aspen Townsite Lots D – I. Lot 2 would contain the existing single-family residence. The western portion of the property would be identified as Lot 1 and be comprised of Aspen Townsite Lots A – C and the metes and bounds area. The application contains an initial survey of the proposed lot split. Should Council approve the request,



staff and the applicant will develop the final plat in accordance with the requirements of Ordinance No. 2.

The following map depicts the proposed lot configurations and sizes:



No development on Lot 1 is proposed at this time. Future City review and approval will be required prior to any development on the Lots. Specifically, future Lot 1 development will be required to comply with the Residential Design Standards (RDS) in place at the time of submittal.

At the time of development or redevelopment of either lot, required housing mitigation and other regulations will be analyzed at land use application and building permit submittal and required prior to permit issuance. Given the historic significance of the existing residence on Lot 2, staff continues to recommend AspenModern historic designation for the structure. The applicant may choose to designate the structure at a future date.

At the request of Community Development, Engineering, and Attorney's Office staff, the applicant proposes to dedicate a 30-foot right-of-way to the City for ongoing use of Power Plant Road. The total area dedicated for the roadway is 7,581 square feet. Additionally, a 16-foot pedestrian and utility easement is proposed on the west side of Power Plant Road, and a 10-foot utility easement is proposed for the east side of the road. The extent and configuration of these dedications and easements will be memorialized on the final subdivision plat.

The property is partially comprised of a metes a bounds description and subsequently has an unusual parcel configuration that creates uncertainty for yard designation and building setback requirements. As part of the negotiation for the dedication of the roadway and easements, modified setbacks were agreed to for the western Lot 1. Those are outlined in Ordinance No. 2. In accordance with the Land Use Code subdivision regulations in section 26.480.040, the eastern Lot 2 is subject to the requirements of the underlying R-6 zone district. No setback or floor area ratio modifications for Lot 2 are

included in Ordinance No. 2. A building envelope for Lot 1 will be included on the final plat memorializing the yard designations and setback requirements.

### Zoning:

The subject property is located within two (2) separate zone districts: R-6 and R-30. The proposed Lot 1 contains the existing R-6 zoning on the flat portion of the lot above Power Plant Road while the steep portion of the lot below Power Plant Road contains R-30 zoning. The proposed Lot 2 would be contained entirely within the R-6 zone district.



Figure 4: Existing zoning

While Lot 2 will be subject to R-6 zone district standards and requirements, due to split zoning, future development on Lot 1 warrants further discussion. In general, the R-6 and R-30 residential zone districts contain almost identical permitted uses, while differing in Floor Area Ratios (FAR), setbacks, and other dimensional requirements. Land Use Code Sections 26.710.022.A and B address Split Zoning and stipulate that in circumstances where one lot spans more than one zone district, the more restrictive dimensional requirements from each zone district apply. Therefore, future development on Lot 1 shall comply with the most restrictive zone district standards.

All future development on Lot 1 will be required to comply with the Split Zoning requirements in Land Use Code Section 26.710.022.A & B, unless rezoned to one zone district. Rezoning of property is subject to Council review and final approval. Additionally, the building envelope to be established for Lot 1 will include setback requirements from each lot line. The floor area ratio for the development or redevelopment of each lot will be calculated at such time as a development proposal for the site is submitted.

### **STAFF FINDINGS AND DISCUSSION:**

Staff responses to applicable Land Use Code criteria can be viewed in Attachment A. The Applicant has shown compliance with the applicable review standards and approval of Ordinance No. 2 is recommended, with certain conditions outlined in the Ordinance. Staff offers the following discussion items for consideration:

- Subdivision of land typically engages the Growth Management Quota System (GMQS) section of the Code, which requires that the newly created lots obtain a development right through the allotment process. Minor Subdivision – Lot Split



requests are exempted from this process and need not obtain a GMQS allotment for future development of the newly created lot.

- With respect to Growth Management affordable housing requirements, no affordable housing mitigation is required of Lot Splits. Should the existing structure on Lot 2 be redeveloped, under the current land use code, a credit toward affordable housing mitigation would be granted for the existing floor area on the lot. There is no such credit for the vacant Lot 1.
- Given that residential development is not proposed at this time on either lot, conditions in the draft ordinance are included requiring further City review prior to submittal of any building permit application(s).
- The presence of two zone districts creates heightened zoning analysis for any future development on Lot 1, particularly given the steep grades and almost unbuildable condition of land west of Power Plant Road. This portion of land is zoned R-30 and development would be severely constrained including any form of accessory development such as vehicular access or a shed.

The Land Use Code requires that as a result of subdivision, a single lot shall not be located within more than one zone district unless unusual circumstances exist. The Applicant has not submitted a rezoning application and argues that the subject property contains unusual circumstances given its zoning history and site constraints. Staff finds that the R-30 zoned land west of Power Plant Road is an unusual circumstance that does not reflect a buildable condition for the newly created Lot 1. Further, requiring a rezoning to one consistent zone district provides no added value to the subdivision, particularly given that the Land Use Code has established standards for split zone development.

Staff does not recommend rezoning the property. To formalize the property's unusual site circumstances, Ordinance No. 2 stipulates that a building restriction is placed on the portion of land zoned R-30, west of Power Plant Road that restricts all future development on that portion of the lot. This development restriction preserves valuable existing oak brush and sage brush habitat. This restriction will be memorialized in a note on the future subdivision plat.

Further, the placement of the building envelope, pursuant to Land Use Code 26.575.110, on that portion of Lot 1 zoned R-6 restricts the location of structures to within the building envelope. The map below depicts this area west of Power Plant Road, labeled "Area of Steep Slopes" where development will be prohibited.





Figure 5: Area of steep slopes west of Power Plant Road in purple and white hatching

- The applicant and City staff collaborated to arrive at the right-of-way dedication described in Ordinance No. 2. The proposal to dedicate 30-feet of right-of-way and an additional combined 26-feet of pedestrian and utility easements will establish clear City ownership in its present location. The Engineering Department supports the location and extent of these dedications. Staff recommends approval of the Power Plant Road dedication.
- In exchange for the dedication of the right-of-way and easements, staff negotiated setbacks, memorialized on the plat and in Ordinance No. 2, for the front, rear, and side yards of Lot 1. Those setbacks are described in Ordinance No. 2.

During these negotiations, the applicant requested modified setbacks for the fathering parcel, Lot 2. As the right-of-way dedication and easements along Power Plant Road do not impact and are not related to the condition of Lot 2, staff does not support any modifications to the development rights for Lot 2. Future development on Lot 2 shall be governed by underlying zoning standards.

- The existing Power Plant Road cut creates a steep and unstable slope condition. This slope is unvegetated and eroding. Staff is concerned that should development potentially be placed at or near the top of this road cut, erosion may be further exacerbated creating an unsafe condition for future development. Following first reading, the Applicant provided a professional geotechnical report analyzing the existing Power Plant Road cut for unstable conditions as it relates to future



development. Future development on Lot 1 above the unstable slope will be required to ensure any erosion or stability impacts are mitigated as a condition of approval and in accordance with Community Development and Engineering standards.

- As is common practice, subdivision plats do not depict existing improvements like structures. The applicant has expressed a desire to include the existing structures on the fathering parcel Lot 2 on the final plat. There is some question as to whether the location of any of these structures does not conform to setback requirements. As such, staff does not support their inclusion on the final plat. Doing so may create confusion as to their status should the property be proposed for redevelopment.

**STAFF RECOMMENDATION:**

Staff recommends Council approve the request for a Minor Subdivision at 2<sup>nd</sup> reading with the conditions and requirements outlined in Ordinance No. 2, Series of 2020.

**PROPOSED MOTION (WORDED IN THE AFFIRMATIVE):** “I move to approve Ordinance No. 2, Series of 2020.”

**Attachments:**

Exhibit A – Staff Findings – Minor Subdivision – Lot Split  
Exhibit B – Engineering Comments  
Exhibit C – Application

**ORDINANCE NO. 002  
(SERIES OF 2020)**

**AN ORDINANCE OF THE ASPEN CITY COUNCIL APPROVING A MINOR  
SUBDIVISION – LOT SPLIT FOR PROPERTY COMMONLY DESCRIBED AS 949  
WEST SMUGGLER STREET, LEGALLY DESCRIBED IN EXHIBIT A; CITY OF  
ASPEN, PITKIN COUNTY, COLORADO**

**PARCEL ID #'s: 273512212001 and 273500**

**WHEREAS**, the Community Development Department has received an application from 949 West Smuggler Street, LLC (Applicant), represented by Chris Bendon, BendonAdams, LLC, requesting a Minor Subdivision – Lot Split for property located at 949 West Smuggler Street (legally described in Exhibit A of this Ordinance) to create two (2) separate and distinct lots - Lot 1 and Lot 2; and,

**WHEREAS**, pursuant to Chapter 26.480.060.A and 26.480.040 of the Land Use Code, a Minor Subdivision – Lot Split shall be approved, approved with conditions, or denied by the City Council, after receiving a recommendation from the Community Development Director; and,

**WHEREAS**, upon initial review of the application and the applicable code standards, the Community Development Department recommended approval of the request; and,

**WHEREAS**, the Aspen City Council considered the Minor Subdivision request at 1<sup>st</sup> Reading on February 25<sup>th</sup>, 2020 and at 2<sup>nd</sup> Reading (duly noticed public hearing) on July 14<sup>th</sup>, 2020; and,

**WHEREAS**, the City Council has reviewed and considered the Minor Subdivision - Lot Split application proposal under the applicable provisions of the Municipal Code as identified herein, has reviewed and considered the recommendation from the Community Development Director, the applicable referral agencies, and has taken and considered public comment at a duly noticed public hearing; and,

**WHEREAS**, the City Council finds that the Minor Subdivision – Lot Split proposal meets the applicable land use standards; and,

**WEREAS**, the City Council further finds that the dedication of this portion of the Road as Right of Way from the Applicant to the City of Aspen for public use will indefinitely establish its ongoing public use; and,

**WHEREAS**, the City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF ASPEN, COLORADO, THAT:**

### **Section 1: Minor Subdivision – Lot Split**

Pursuant to the procedures and standards set forth in Title 26 of the Aspen Municipal Code, the Aspen City Council hereby approves the Minor Subdivision – Lot Split for property located 949 West Smuggler Street. The fathering parcel to the east containing the existing improvements is designated Lot 2. The newly created western lot is designated Lot 1. These designations shall be shown in the final plat.

### **Section 2: Future City Review Required**

Prior to building permit submittal for any future development or redevelopment on Lots 1 or 2, further City of Aspen review, including but not limited to, Residential Design Standards Review is required.

### **Section 3: Zoning**

At the time of this subdivision, portions of Lot 1 are zoned R-6 and R-30. Therefore, future development of Lot 1 is subject to the Split Zoning requirements of the Land Use Code Section 26.710.022 in place at such time as a development application is made. Any future development on Lot 2 is subject to the requirements of the R-6 zone district in place at such time an application is made.

### **Section 4: Development Restriction**

To acknowledge the subject property's unusual site circumstances, a building restriction is placed on the portion of land zoned R-30, west of Power Plant Road that restricts all future development. This area of land shall be identified on the final subdivision plat and a note shall be placed on the plat acknowledging this restriction. A building envelope, pursuant to Land Use Code 26.575.110 and described on the final plat, shall be placed on that portion of the newly created Lot 1 zoned R-6 and located east of the Power Plant Road to identify that area of Lot 1 permitted for future development in accordance with the requirements of this ordinance and applicable Zone District standards.

### **Section 5: Future Development and Floor Area**

The development restriction on Lot 1 described in Section 4 of this ordinance does not reduce the gross lot area used for the purposes of Floor Area calculations. Such calculations shall be made in accordance with the requirements and calculation methods of the Land Use Code in place at the time a development application is made for Lot 1.

### **Section 6: Power Plant Road Right-of-Way and Easements – Dedication to the City of Aspen**

The City Council hereby accepts for public use the dedication from the Applicant to the City of Aspen of Power Plant Road Right-of-Way at a width of 30-feet as it traverses the subject property. Additionally, City Council hereby accepts the conveyance of a 16-foot wide utility and pedestrian easement on the west side of the Power Plant Road dedication area and the conveyance of a 10-foot utility easement on the east side of the Power Plant Road dedication area. The right-of-way dedication and the easements shall be depicted and legally described in a note on the final subdivision plat in accordance with Engineering Standards in place at the time of approval.

### **Section 7: Further Lot Split**

Pursuant to Land Use Code Section 26.480.060.A.2, Lot 1 and Lot 2 shall not be further subdivided through the Minor Subdivision – Lot Split process.

### **Section 8: Lot Spanning Right-of-Way**

Dedication of Power Plant Road Right-of-Way from the Applicant to the City of Aspen does not further subdivide Lot 2, now or in the future.

### **Section 9: Setbacks**

The setbacks for Lot 1 are as follows: south – 15 feet, all other lot lines – 10 feet, and the combined side yard setback does not apply. The Lot 2 setbacks are subject to the zoning requirements for R-6 in place at such time as a development or redevelopment application is submitted.

### **Section 10: Non-conforming sheds**

Structures located on Lot 2 at the time of this lot split plat filing, consisting of a home and two wooden shed structures, and which may conflict with zoning setback requirements, are subject to the Non-Conformities regulations in Land Use Code Section 26.312.

### **Section 11: Utility Easements**

The portion of the utility easement dedicated on the south side of the fathering parcel, Lot 2, shall be limited to five (5) feet in width.

### **Section 12: Final Plat**

Within 60 days of final approval of the 949 West Smuggler Street Minor Subdivision – Lot Split, the Applicant shall submit for review, approval, and recordation a final plat depicting the approved subdivision.

### **Section 13:**

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

### **Section 14:**

If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

### **Section 15:**

A duly noticed public hearing on this Ordinance was held on the 14<sup>th</sup> day of July 2020 at 5:00 PM in the City Council Chambers, Aspen City Hall, Aspen, Colorado.



**INTRODUCED, READ AND ORDERED PUBLISHED** as provided by law, by the City Council of the City of Aspen on the 25<sup>th</sup> day of February 2020.

\_\_\_\_\_  
Torre, Mayor

ATTEST:

\_\_\_\_\_  
Nicole Henning, City Clerk

**FINALLY**, adopted, passed, and approved by a \_\_\_\_\_ to \_\_\_\_\_ (\_\_\_\_\_-\_\_\_\_) vote on this 14<sup>th</sup> day of July 2020.

\_\_\_\_\_  
Torre, Mayor

ATTEST:

\_\_\_\_\_  
Nicole Henning, City Clerk

Approved as to form:

\_\_\_\_\_  
James R. True, City Attorney

**Exhibit A**  
**Legal Description of subject property (un-subdivided)**

PARCEL 1

LOTS A, B, C, D, E, F, G, H AND I, BLOCK 3, CITY AND TOWNSITE OF ASPEN,

PARCEL 2

THAT CERTAIN PARCEL OF LAND, TOGETHER WITH ALL RIGHTS, PRIVILEGES AND EASEMENTS CONTAINED IN THE DEED HEREIN-AFTER DESCRIBED, CONVEYED TO H.R. VANDEMOER BY VIRGINIA S. CHAMBERLAIN BY DEED DATED APRIL 20, 1959, DULY RECORDED JUNE 2, 1959 AS RECEPTION NO. [108073](#) IN BOOK 187 AT PAGE [389](#) OF THE RECORDS IN THE OFFICE OF THE CLERK OF THE RECORDED OF PITKIN COUNTY, COLORADO.

SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (FROM RECEPTION NO. [108073](#)) :

THAT CERTAIN PARCEL OF LAND IN SECTION 12, TOWNSHIP 10 SOUTH, RANGE 85 WEST, 6TH P.M., DESCRIBED IN DOCUMENT NO. 96608 IN BOOK 170 AT PAGE [565](#) OF THE RECORDS FOR PITKIN COUNTY LYING NORTHERLY OF THE CENTERLINE OF THE ALLEY IN BLOCK 3 OF THE CITY AND TOWNSITE OF ASPEN PROJECTED WESTERLY TO IT'S INTERSECTION WITH THE WESTERLY LINE OF SAID TRACT OF LAND DESCRIBED IN SAID DOCUMENT NO. 96608 OF THAT PARCEL OF LAND CONVEYED BY MICHAEL MAROLT TO H.R. VANDEMOER AND ARTHUR PFISTER BY QUIT CLAIM DEED DATED JULY 14, 1949.

INCLUDING ALL RIGHTS AND PRIVILEGES TO USE THE ROADWAY AS NOW CONSTRUCTED AND IN USE FROM SMUGGLER STREET ACROSS SAID ABOVE DESCRIBED PROPERTY TO THAT PORTION OF LAND DESCRIBED IN SAID DOCUMENT NO. 96608 LYING SOUTHERLY OF THE CENTERLINE OF THE ALLEY IN SAID BLOCK 3 PROJECTED WESTERLY, IT BEING THE INTENTION OF THE GRANTOR TO RELEASE AND QUIT-CLAIM FOREVER HER INTEREST IN SAID EASEMENT USED FOR INGRESS AND EGRESS TO SMUGGLER STREET.

LESS AND EXCEPT ALL OF THAT PROPERTY DESCRIBED IN THAT DOCUMENT RECORDED JUNE 2, 1959 IN BOOK 187 AT PAGE [388](#), AS RECEPTION NO. 108072.

COUNTY OF PITKIN.  
STATE OF COLORADO.

**Lot Split**

The subdivision of a lot for the purpose of creating one additional development parcel shall be approved, approved with conditions, or denied by the City Council, pursuant to Section 26.480.030 – Procedures for Review, according to the following standards:

1. The request complies with the requirements of Section 26.480.040, General Subdivision Review Standards.

**STAFF RESPONSE: Staff responses to this Land Use Code Section are outlined below.**

2. No more than two lots are created by the lot split. No more than one lot split shall occur on a fathering parcel.

**STAFF RESPONSE: The Applicant has shown compliance with this requirement and no more than (2) lots are proposed. A condition in the draft ordinance has been included stating that subdivision by further lot split is prohibited.**

3. The Lot Split Plat shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents. No subdivision agreement need be prepared or entered into between the applicant and the City unless the Community Development Director determines such an agreement is necessary.

**STAFF RESPONSE: The Applicant will be required to file a lot split plat commensurate with the requirements of Chapter 26.490. Given the low impact nature of the proposed subdivision, Staff does not feel that a Subdivision Agreement is needed. Conditions in the approval ordinance reflect the requirements for the subdivision and subsequent future development.**

**General subdivision review standards**

All subdivisions shall be required to conform to the following general standards and limitations in addition to the specific standards applicable to each type of subdivision:

**A. Guaranteed Access to a Public Way.** All subdivided lots must have perpetual unobstructed legal vehicular access to a public way. A proposed subdivision shall not eliminate or obstruct legal vehicular access from a public way to an adjacent property. All streets in a Subdivision retained under private ownership shall be dedicated to public use to ensure adequate public and emergency access. Security/privacy gates across access points and driveways are prohibited.

**STAFF RESPONSE: Legal access is provided along West Smuggler Street, N. 8<sup>th</sup> Street, and an alley. These are public Right of Ways (ROW) that will not be privatized. The Applicant has shown compliance with this criterion.**

**B. Alignment with Original Townsite Plat.** The proposed lot lines shall approximate, to the extent practical, the platting of the Original Aspen Townsite, and additions thereto, as applicable to the subject land. Minor deviations from the original platting lines to accommodate significant features of the site may be approved.

**STAFF RESPONSE:** The proposed subdivision plat and creation of the new lot is drawn consistent with the Aspen Townsite boundary. The Applicant has shown compliance with this criterion.

**C. Zoning Conformance.** All new lots shall conform to the requirements of the zone district in which the property is situated, including variations and variances approved pursuant to this Title. A single lot shall not be located in more than one zone district unless unique circumstances dictate. A rezoning application may be considered concurrently with subdivision review.

**STAFF RESPONSE:** The Applicant acknowledges compliance with zone district requirements, including existing split zone district requirements. The proposed Lot 1 will continue to reside within both the R-6 and R-30 zone districts. Future development will be required to comply with split zoning regulations and the requirements of the approval ordinance. The Applicant has not submitted a rezoning application and states that the property's unusual site circumstances and zoning history create unique circumstances. Staff agrees that unusual site circumstances exists, particularly the steep area of land west of Power Plant Road. To acknowledge the property's unusual circumstances, a development restriction is placed on this area that prohibits all future development. With acceptance of this condition, Staff finds this criterion met.

**D. Existing Structures, Uses, and Non-Conformities.** A subdivision shall not create or increase the non-conformity of a use, structure or parcel. A rezoning application or other mechanism to correct the non-conforming nature of a use, structure, or parcel may be considered concurrently.

In the case where an existing structure or use occupies a site eligible for subdivision, the structure need not be demolished, and the use need not be discontinued prior to application for subdivision.

If approval of a subdivision creates a non-conforming structure or use, including a structure spanning a parcel boundary, such structure or use may continue until recordation of the subdivision plat. Alternatively, the City may accept certain assurance that the non-conformities will be remedied after recordation of the subdivision plat. Such assurances shall be reflected in a development agreement or other legal mechanism acceptable to the City Attorney and may be time-bound or secured with a financial surety.

**STAFF RESPONSE:** Overall, the Applicant has shown compliance with these criteria. Existing sheds that appear to have been constructed in the same period as the main house, and retain similar Chalet style architecture, reside within the rear yard setback of the proposed Lot 2. These sheds are historically significance

**and eligible for designation. They may remain in the rear yard setback as legal non-conforming structures in their existing configuration.**

## 949 W Smuggler Lot Split - Engineering Referral

From: Hailey Guglielmo  
Project Manager  
City of Aspen Engineering Department

To: Mike Kraemer  
Senior Planner  
City of Aspen Community Development Department

Date: February 5, 2020

---

The following Comments need to be addressed prior to recordation of the Lot Split Plat:

1. The Powerplant Rd and part of Smuggler St ROW width needs to be finalized, dedicated as ROW, and shown on the Plat. A larger width than the proposed existing asphalt to asphalt is required. The street is classified as a collector. Per section 4.2.2 of The Engineering Design Standards the Right-of-Way width shall be 72-89 feet. The ROW width needs to accommodate not only the roadway, but also any future construction to update the roadway. This includes the width for shoulders, a drainage system (swale), pedestrian walkway, and any necessary retaining walls.
2. Currently the existing lot sits in a sidewalk deferred zone. Given the need for a future walkway to serve the houses at the bottom of Powerplant Rd, the two new lots will be required to install sidewalks at the time of development.  
Lot 1 will be required to install sidewalk along Smuggler St, any sidewalk on Powerplant Rd would be done by the City as an all-encompassing roadway project.  
Lot 2 will be required to install sidewalk on Smuggler St and Eighth St adjacent to the property. The requirements of sidewalks shall be included as a plat note on the recorded lot split plat.
3. A COA compliant survey is required for the land use submittal. Please refer to the survey checklist located in the Engineering Standards. Particularly the survey needs to show all utilities, trees, and 1' contours.
4. All utilities require a dedicated easement or show they are in the ROW dedication. Once utilities are shown on the survey we can determine if any additional easements are needed.
5. Verify there are no existing drainage patterns that would require a surface drainage easement.
6. On the plat show all front, rear and side easements per section 2.5.2 of the COA Engineering Standards. This includes ten feet in width on all rear lot lines, and 5 ft in width on all side of lot lines. Where the rear or side lot lines abut properties outside the subdivision the rear and side lot lines shall be 20 feet and 10 feet respectively.
7. Verify with the Fire Dept that there is adequate access down the alley. If additional width is needed lot boundaries may be altered.
8. Change City Engineers block to read:  
City Engineer's Review:

This lot split plat of the Vandermoer Hill Lot Split was reviewed for the depiction of the Engineering Department survey requirements this \_\_\_\_ day of \_\_\_\_, 2020.

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

The following are items that are not required for recordation of the lot split but will be required when the lots are developed and should be taken into consideration.

9. The parking along Smuggler St and Eighth will need to be formalized.
10. Sidewalks will be required along Smuggler and Eighth St
11. All access to both lots will be off the alley. No curb cuts will be permitted on Smuggler or Eighth.
12. Additional easements will be required for any new transformers or other utilities when a design is determined.
13. A drainage system will need to be installed along the length of the lots. This most likely will be a swale with consideration of where it ties to downstream.

November 27, 2019

Mr. Garrett Larimer  
Community Development Department  
City of Aspen  
130 So. Galena St.  
Aspen, Colorado 81611

**RE: Vandemoer Hill Lot Split  
949 W. Smuggler St.**

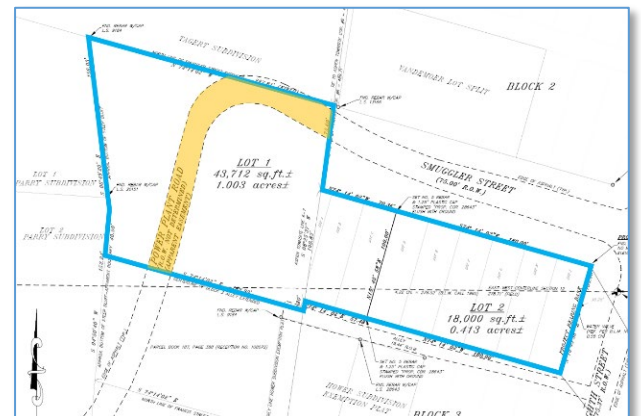
Mr. Larimer:

Please accept this Minor Subdivision application for the Lot Split of 949 West Smuggler Street into two fee simple lots. The 61,712 square foot property at the corner of North 8<sup>th</sup> and Smuggler Streets is currently developed with a single-family home. The parcel has access from Smuggler and 8<sup>th</sup> Streets as well as an alleyway within Townsite Block 3.



The property is owned by 949 West Smuggler Street LLC. The property has been held in the extended Vandemoer family for generations and the home has been used as a vacation residence. Craig Vandemoer and Geoffrey Hill are the Managers of 949 and have authorized BendonAdams to represent the ownership's interest.

The land is crossed by Power Plant Road. The longstanding, routine use of this road by the public is unquestionable. The applicant has no interest in disrupting this use pattern or attempting to restrict or prohibit the public interest in this road. The applicant is willing to grant a public right-of-way consistent with the apparent prescriptive easement. The applicant perceives this to be the width of the paved cartway, representing a 5,899 square foot area. Reasonable accommodation of additional width will be considered if the development rights are unaffected.





Most of the parcel is zoned Medium-Density Residential (R-6). The far western, sloped portion of the property is zoned Low-Density Residential (R-30) with a Planned Development overlay. There is no adopted Planned Development approval of record. A zoning boundary map is attached as Exhibit 12.

The property appears on various historical zoning maps with conflicting information. The differences appear to be the result of mapping practices and not intentional amendments to the zoning map. The zoning boundary map prepared by Sopris Engineering is based on information received from the City's GIS department during the preparation of this application.

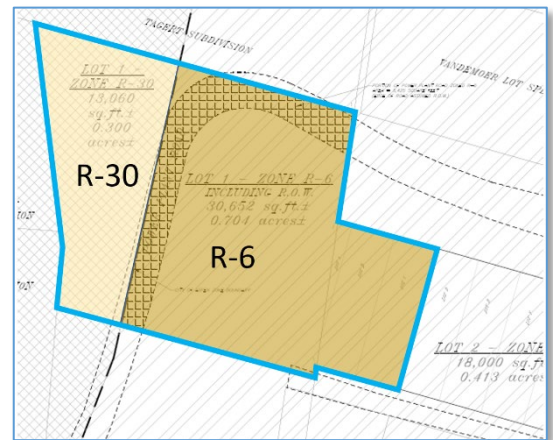
The resulting Lot 1 (the western lot) will be a 43,712 square foot property and will continue to be situated in two zone districts. Lot 1 will be subject to the City's "split zone" provisions of Land Use Code Section 26.710.022. The R-6 portion will be less than 75% of the total land area of Lot 1. Lot 2 (the eastern lot) will be an 18,000 square foot parcel zoned R-6.

The existing home is expected to remain in place until redevelopment. Both Lot 1 and Lot 2 will be eligible to be developed with either a single-family or duplex. Lot 2 will also be eligible to be developed with two single-family homes, using the duplex floor area allowance of the R-6 zone.

#### "Split Zoning"

Section 26.710.022 of the City's Land Use Code provides guidance for dealing with properties situated in more than one zone district. Proposed Lot 1 will fall within the R-6 and R-30 districts.

*The map to the right highlights the two zones within Lot 1.*



*The chart to the right highlights the allowed uses in each zone.*

Allowed Uses	R-6	R-30
Single-Family Home	✓	✓
Duplex	✓	✓
Two Single-Family Homes (on one lot)	✓	✗
Accessory Dwelling Unit	✓	✓
Accessory Uses	✓	✓
Vacation Rentals	✓	✓

Subsection A provides guidance for uses that are not allowed in both zones. Two detached single-family homes is a permitted use in the R-6 district; however, it is not listed as a permitted or conditional use in the R-30 district. If Lot 1 is developed with two detached single-family homes, the Floor Area will be based on just the 30,652 square feet of land area zoned R-6. Other

dimensions of a two single-family home development would be based on the R-6 zone with the entire 43,712 square foot parcel as the basis for calculation.

Subsection B addresses uses that are allowed in both zones. If a single-family home or a duplex is developed on Lot 1, the more restrictive of each zone's dimensional allowance applies. The entire 43,712 square foot parcel will be the basis of calculation. If two single-family homes are developed on Lot 1, the basis for calculating development rights is limited to the 30,652 square foot are that is zoned R-6.

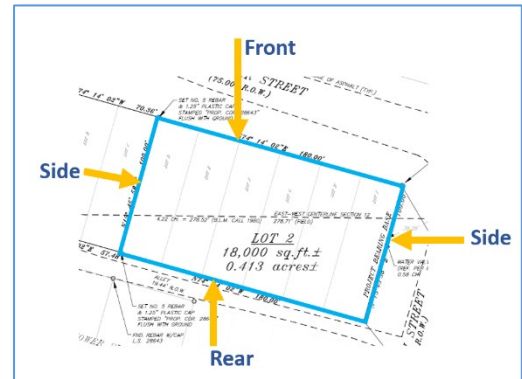
The chart below shows the Floor Area and setback limitations for Lot 1.

Lot 1 Floor Area				
Gross Lot Size	Area within R.O.W.	Slope Reduction	Net Lot Area	Allowable Floor Area
43,712 sf	5,899 sf	15,264 sf	22,549 sf	SF – 4,387.5 sf Dx – 4,817.5 sf
30,652 sf	5,425 sf	3,870.5 sf	21,356.5sf	2SF – 4,757.8 sf
Lot 1 Setbacks				
	Front Yard	Rear Yard	Side Yard	
R-6 Zone	10 feet	10 feet for primary use, 5 feet for accessory uses	15 feet each, 50 feet combined	
R-30 Zone	30 feet	15 feet for primary use, 5 feet for accessory uses	10 feet each	
Ital. denotes most-restrictive setback applicable to 2 SF homes				

Development of Lot 2 is not affected by this split zoning section and all development scenarios are based on the entire 18,000 square foot parcel. The chart below shows the Floor Area and setback limitations for Lot 2.

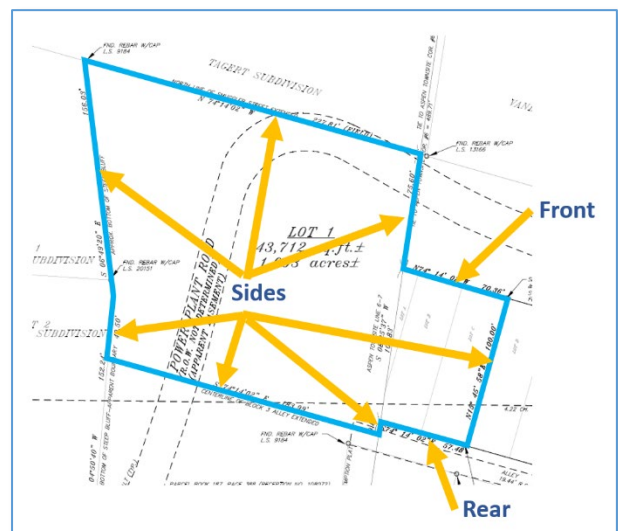
Lot 2 Floor Area				
Gross Lot Size	Area within R.O.W.	Slope Reduction	Net Lot Area	Allowable Floor Area
18,000 sf	0 sf	102.5 sf	17,897.5 sf	SF – 4,049 sf Dx – 4,469 sf 2SF – 4,469 sf
Lot 2 Setbacks				
	Front Yard	Rear Yard	Side Yard	
<b>R-6 Zone</b>	10 feet	10 feet for primary use, 5 feet for accessory uses	15 feet each, 50 feet combined	

Section 26.575.020.E.2 provides guidance on determining front, rear, and side yards. Lot 2 is straightforward and the graphic to the right depicts the applicant's understanding of the yard designations.

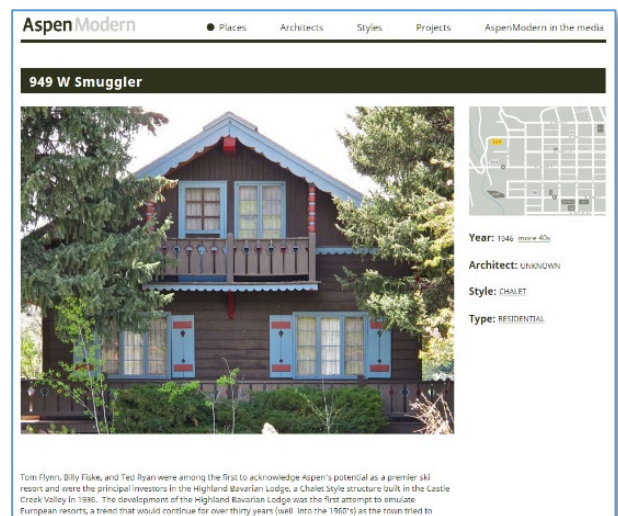


The yard designations for Lot 1 are more complex. The code clearly states that a property can have only one front lot line and one rear lot line, which is opposite the front.

The graphic to the right depicts the applicant's understanding of this code section and the resulting designations. The applicant requests clarification of this matter as part of the Lot Split process.



The applicant is aware of the property's potential historic value and has examined the City's AspenModern program and the potential benefits of designating this property with the City of Aspen as a historic resource. The property is not currently listed on the City's Inventory of Historic Resources and the applicant is not interested in pursuing historic designation at this time. Reconsideration of this position may be possible in the future, after the Lot Split is finalized.



The applicant's response to the Lot Split criteria are contained in Exhibit 1. We believe this application provides the necessary documents, responds appropriately to the criteria for approval, and represents compliance with all applicable requirements. Please let us know if we can answer questions, provide additional clarity, or address any other item that comes up. We will also happily organize a site visit at your request.

Kind Regards,

A handwritten signature in dark ink, appearing to read 'Chris Bendon'.

Chris Bendon, AICP  
**BendonAdams, LLC**

**Attachments:**

1. Review Standards
2. Application Form
3. Authorization to represent
4. Statement of Authority
5. Proof of ownership
6. Agreement to Pay Form
7. HOA compliance
8. Pre-Application Summary
9. Vicinity Map
10. Survey
11. Draft Vandemoer/Hill Lot Split Plat
12. Zoning Map
13. Slope Analysis

## Exhibit 1

### Review Criteria

#### 26.480.060. Minor Subdivisions – A. Lot Split

The subdivision of a lot for the purpose of creating one additional development parcel shall be approved, approved with conditions, or denied by the City Council, pursuant to Section 26.480.030 – Procedures for Review, according to the following standards:

1. The request complies with the requirements of Section 26.480.040, General Subdivision Review Standards.

*Response – See responses to the General Review Standards, below.*

2. No more than two lots are created by the lot split. No more than one lot split shall occur on any one fathering parcel.

*Response – Only one lot split is proposed. The parcel has not been previously split.*

3. The Lot Split Plat shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents. No subdivision agreement need be prepared or entered into between the applicant and the City unless the Community Development Director determines such an agreement is necessary.

*Response – A draft plat is provided for the City's review. The applicant is not expecting a subdivision agreement will be necessary. If certain infrastructure upgrades are required of the subdivision, the applicant will provide a development agreement with these responsibilities assigned to the individual lots.*

#### 26.480.040. General Subdivision Review Standards.

All subdivisions shall be required to conform to the following general standards and limitations in addition to the specific standards applicable to each type of subdivision:

- A. **Guaranteed Access to a Public Way.** All subdivided lots must have perpetual unobstructed legal vehicular access to a public way. A proposed subdivision shall not eliminate or obstruct legal vehicular access from a public way to an adjacent property. All streets in a Subdivision retained under private ownership shall be dedicated to public use to ensure adequate public and emergency access. Security/privacy gates across access points and driveways are prohibited.

*Response – Both proposed Lots will have access to a public way.*

- B. **Alignment with Original Townsite Plat.** The proposed lot lines shall approximate, to the extent practical, the platting of the Original Aspen Townsite, and additions thereto, as applicable to the subject land. Minor deviations from the original platting lines to accommodate significant features of the site may be approved.

*Response – The proposed boundary is along the Lot C/D boundary of Block 3 of the Original Townsite. This proposed boundary respects the layout of the City's original platting.*

- C. **Zoning Conformance.** All new lots shall conform to the requirements of the zone district in which the property is situated, including variations and variances approved pursuant to this Title. A single lot shall not be located in more than one zone district unless unique circumstances dictate. A rezoning application may be considered concurrently with subdivision review.

*Response – Both Lots provide the minimum area and lot width dimensions. The property currently exists within two zone districts – the R-6 and R-30 zones. Proposed Lot 1 will continue to be located in two zones. This is a unique condition and not the result of the applicant's actions.*

*A review of historical zoning maps shows a confusing history of the zoning boundary being mapped along the townsite boundary, along to road edge, or along property boundaries depending on the year of the zoning map production or update. Older zoning maps also show the area currently zoned R-30 as being zoned R-15. The applicant has provided a zoning boundary map with information provided by the City of Aspen Geographic Information Systems Department. The zoning boundary on this current map is not aligned with property boundaries, the road, or with the townsite boundary.*

*The applicant is not pursuing a rezoning application for the R-30 portion of the property. This area is steeply sloped with access challenges resulting in limited development opportunity. The unique condition does not affect the developability of the remaining portion of the property and the City's "split-zoning" provisions of the Land Use Code provide adequate guidance for calculating development rights.*

*The applicant is also not splitting the property along the zoning boundary. This would cure the split zoning situation and result in neither lot having more than one zone district designation. But, creating a development parcel based on the R-30 portion of this property would create a development parcel with severe access and development challenges. A lot split along the current zoning boundary would not seem to be in the community interest.*

*The applicant believes the split zoning circumstance is a unique condition that this standard anticipated.*

- D. **Existing Structures, Uses, and Non-Conformities.** A subdivision shall not create or increase the non-conformity of a use, structure or parcel. A rezoning application or other mechanism to correct the non-conforming nature of a use, structure, or parcel may be considered concurrently. In the case where an existing structure or use occupies a site eligible for subdivision, the structure need not be demolished and the use need not be discontinued prior to application for subdivision.

If approval of a subdivision creates a non-conforming structure or use, including a structure spanning a parcel boundary, such structure or use may continue until recordation of the subdivision plat. Alternatively, the City may accept certain assurance that the non-conformities will be remedied after recordation of the subdivision plat. Such assurances

shall be reflected in a development agreement or other legal mechanism acceptable to the City Attorney and may be time-bound or secured with a financial surety.

*Response – The lot split will not create or worsen a non-conformity. The existing home on Lot 2 will have a side yard setback exceeding the minimum of 15 feet along the western boundary. Other setbacks and the combined side yard setback are easily met. The existing Floor Area of approximately 1,800 sf is well below the allowable limit.*

*There are a couple of sheds on the property that appear to be non-conforming with respect to setbacks. The Lot Split will not worsen this condition.*

*The applicant will continue to use the existing home and sheds after the Lot Split is concluded and hopes to not need to demolish these structures until substantial redevelopment of the parcel.*



# CITY OF ASPEN COMMUNITY DEVELOPMENT DEPARTMENT

## LAND USE APPLICATION

Project Name and Address: Vandemoer Hill Lot Split. 949 West Smuggler Street; Aspen, CO.

Parcel ID # (REQUIRED) 2735.122.12.001

### APPLICANT:

Name: 949 West Smuggler Street LLC, a Colorado limited liability company

Address: 3489 W. 62nd Ave; Denver, CO 80221

Phone #: 303.818.1497 email: CVandemoer@Sterlinglbr.com

407.712.4899 email: GeoffreyHill@gmail.com

### REPRESENTATIVE:

Name: BendonAdams

Address: 300 So. Spring Street #202; Aspen, CO 81611

Phone#: 970.925.2855 email: Chris@BendonAdams.com

**Description:** Existing and Proposed Conditions

Existing home in 1+acre parcel to be split into two development parcels.

**Review:** Administrative or Board Review

**Required Land Use Review(s):** Minor Subdivision; Lot Split

**Growth Management Quota System (GMQS) required fields:**

Net Leasable square footage na Lodge Pillows na Free Market dwelling units 1 existing

Affordable Housing dwelling units na Essential Public Facility square footage na

Have you included the following?

FEES DUE: \$ 4,550

- ☒ Pre-Application Conference Summary
- ☒ Signed Fee Agreement
- ☒ HOA Compliance form
- ☒ All items listed in checklist on PreApplication Conference Summary





November 19, 2019

Jennifer Phelan, AICP  
Community Development Director  
City of Aspen  
130 So. Galena St.  
Aspen, Colorado 81611

**RE: 949 Smuggler Street; Aspen, CO.**

Ms. Phelan:

Please accept this letter authorizing BendonAdams LLC to represent our ownership interests in 949 Smuggler Street and act on our behalf on matters reasonably associated in securing land use approvals for the property.

If there are any questions about the foregoing or if I can assist, please do not hesitate to contact me.

Property – 949 Smuggler Street; Aspen, CO 81611

Legal Description – Lots A-I, Block 3, City and Townsite of Aspen, plus a metes and bounds area. See attached.

Parcel ID – 2735-122-12-001

Owner – 949 West Smuggler Street LLC, a Colorado Limited Liability Company

Kind Regards,

Craig H. Vandemoer, Manager  
949 West Smuggler Street LLC  
A Colorado Limited Liability Company  
3489 W 62nd Ave  
Denver CO 80221  
CVandemoer@Sterlinglbr.com  
303-818-1497

Geoffrey T. Hill, Manager  
949 West Smuggler Street LLC  
A Colorado Limited Liability Company  
c/o BendonAdams  
300 So. Spring St. #202  
geoffreythill@gmail.com  
407-712-4899

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300 SO SPRING ST | 202 | ASPEN, CO 81611  
970.925.2855 | BENDONADAMS.COM

Expanded legal description –

PARCEL 1 – LOTS A, B, C, D, E, F, G, H AND I, BLOCK 3, CITY AND TOWNSITE OF ASPEN,

PARCEL 2 – THAT CERTAIN PARCEL OF LAND, TOGETHER WITH ALL RIGHTS, PRIVILEGES AND EASEMENTS CONTAINED IN THE DEED HEREIN-AFTER DESCRIBED, CONVEYED TO H.R. VANDEMOER BY VIRGINIA S. CHAMBERLAIN BY DEED DATED APRIL 20, 1959, DULY RECORDED JUNE 2, 1959 AS RECEPTION NO. 108073 IN BOOK 187 AT PAGE 389 OF THE RECORDS IN THE OFFICE OF THE CLERK OF THE RECORDED OF PITKIN COUNTY, COLORADO.

SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (FROM RECEPTION NO. 108073) : THAT CERTAIN PARCEL OF LAND IN SECTION 12, TOWNSHIP 10 SOUTH, RANGE 85 WEST, 6TH P.M., DESCRIBED IN DOCUMENT NO. 96608 IN BOOK 170 AT PAGE 565 OF THE RECORDS FOR PITKIN COUNTY LYING NORTHERLY OF THE CENTERLINE OF THE ALLEY IN BLOCK 3 OF THE CITY AND TOWNSITE OF ASPEN PROJECTED WESTERLY TO ITS INTERSECTION WITH THE WESTERLY LINE OF SAID TRACT OF LAND DESCRIBED IN SAID DOCUMENT NO. 96608 OF THAT PARCEL OF LAND CONVEYED BY MICHAEL MAROLT TO H.R. VANDEMOER AND ARTHUR PFISTER BY QUIT CLAIM DEED DATED JULY 14, 1949.

INCLUDING ALL RIGHTS AND PRIVILEGES TO USE THE ROADWAY AS NOW CONSTRUCTED AND IN USE FROM SMUGGLER STREET ACROSS SAID ABOVE DESCRIBED PROPERTY TO THAT PORTION OF LAND DESCRIBED IN SAID DOCUMENT NO. 96608 LYING SOUTHERLY OF THE CENTERLINE OF THE ALLEY IN SAID BLOCK 3 PROJECTED WESTERLY, IT BEING THE INTENTION OF THE GRANTOR TO RELEASE AND QUIT-CLAIM FOREVER HER INTEREST IN SAID EASEMENT USED FOR INGRESS AND EGRESS TO SMUGGLER STREET.

LESS AND EXCEPT ALL OF THAT PROPERTY DESCRIBED IN THAT DOCUMENT RECORDED JUNE 2, 1959 IN BOOK 187 AT PAGE 388, AS RECEPTION NO. 108072.

COUNTY OF PITKIN. STATE OF COLORADO.

FILED  
 COUNTY OF DENVER  
 COLORADO SECRETARY OF STATE

**ARTICLES OF ORGANIZATION  
 FOR  
 949 WEST SMUGGLER STREET LLC**

200401045288 0  
 \$ 100.00  
 SECRETARY OF STATE  
 02-08-2004 10:05:07

The undersigned natural person, being of the age of eighteen years or more, acting as the organizer of a limited liability company under the Colorado Limited Liability Company Act, adopts the following Articles of Organization for such limited liability company:

**FIRST:** The name of the limited liability company ("Company") is:

949 WEST SMUGGLER STREET LLC,

and its principal place of business is at 3489 West 62nd Avenue, Denver, Colorado 80221.

**SECOND:** The name and business address of the registered agent for service of process is Douglas R. Ferguson, 1099 18th Street, Suite 2600, Denver, Colorado 80202.

**THIRD:** The management of the Company is vested in managers rather than its members.

**FOURTH:** The name and business addresses of the initial managers are:

Craig H. Vandemoer      3489 West 62nd Avenue,  
 Denver, Colorado 80221

Geoffrey T. Hill      18737 East Dorado Drive  
 Aurora, Colorado 80015

**FIFTH:** The name and address of the organizer is:

Douglas R. Ferguson  
 1099 18<sup>th</sup> Street, Suite 2600  
 Denver, Colorado 80202

**SIXTH:** The name or names, and mailing addresses of any one or more of the individuals who cause this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused, are: Douglas R. Ferguson, 1099 18<sup>th</sup> Street, Suite 2600, Denver, Colorado 80202.

DATED this 9<sup>th</sup> day of February, 2004.

COMPUTER UPDATE COLORADO  
 SLC



**Land Title Guarantee Company  
Customer Distribution**



**PREVENT FRAUD** - Please remember to call a member of our closing team when initiating a wire transfer or providing wiring instructions.

Order Number: **Q64002750-2**

Date: **10/29/2019**

Property Address: **949 W SMUGGLER ST, ASPEN, CO 81611**

**PLEASE CONTACT YOUR CLOSER OR CLOSER'S ASSISTANT FOR WIRE TRANSFER INSTRUCTIONS**

---

**For Closing Assistance**

**For Title Assistance**

Land Title Roaring Fork Valley Title  
Team

533 E HOPKINS #102

ASPEN, CO 81611

(970) 927-0405 (Work)

(970) 925-0610 (Work Fax)

[valleyresponse@ltgc.com](mailto:valleyresponse@ltgc.com)

---

**Seller/Owner**

949 WEST SMUGGLER STREET LLC

Delivered via: Electronic Mail

**Agent for Seller**

SOPRIS ENGINEERING

Attention: MARK BECKLER

502 MAIN

CARBONDALE, CO 81623

(970) 704-0311 (Work)

(970) 704-0313 (Work Fax)

[mbeckler@sopriseng.com](mailto:mbeckler@sopriseng.com)

[clove@sopriseng.com](mailto:clove@sopriseng.com)

Delivered via: Electronic Mail



## Land Title Guarantee Company Estimate of Title Fees

Order Number: **Q64002750-2**

Date: **10/29/2019**

Property Address: **949 W SMUGGLER ST, ASPEN, CO 81611**

Parties: **TO BE DETERMINED**

**949 WEST SMUGGLER STREET LLC, A COLORADO LIMITED LIABILITY  
COMPANY**

Visit Land Title's Website at [www.ltgc.com](http://www.ltgc.com) for directions to any of our offices.

Estimate of Title insurance Fees	
"TBD" Commitment	\$217.00
	<b>Total \$217.00</b>
If Land Title Guarantee Company will be closing this transaction, the fees listed above will be collected at closing.	
<b>Thank you for your order!</b>	

**Note:** The documents linked in this commitment should be reviewed carefully. These documents, such as covenants conditions and restrictions, may affect the title, ownership and use of the property. You may wish to engage legal assistance in order to fully understand and be aware of the implications of the effect of these documents on your property.

### Chain of Title Documents:

[Pitkin county recorded 12/13/2004 under reception no. 505058](#)

[Pitkin county recorded 12/13/2004 under reception no. 505057](#)

[Pitkin county recorded 12/13/2004 under reception no. 505056](#)

[Pitkin county recorded 12/13/2004 under reception no. 505055](#)

[Pitkin county recorded 12/09/2002 under reception no. 475771](#)

[Pitkin county recorded 12/09/2002 under reception no. 475770](#)

[Pitkin county recorded 12/09/2002 under reception no. 475769](#)

[Pitkin county recorded 01/10/2000 under reception no. 439400](#)

[Pitkin county recorded 01/10/2000 under reception no. 439399](#)

[Pitkin county recorded 01/10/2000 under reception no. 439398](#)

[Pitkin county recorded 02/04/1999 under reception no. 427342](#)

[Pitkin county recorded 02/04/1999 under reception no. 427341](#)

[Pitkin county recorded 02/04/1999 under reception no. 427340](#)

[Pitkin county recorded 11/23/1998 under reception no. 424762](#)

[Pitkin county recorded 11/23/1998 under reception no. 424761](#)

[Pitkin county recorded 11/23/1998 under reception no. 424760](#)  
[Pitkin county recorded 12/08/1997 under reception no. 411391](#)  
[Pitkin county recorded 12/08/1997 under reception no. 411390](#)  
[Pitkin county recorded 11/18/1997 under reception no. 410725](#)  
[Pitkin county recorded 03/25/1997 under reception no. 402816](#)  
[Pitkin county recorded 03/25/1997 under reception no. 402815](#)  
[Pitkin county recorded 03/25/1997 under reception no. 402814](#)  
[Pitkin county recorded 03/13/1986 under reception no. 276360 at book 507 page 159](#)  
[Pitkin county recorded 03/13/1986 under reception no. 276359 at book 507 page 158](#)  
[Pitkin county recorded 03/13/1986 under reception no. 276358 at book 507 page 157](#)  
[Pitkin county recorded 03/13/1986 under reception no. 276357 at book 507 page 156](#)  
[Pitkin county recorded 12/27/1977 under reception no. 200565 at book 340 page 994](#)  
[Pitkin county recorded 01/12/1972 at book 260 page 685](#)  
[Pitkin county recorded 12/13/1971 at book 260 page 17](#)  
[Pitkin county recorded 04/20/1959 under reception no. 108073 at book 187 page 389](#)  
[Pitkin county recorded 05/28/1957 at book 181 page 345](#)  
[Pitkin county recorded 07/19/1949 at book 170 page 565](#)  
[Pitkin county recorded 12/19/1947 at book 170 page 454](#)

**ALTA COMMITMENT**  
**Old Republic National Title Insurance Company**  
**Schedule A**

Order Number: Q64002750-2

**Property Address:**

949 W SMUGGLER ST, ASPEN, CO 81611

**1. Effective Date:**

09/20/2019 at 5:00 P.M.

**2. Policy to be Issued and Proposed Insured:**

"TBD" Commitment

\$0.00

Proposed Insured:

TO BE DETERMINED

**3. The estate or interest in the land described or referred to in this Commitment and covered herein is:**

A Fee Simple

**4. Title to the estate or interest covered herein is at the effective date hereof vested in:**

949 WEST SMUGGLER STREET LLC, A COLORADO LIMITED LIABILITY COMPANY

**5. The Land referred to in this Commitment is described as follows:**

PARCEL 1

LOTS A, B, C, D, E, F, G, H AND I, BLOCK 3, CITY AND TOWNSITE OF ASPEN,

PARCEL 2

THAT CERTAIN PARCEL OF LAND, TOGETHER WITH ALL RIGHTS, PRIVILEGES AND EASEMENTS CONTAINED IN THE DEED HEREIN-AFTER DESCRIBED, CONVEYED TO H.R. VANDEMOER BY VIRGINIA S. CHAMBERLAIN BY DEED DATED APRIL 20, 1959, DULY RECORDED JUNE 2, 1959 AS RECEPTION NO. [108073](#) IN BOOK 187 AT PAGE [389](#) OF THE RECORDS IN THE OFFICE OF THE CLERK OF THE RECORDED OF PITKIN COUNTY, COLORADO.

SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (FROM RECEPTION NO. [108073](#)) :

THAT CERTAIN PARCEL OF LAND IN SECTION 12, TOWNSHIP 10 SOUTH, RANGE 85 WEST, 6TH P.M., DESCRIBED IN DOCUMENT NO. 96608 IN BOOK 170 AT PAGE [565](#) OF THE RECORDS FOR PITKIN COUNTY LYING NORTHERLY OF THE CENTERLINE OF THE ALLEY IN BLOCK 3 OF THE CITY AND TOWNSITE OF ASPEN PROJECTED WESTERLY TO IT'S INTERSECTION WITH THE WESTERLY LINE OF SAID TRACT OF LAND DESCRIBED IN SAID DOCUMENT NO. 96608 OF THAT PARCEL OF LAND CONVEYED BY MICHAEL MAROLT TO H.R. VANDEMOER AND ARTHUR PFISTER BY QUIT CLAIM DEED DATED JULY 14, 1949.

INCLUDING ALL RIGHTS AND PRIVILEGES TO USE THE ROADWAY AS NOW CONSTRUCTED AND IN USE FROM SMUGGLER STREET ACROSS SAID ABOVE DESCRIBED PROPERTY TO THAT PORTION OF LAND DESCRIBED IN SAID DOCUMENT NO. 96608 LYING SOUTHERLY OF THE CENTERLINE OF THE ALLEY IN SAID BLOCK 3 PROJECTED WESTERLY, IT BEING THE INTENTION OF THE GRANTOR TO RELEASE AND QUIT-CLAIM FOREVER HER INTEREST IN SAID EASEMENT USED FOR INGRESS AND EGRESS TO SMUGGLER STREET.

**ALTA COMMITMENT**  
**Old Republic National Title Insurance Company**  
**Schedule A**

Order Number: Q64002750-2

LESS AND EXCEPT ALL OF THAT PROPERTY DESCRIBED IN THAT DOCUMENT RECORDED JUNE 2, 1959 IN BOOK 187 AT PAGE [388](#), AS RECEPTION NO. 108072.

COUNTY OF PITKIN.  
STATE OF COLORADO.

COUNTY OF PITKIN  
STATE OF COLORADO

NOTE: THE FINAL POLICY DOES NOT IN ANY WAY GUARANTEE OR INSURE THE DIMENSIONS OF THE ABOVE DESCRIBED LAND, THE LEGAL DESCRIPTION IS DERIVED BY THE CHAIN OF TITLE.

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**ALTA COMMITMENT**

**Old Republic National Title Insurance Company**

**Schedule B, Part I**

**(Requirements)**

**Order Number:** Q64002750-2

**All of the following Requirements must be met:**

**This proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.**

**Pay the agreed amount for the estate or interest to be insured.**

**Pay the premiums, fees, and charges for the Policy to the Company.**

**Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.**

1. PROVIDE LAND TITLE GUARANTEE COMPANY WITH A CURRENT IMPROVEMENT LOCATION CERTIFICATE OF SUBJECT PROPERTY. THIS REQUIREMENT IS NECESSARY TO DELETE STANDARD EXCEPTIONS 1 THROUGH 3 AND TO VERIFY LEGAL DESCRIPTION. UPON REVIEW, ADDITIONAL REQUIREMENTS AND/OR EXCEPTIONS MAY BE NECESSARY.

NOTE: ANY MATTERS DISCLOSED BY SAID IMPROVEMENT LOCATION CERTIFICATE WILL BE REFLECTED ON SAID POLICY(S) TO BE ISSUED HEREUNDER.

NOTE: LAND TITLE IS NOT RESPONSIBLE FOR ORDERING SAID IMPROVEMENT LOCATION CERTIFICATE.

2. EVIDENCE SATISFACTORY TO THE COMPANY THAT THE TERMS, CONDITIONS AND PROVISIONS OF THE CITY OF ASPEN TRANSFER TAX HAVE BEEN SATISFIED.
3. LAND TITLE WILL REQUIRE EVIDENCE OF THE RETT BEING SATISFIED FOR ALL OF THE INTERFAMILY DEEDS RECORDED FROM THE TRANSFER RECORDED MARCH 25, 1997 FORWARD TO THE DEED RECORDED DECEMBER 13, 2004. THIS REQUIREMENT AFFECTS 22 DEEDS.
4. WRITTEN INSTRUCTIONS AUTHORIZING LAND TITLE TO PREPARE A STATEMENT OF AUTHORITY FOR 949 WEST SMUGGLER STREET LLC, A COLORADO LIMITED LIABILITY COMPANY, STATING UNDER WHICH LAWS THE ENTITY WAS CREATED, THE MAILING ADDRESS OF THE ENTITY, AND THE NAME AND POSITION OF THE PERSON(S) AUTHORIZED TO EXECUTE INSTRUMENTS CONVEYING, ENCUMBERING, OR OTHERWISE AFFECTING TITLE TO REAL PROPERTY ON BEHALF OF THE ENTITY; OR, A DULY EXECUTED AND ACKNOWLEDGED STATEMENT OF AUTHORITY SETTING FORTH THE NAME OF 949 WEST SMUGGLER STREET LLC, A COLORADO LIMITED LIABILITY COMPANY AS A LIMITED LIABILITY COMPANY.

NOTE: ANY STATEMENT OF AUTHORITY MUST BE IN COMPLIANCE WITH THE PROVISIONS OF SECTION 38-30-172, C.R.S. AND BE RECORDED WITH THE CLERK AND RECORDER.

5. WARRANTY DEED FROM 949 WEST SMUGGLER STREET LLC, A COLORADO LIMITED LIABILITY COMPANY TO TO BE DETERMINED CONVEYING SUBJECT PROPERTY.

NOTE: ADDITIONAL REQUIREMENTS OR EXCEPTIONS MAY BE NECESSARY WHEN THE BUYERS NAMES ARE ADDED TO THIS COMMITMENT. COVERAGES AND/OR CHARGES REFLECTED HEREIN, IF ANY, ARE SUBJECT TO CHANGE UPON RECEIPT OF THE CONTRACT TO BUY AND SELL REAL ESTATE AND ANY AMENDMENTS THERETO.

**ALTA COMMITMENT**  
**Old Republic National Title Insurance Company**  
**Schedule B, Part II**  
**(Exceptions)**

Order Number: Q64002750-2

**This commitment does not republish any covenants, condition, restriction, or limitation contained in any document referred to in this commitment to the extent that the specific covenant, conditions, restriction, or limitation violates state or federal law based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.**

- 1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.**
- 2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.**
- 3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.**
- 4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.**
- 5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.**
- 6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.**
- 7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.**
- 8. RESERVATIONS AND EXCEPTIONS AS SET FORTH IN THE DEED FROM THE CITY OF ASPEN RECORDED JANUARY 17, 1888 IN BOOK 59 AT PAGE 292, PROVIDING AS FOLLOWS: THAT NO TITLE SHALL BE HEREBY ACQUIRED TO ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER OR TO ANY VALID MINING CLAIM OR POSSESSION HELD UNDER EXISTING LAWS.**
- 9. RESERVATIONS AND EXCEPTIONS AS SET FORTH IN THE DEED FROM THE CITY OF ASPEN RECORDED AUGUST 08, 1888 IN BOOK 59 AT PAGE 468, PROVIDING AS FOLLOWS: THAT NO TITLE SHALL BE HEREBY ACQUIRED TO ANY MINE OF GOLD, SILVER, CINNABAR OR COPPER OR TO ANY VALID MINING CLAIM OR POSSESSION HELD UNDER EXISTING LAWS.**



## LAND TITLE GUARANTEE COMPANY DISCLOSURE STATEMENTS

**Note:** Pursuant to CRS 10-11-122, notice is hereby given that:

- (A) The Subject real property may be located in a special taxing district.
- (B) A certificate of taxes due listing each taxing jurisdiction will be obtained from the county treasurer of the county in which the real property is located or that county treasurer's authorized agent unless the proposed insured provides written instructions to the contrary. (for an Owner's Policy of Title Insurance pertaining to a sale of residential real property).
- (C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

**Note:** Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

**Note:** Colorado Division of Insurance Regulations 8-1-2 requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lenders Policy when issued.

**Note:** Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

- (A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.
- (B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.
- (C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.
- (D) The Company must receive payment of the appropriate premium.
- (E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

**Note:** Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments disclosing that a mineral estate has been severed from the surface estate, in Schedule B-2.

- (A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- (B) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

**Note:** Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

**Note:** Pursuant to Colorado Division of Insurance Regulations 8-1-3, notice is hereby given of the availability of a closing protection letter for the lender, purchaser, lessee or seller in connection with this transaction.



**JOINT NOTICE OF PRIVACY POLICY OF  
LAND TITLE GUARANTEE COMPANY,  
LAND TITLE GUARANTEE COMPANY OF SUMMIT COUNTY  
LAND TITLE INSURANCE CORPORATION AND  
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

This Statement is provided to you as a customer of Land Title Guarantee Company as agent for Land Title Insurance Corporation and Old Republic National Title Insurance Company.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to your non-public personal information ("Personal Information").

In the course of our business, we may collect Personal Information about you from:

- applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
  - your transactions with, or from the services being performed by us, our affiliates, or others;
  - a consumer reporting agency, if such information is provided to us in connection with your transaction;
- and
- The public records maintained by governmental entities that we obtain either directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- We may share your Personal Information with affiliated contractors or service providers who provide services in the course of our business, but only to the extent necessary for these providers to perform their services and to provide these services to you as may be required by your transaction.
- We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- We regularly assess security standards and procedures to protect against unauthorized access to Personal Information.

**WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT STATED ABOVE OR PERMITTED BY LAW.**

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows: Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.



## Commitment For Title Insurance

### Issued by Old Republic National Title Insurance Corporation

#### NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON. .

#### COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Minnesota corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured. If all of the Schedule B, Part I—Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

#### COMMITMENT CONDITIONS

##### 1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements; and
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

##### 4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

##### 5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - i. comply with the Schedule B, Part I—Requirements;
  - ii. eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
  - iii. acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.

- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

**6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT**

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

**7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT**

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

**8. PRO-FORMA POLICY**

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

**9. ARBITRATION**

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

IN WITNESS WHEREOF, Land Title Insurance Corporation has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A to be valid when countersigned by a validating officer or other authorized signatory.

Issued by:

Land Title Guarantee Company  
3033 East First Avenue Suite 600  
Denver, Colorado 80206  
303-321-1880



Senior Vice President



**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By



President

Attest



Secretary

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Land Title Insurance Corporation. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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# CITY OF ASPEN COMMUNITY DEVELOPMENT DEPARTMENT

## Agreement to Pay Application Fees

An agreement between the City of Aspen ("City") and

**Please type or print in all caps**

Address of Property: 949 Smuggler Street

Property Owner Name: 949 West Smuggler Street LLC Representative Name (if different from Property Owner) BendonAdams

Billing Name and Address - Send Bills to:

Craig Vandenmoer, Manager; 949 West Smuggler Street LLC; 3489 W 62nd Ave.; Denver CO 80221

Contact info for billing: e-mail: CVandemoer@Sterlinglbr.com Phone: 303-818-1497

I understand that the City has adopted, via Ordinance No. 30, Series of 2017, review fees for Land Use applications and payment of these fees is a condition precedent to determining application completeness. I understand that as the property owner that I am responsible for paying all fees for this development application.

For flat fees and referral fees: I agree to pay the following fees for the services indicated. I understand that these flat fees are non-refundable.

\$ 975 flat fee for Parks \$. flat fee for

\$ flat fee for \$. flat fee for

For Deposit cases only: The City and I understand that because of the size, nature or scope of the proposed project, it is not possible at this time to know the full extent or total costs involved in processing the application. I understand that additional costs over and above the deposit may accrue. I understand and agree that it is impracticable for City staff to complete processing, review and presentation of sufficient information to enable legally required findings to be made for project consideration, unless invoices are paid in full.

The City and I understand and agree that invoices mailed by the City to the above listed billing address and not returned to the City shall be considered by the City as being received by me. I agree to remit payment within 30 days of presentation of an invoice by the City for such services.

I have read, understood, and agree to the Land Use Review Fee Policy including consequences for no-payment. I agree to pay the following initial deposit amounts for the specified hours of staff time. I understand that payment of a deposit does not render and application complete or compliant with approval criteria. If actual recorded costs exceed the initial deposit, I agree to pay additional monthly billings to the City to reimburse the City for the processing of my application at the hourly rates hereinafter stated.

\$ 3,250 deposit for 10 hours of Community Development Department staff time. Additional time above the deposit amount will be billed at **\$325.00 per hour**.

\$ 325 deposit for 1 hours of Engineering Department staff time. Additional time above the deposit amount will be billed at **\$325.00 per hour**.

### City of Aspen:

Jennifer Phelan, AICP  
Community Development Director

City Use:

Fees Due: \$ Received \$

Case #

Signature:

PRINT Name: Craig Vandenmoer, Manager  
949 West Smuggler Street LLC  
a Colorado Limited Liability Company

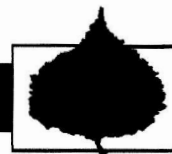
Title:

November 2017

City of Aspen | 130 S. Galena St. | (970) 920 5090



## COMMUNITY DEVELOPMENT DEPARTMENT



## Homeowner Association Compliance Policy

All land use applications within the City of Aspen are required to include a Homeowner Association Compliance Form (this form) certifying the scope of work included in the land use application complies with all applicable covenants and homeowner association policies. The certification must be signed by the property owner or Attorney representing the property owner.

Property Owner ("I"):	Name: Craig Vandemoer, Manager; 949 West Smuggler Street LLC; a Colorado Limited Liability Company	
	Email: <a href="mailto:CVandemoer@Sterlinglbr.com">CVandemoer@Sterlinglbr.com</a>	Phone No. 303.818.1497
Address of Property: (subject of application)	949 W. Smuggler St. Aspen, CO 81611	

I certify as follows: (pick one)

- ☒ This property is not subject to a homeowners association or other form of private covenant.
- ☐ This property is subject to a homeowners association or private covenant and the improvements proposed in this land use application do not require approval by the homeowners association or covenant beneficiary.
- ☐ This property is subject to a homeowners association or private covenant and the improvements proposed in this land use application have been approved by the homeowners association or covenant beneficiary.

I understand this policy and I understand the City of Aspen does not interpret, enforce, or manage the applicability, meaning or effect of private covenants or homeowner association rules or bylaws. I understand that this document is a public document.

Owner signature:  date: 11/7/19

Owner printed name: Craig Vandemoer, Manager  
949 West Smuggler Street LLC  
A Colorado Limited Liability Company

or,

Attorney signature: \_\_\_\_\_ date: \_\_\_\_\_



## PRE-APPLICATION CONFERENCE SUMMARY

**DATE:** October 22, 2019

**PLANNER:** Garrett Larimer, 970.429.2739

**PROJECT NAME AND ADDRESS:** 949 W. Smuggler

**PARCEL ID#:** 2735-122-12-001

**REPRESENTATIVE:** Chris Bendon, BendonAdams, LLC

**DESCRIPTION:** 949 W. Smuggler St. is an approximately 39,000 square foot residential lot in the R-6 zone district. The prospective applicant would like to divide the subject site into two lots through a Lot Split. A single-family residence is currently located on site. The residence is a chalet style structure that is eligible for Historic designation. If the applicant is interested in pursuing a historic designation for the property, the lot split review process would be different than listed below and the property would be eligible for historic preservation benefits.

No record of a previous lot split has been found during initial review and will be confirmed during the land use process. The minimum lot size for a non-historic lot in the R-6 zone district is 6,000 square feet. The minimum net lot area per dwelling unit is 4,500 square feet per unit, so the minimum lot size for a duplex or two detached residential dwellings is 9,000 square feet. The minimum lot width is 60 feet. The newly created lots must comply with the R-6 zone district requirements, per section 26.710.040.

A lot split requires review by City Council at a public hearing per Section 26.480.030.B.

Neighborhood Outreach is required prior to the public hearing in accordance with the Land Use Code Section 26.304.035. Staff recommends the applicant provide enhanced public information according to Section 26.304.035.C.3. Staff recommends additional information on the application be provided in both the mailing notice and the posting on site. The additional information included in the mailing should include a proposed site plan and description of the proposal. A poster showing the proposed lot split should also be posted on site. The poster should include the site plan, description, and contact information for the applicant.

Below are links to the Land Use Application form and Land Use Code for your convenience:

### RELEVANT LAND USE CODE SECTIONS:

<u>Section Number</u>	<u>Section Title</u>
26.304	Common Development Review Procedures
26.304.035	Neighborhood Outreach
26.480.030.B	Procedures for Review - Minor Subdivisions
26.480.040	General Subdivision Review Standards
26.480.060.A	Lot Split
26.490	Approval Documents - For Plat Requirements
26.575.020	Calculations and Measurements
26.710.040	Zone Districts, Medium Density Residential (R-6)

For your convenience - links to the Land Use Application and Land Use Code are below:

[Land Use Application](#)

[Land Use Code](#)

**REVIEW BY:**           - Community Development Staff for complete application  
                          - City Council for Decision

**PUBLIC HEARING:**   Yes, City Council

**PLANNING FEES:**   \$3,250 for ten hours of staff time (additional hours will be billed at \$325/hour)

**REFERRAL FEES:**   Engineering - \$325 Deposit for 1 hour of review (additional hours will be billed at \$325/hr.)  
                          Parks - \$975 Flat Fee

**TOTAL DEPOSIT:**   **\$4,550**

**APPLICATION CHECKLIST – These items should first be submitted in a paper copy.**

- ☐ Completed Land Use Application, HOA Compliance Form, and signed Fee Agreement.
- ☐ Pre-application Conference Summary (this document).
- ☐ Applicant's name, address and telephone number, contained within a letter signed by the applicant stating the name, address, and telephone number of the representative authorized to action on behalf of the applicant.
- ☐ Street address and legal description of the parcel on which development is proposed to occur, consisting of a current (no older than 6 months) certificate from a title insurance company, an ownership and encumbrance report, or attorney licensed to practice in the State of Colorado, listing the names of all owners of the property, and all mortgages, judgments, liens, easements, contracts and agreements affecting the parcel, and demonstrating the owner's right to apply for the Development Application.
- ☐ An 8 1/2" by 11" vicinity map locating the parcel within the City of Aspen.
- ☐ Improvement survey of existing conditions
- ☐ A written description of the proposal and written explanation of how the request complies with the review standards relevant to the application.
- ☐ Proposed Subdivision Plat

If the copy is deemed complete by staff, the following items will then need to be submitted:

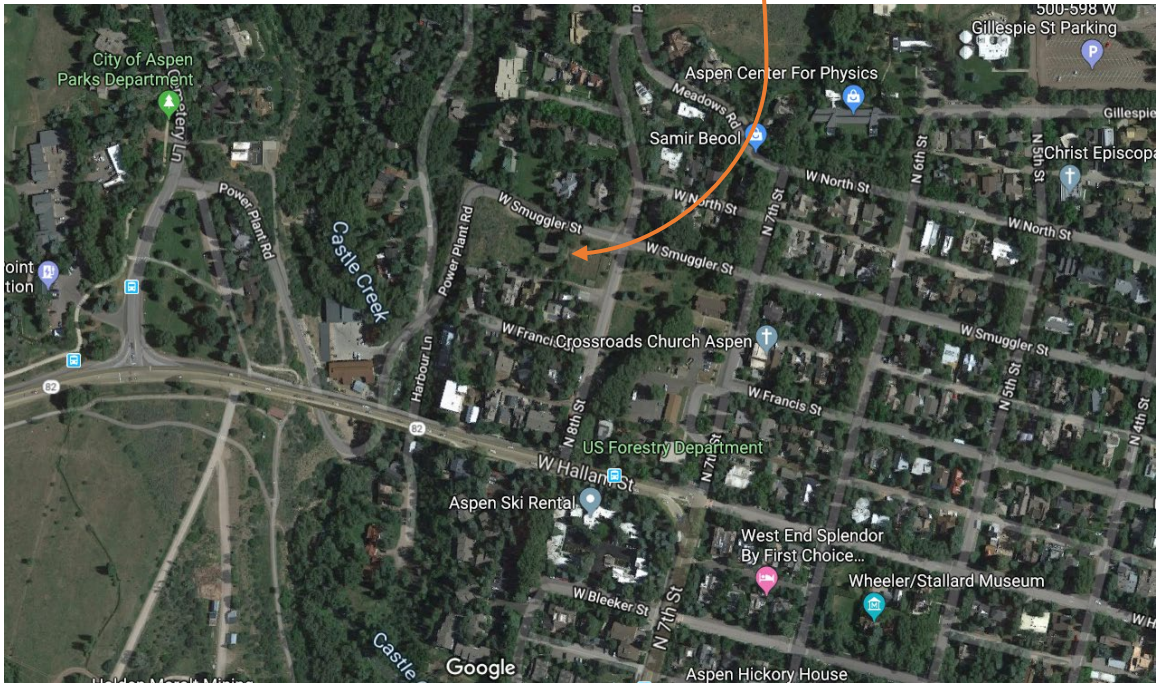
- ☐ Total deposit for review of the application.
- ☐ A digital copy of the application provided in pdf file format.

Depending on further review of the case, additional items may be requested of the application. Once the application is deemed complete by staff, the applicant/applicant's representative will receive an e-mail requesting submission of an electronic copy of the complete application and the deposit. Once the deposit is received, the case will be assigned to a planner and the land use review will begin.

**Disclaimer:**

The foregoing summary is advisory in nature only and is not binding on the City. The summary is based on current zoning, which is subject to change in the future, and upon factual representations that may or may not be accurate. The summary does not create a legal or vested right.

## 949 West Smuggler Street – Vicinity Map

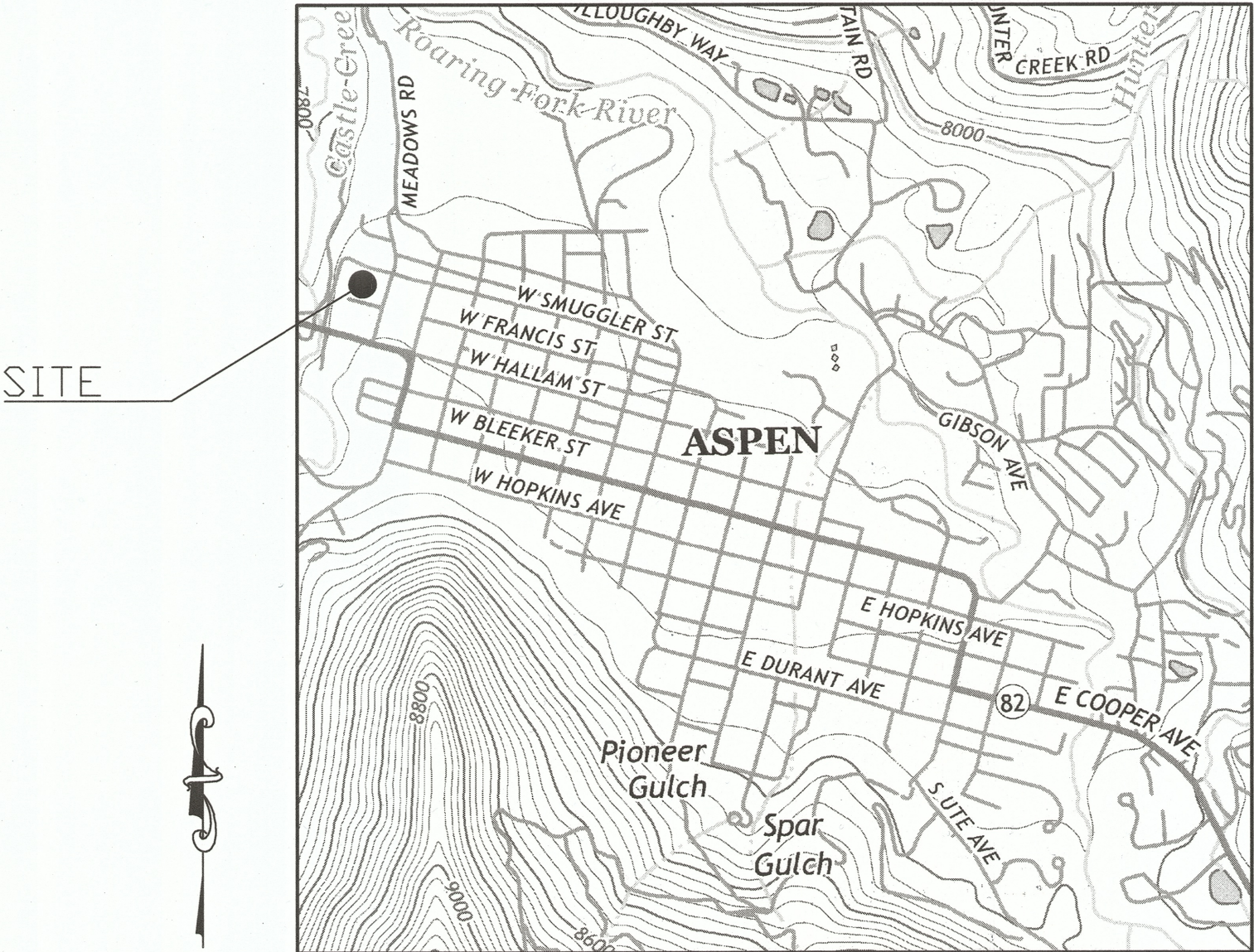




IMPROVEMENT SURVEY PLAT OF:  
**THE VANDEMOER PROPERTY**

LOTS A,B,C,D,E,F,G,H AND I, BLOCK 3, CITY AND TOWNSITE OF ASPEN AND  
A PRACEL OF LAND SITUATED IN THE SW 1/4 AND THE NW 1/4 OF SECTION 12, TOWNSHIP 10 SOUTH, RANGE 85 WEST OF THE 6th P.M.  
CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO

SHEET 1 OF 1

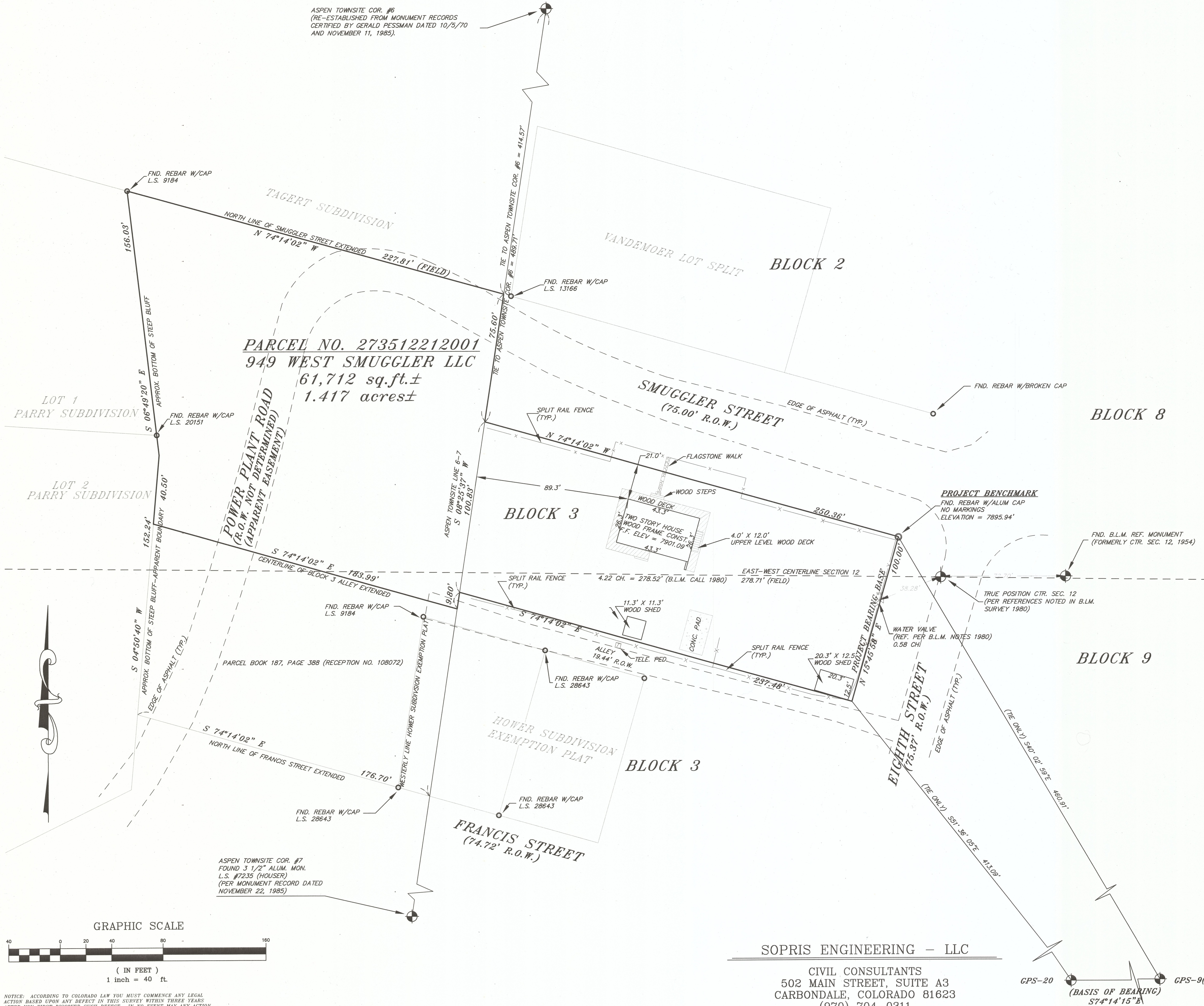


**PROPERTY DESCRIPTION**  
(RECEPTION NO. 505058)  
PARCEL No. 1  
LOTS A, B, C, D, E, F, G, H AND I (LOTS A TO I, BOTH INCLUSIVE, BLOCK 3, IN AND TO THE CITY AND TOWNSITE OF ASPEN  
PARCEL No. 2  
THAT CERTAIN PARCEL OF LAND, TOGETHER WITH ALL RIGHTS, PRIVILEGES AND EASEMENTS CONTAINED IN THE DEED  
HEREIN-AFTER DESCRIBED, CONVEYED TO H.R. VANDEMOER BY VIRGINIA S. CRAMERLAIN BY DEED DATED APRIL 20, 1959,  
DULY RECORDED JUNE 2, 1959 AS DOCUMENT NO. 108073, IN BOOK 187 AT PAGE 389 OF THE RECORDS IN THE OFFICE OF  
THE CLERK AND RECORDER OF PITKIN COUNTY, COLORADO.  
SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (FROM RECEPTION NO. 108073):  
THAT CERTAIN PARCEL OF LAND IN SECTION 12, TOWNSHIP 10 SOUTH, RANGE 85 WEST, 6TH P.M., DESCRIBED IN DOCUMENT  
NO. 96608 IN BOOK 170 AT PAGE 565 OF THE RECORDS FOR PITKIN COUNTY LYING NORTHERLY OF THE CENTERLINE OF THE  
ALLEY IN BLOCK 3 OF THE CITY AND TOWNSITE OF ASPEN PROJECTED WESTERLY TO ITS INTERSECTION WITH THE WESTERLY  
LINE OF SAID TRACT OF LAND DESCRIBED IN SAID DOCUMENT NO. 96608. THE LAND DESCRIBED IN SAID DOCUMENT NO.  
96608 IS THAT PARCEL OF LAND CONVEYED BY MICHAEL MAROLT TO H.R. VANDEMOER AND ARTHUR PISTNER BY QUIT CLAIM  
DEED DATED JULY 14, 1949.  
INCLUDING ALL RIGHTS AND PRIVILEGES TO USE THE ROADWAY AS NOW CONSTRUCTED AN IN USE FROM SMUGGLER STREET  
ACROSS SAID ABOVE DESCRIBED PROPERTY TO THAT PORTION OF LAND DESCRIBED IN SAID DOCUMENT NO. 96608 LYING  
SOUTHERLY OF THE CENTERLINE OF THE ALLEY IN SAID BLOCK 3 PROJECTED WESTERLY, IT BEING THE INTENTION OF THE  
GRANTOR TO RELEASE AND QUIT-CLAIM FOREVER HER INTEREST IN SAID EASEMENT USED FOR INGRESS AND EGRESS TO  
SMUGGLER STREET.  
LESS AND EXCEPTING ALL OF THAT PROPERTY DESCRIBED IN THAT DOCUMENT RECORDED JUNE 2, 1959 IN BOOK 187 AT  
PAGE 388, AS RECEPTION NO. 108072.

**CITY OF ASPEN**  
COUNTY OF PITKIN  
STATE OF COLORADO  
**SURVEYOR'S CERTIFICATE**  
I, MARK S. BECKLER, HEREBY CERTIFY TO 949 WEST SMUGGLER STREET, LLC AND LAND TITLE GUARANTEE COMPANY, THAT  
THIS IS AN 'IMPROVEMENT SURVEY PLAT' AS DEFINED BY C.R.S. § 39-51-102(9), AND THAT IT IS A MONUMENTED LAND  
SURVEY SHOWING THE CURRENT LOCATION OF ALL STRUCTURES, WATER COURSES, WATER FEATURES AND/OR BODIES OF  
WATER, FLOOD PLAIN, ROADS, TRAILS, VISIBLE UTILITIES, FENCES, HEDGES, OR WALLS SITUATED ON THE DESCRIBED PARCEL  
AND WITHIN THE FEET OF ALL BOUNDARIES OF SUCH PARCELS OF ANY CONFLICTING BOUNDARY EVIDENCE OR VISIBLE  
ENCROACHMENTS, AND ALL EASEMENTS AND RIGHTS OF WAY OF A PUBLIC OR PRIVATE NATURE THAT ARE VISIBLE, OR  
APPARENT, OR OF RECORD AND UNDERGROUND UTILITIES DESCRIBED IN THE TITLE COMMITMENT REFERENCED IN NOTE 5  
BELOW, OR OTHER SOURCES AS SPECIFIED ON THE IMPROVEMENT SURVEY PLAT.

MARK S. BECKLER, Surveyor  
L.S. 428643  
**NOTES**  
1) DATE OF FIELD WORK: DECEMBER, 2001--JUNE, 2001; SEPTEMBER 2019.  
2) DATE OF PREPARATION: DECEMBER, 2001--JUNE, 2001; UPDATED SEPTEMBER-OCTOBER 2019.  
3) BASIS OF BEARING: A BEARING OF S74°14'15"E BETWEEN THE 1988 CITY OF ASPEN-GPS CONTROL POINTS GPS-20  
AND GPS-9(R), AT THE STREET INTERSECTIONS OF 7TH FRANCIS AND 6TH FRANCIS, WHICH ESTABLISHED A SITE  
BEARING OF N 15°48'56" E BETWEEN THE NORTHEAST CORNER OF BLOCK 3 AND THE SOUTHEAST CORNER OF BLOCK 2,  
BEING FOUND MONUMENTS AS SHOWN.  
4) BASIS OF SURVEY: THE OFFICIAL MAP OF THE CITY OF ASPEN APPROVED BY THE CITY ENGINEER C.E. BUCHANAN  
DATED DECEMBER 15 1959, THE PLAT OF THE VANDEMOER LOT SPLIT, THE PLAT OF THE PARRY SUBDIVISION, THE  
FLOWER SUBDIVISION EXEMPTION PLAT, VARIOUS DOCUMENTS OF RECORD AND THE U.S. DEPARTMENT OF INTERIOR PLAT  
AND NOTES FOR SECTION 12, AS APPROVED BY THE CHIEF CADASTRAL SURVEYOR ON FEBRUARY 14, 1980.  
5) THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SOPRIS ENGINEERING, LLC (SE) TO DETERMINE OWNERSHIP  
OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHT-OF-WAY AND/OR TITLE OF RECORD  
SE RELIED UPON THE ITEMS LISTED IN NOTE 4 AND THE TITLE COMMITMENT PREPARED BY LAND TITLE GUARANTEE  
COMPANY, ORDER NO. Q68002750 EFFECTIVE DATE SEPTEMBER 20, 2019.  
6) PROPERTY ADDRESS: 949 WEST SMUGGLER STREET, ASPEN, CO 81611

**COUNTY SURVEYOR'S CERTIFICATE**  
DEPOSITED THIS \_\_\_\_ DAY OF \_\_\_\_, 2019, AT \_\_\_\_ M.,  
IN THE PITKIN COUNTY INDEX FOR INFORMATIONAL LAND SURVEY PLATS  
UNDER RECEPTION NUMBER \_\_\_\_  
BY: \_\_\_\_\_  
PITKIN COUNTY SURVEYOR  
DATE: \_\_\_\_\_  
FILING INFORMATION: SECTION 12, TOWNSHIP 10 SOUTH, RANGE 85 WEST, OF THE  
6TH P.M.





FINAL PLAT OF:  
VANDEMOER HILL LOT SPLIT

LOTS A,B,C,D,E,F,G,H AND I, BLOCK 3, CITY AND TOWNSITE OF ASPEN AND  
A PRACEL OF LAND SITUATED IN THE SW 1/4 AND THE NW 1/4 OF SECTION 12, TOWNSHIP 10 SOUTH, RANGE 85 WEST OF THE 6th P.M.  
CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO

SHEET 1 OF 1

ASPEN TOWNSITE COR. #6  
(RE-ESTABLISHED FROM MONUMENT RECORDS  
CERTIFIED BY GERALD PESSMAN DATED 10/5/70  
AND NOVEMBER 11, 1985).

ASPEN CITY COUNCIL APPROVAL

THIS LOT SPLIT PLAT OF THE VANDEMOER HILL LOT SPLIT WAS  
REVIEWED AND APPROVED BY THE CITY OF ASPEN CITY COUNCIL ON  
THE DAY OF \_\_, 2019, BY ORDINANCE NO. \_\_, SERIES 2019,  
RECORDED ON \_\_, IN THE OFFICE OF THE CLERK AND RECORDER  
OF PITKIN COUNTY IN BOOK \_\_, PAGE \_\_ AS RECEPTION NO. \_\_.

MAYOR, CITY OF ASPEN \_\_\_\_\_  
DATE \_\_\_\_\_  
ATTEST: \_\_\_\_\_  
CITY CLERK \_\_\_\_\_

COMMUNITY DEVELOPMENT DIRECTOR APPROVAL

THIS LOT SPLIT PLAT OF THE VANDEMOER HILL LOT SPLIT WAS REVIEWED AND  
APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF  
ASPEN THIS DAY OF \_\_, 2019, TO THE EXTENT THAT ANYTHING IN THIS  
PLAT IS INCONSISTENT OR IN CONFLICT WITH ANY CITY OF ASPEN  
DEVELOPMENT ORDERS FOR THIS PROPERTY OR ANY OTHER PROVISIONS OF  
APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO OTHER APPLICABLE LAND  
USE REGULATIONS AND BUILDING CODES, SUCH OTHER DEVELOPMENT ORDERS  
OR APPLICABLE LAWS SHALL CONTROL.

COMMUNITY DEVELOPMENT DIRECTOR

CITY ENGINEER'S REVIEW

THIS LOT SPLIT PLAT OF THE VANDEMOER HILL LOT SPLIT WAS REVIEWED  
BY THE CITY ENGINEER OF THE CITY OF ASPEN THIS DAY OF \_\_, 2019.

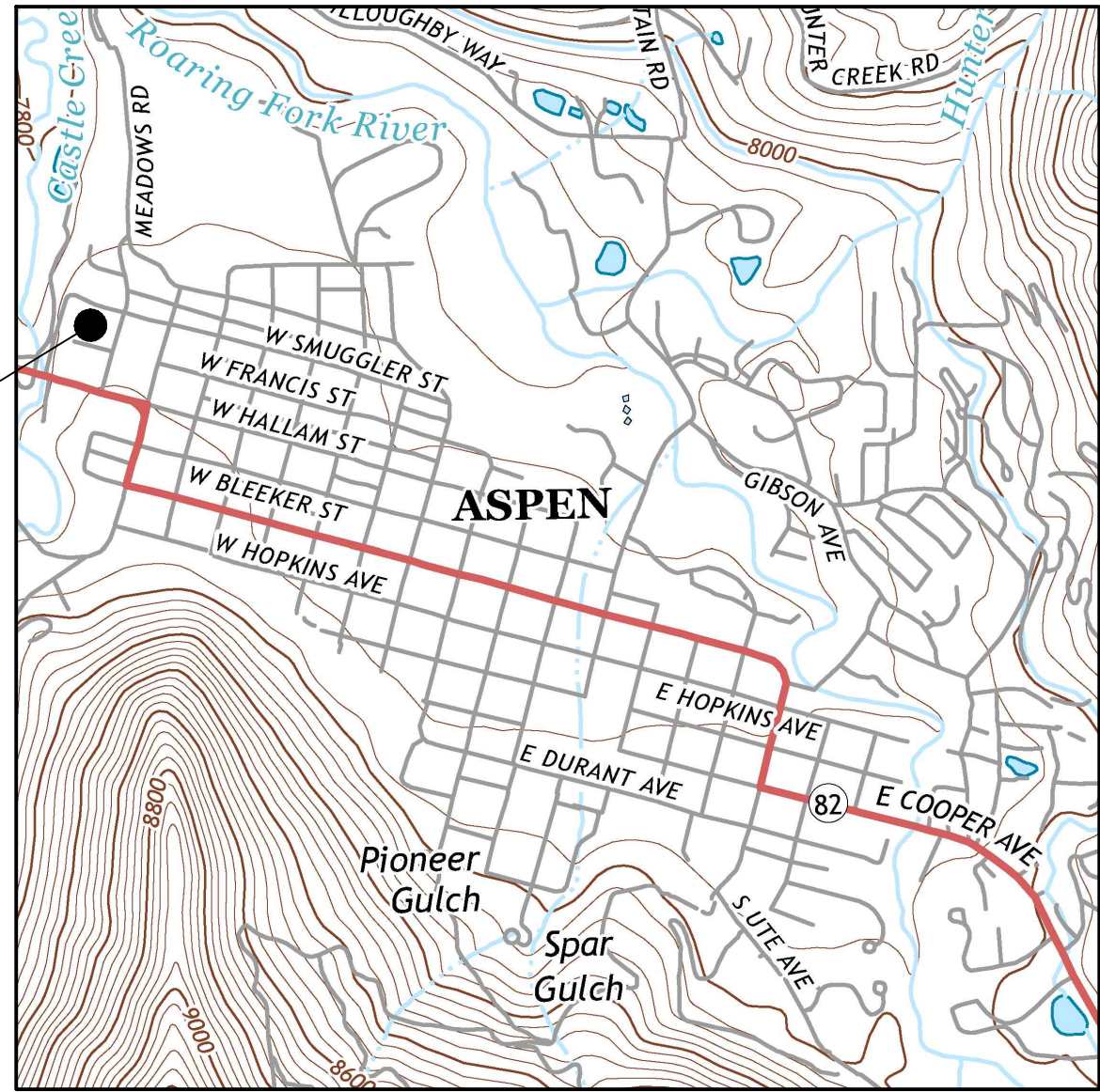
CITY ENGINEER

TITLE CERTIFICATE

THE UNDERSIGNED, A DULY AUTHORIZED REPRESENTATIVE OF LAND TITLE GUARANTEE  
COMPANY WHICH IS REGISTERED TO DO BUSINESS WITHIN PITKIN COUNTY, COLORADO,  
DOES HEREBY CERTIFY THAT THE OWNERS OF THE REAL PROPERTY DESCRIBED HEREON  
HOLD PER SIMPLE TITLE TO THE PROPERTY FREE AND CLEAR OF LIENS, TAXES, AND  
ENCUMBRANCES EXCEPT FOR THE MATTERS OF RECORD LISTED ON THE TITLE  
COMMITMENT ISSUED BY LAND TITLE GUARANTEE COMPANY UNDER FILE NO.  
Q64002750-2, COMMITMENT DATE OCTOBER 29, 2019. ALTHOUGH WE BELIEVE THE  
FACTS STATED ARE TRUE, THIS CERTIFICATE IS NOT TO BE CONSTRUED AS AN  
ABSTRACT OF TITLE NOR AN OPINION OF TITLE NOR A GUARANTEE OF TITLE, AND IT IS  
UNDERSTOOD AND AGREED THAT LAND TITLE GUARANTEE COMPANY NEITHER ASSUMES  
NOR WILL BE CHARGED WITH ANY FINANCIAL OBLIGATION WHATSOEVER.

BY: \_\_\_\_\_  
STATE OF COLORADO )  
COUNTY OF PITKIN )  
THE TITLE CERTIFICATE WAS ACKNOWLEDGED BEFORE ME THIS DAY OF \_\_, 2019, BY  
AS THE TITLE OFFICER OF LAND TITLE GUARANTEE COMPANY.  
WITNESS MY HAND AND OFFICIAL SEAL

SITE



CITY OF ASPEN  
VICINITY MAP

PROPERTY DESCRIPTION  
(RECEPTION NO. 505058)

PARCEL No. 1

LOTS A, B, C, D, E, F, G, H AND I (LOTS A TO I, BOTH INCLUSIVE, BLOCK 3, IN AND TO THE CITY AND TOWNSITE OF ASPEN

PARCEL No. 2

THAT CERTAIN PARCEL OF LAND, TOGETHER WITH ALL RIGHTS, PRIVILEGES AND EASEMENTS CONTAINED IN THE DEED  
HEREIN-AFTER DESCRIBED, CONVEYED TO H.R. VANDEMOER BY VERONICA S. CHAMBERLAIN BY DEED DATED APRIL 20, 1959,  
DULY RECORDED JUNE 2, 1959 AS DOCUMENT NO. 108073, IN BOOK 187 AT PAGE 389 OF THE RECORDS IN THE OFFICE OF  
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96608 IS THAT PARCEL OF LAND CONVEYED BY MICHAEL MAROLT TO H.R. VANDEMOER AND ARTHUR PFISTER BY QUIT CLAIM  
DEED DATED JULY 14, 1949.

INCLUDING ALL RIGHTS AND PRIVILEGES TO USE THE ROADWAY AS NOW CONSTRUCTED AN IN USE FROM SMUGGLER STREET  
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LESS AND EXCEPTING ALL OF THAT PROPERTY DESCRIBED IN THAT DOCUMENT RECORDED JUNE 2, 1959 IN BOOK 187 AT  
PAGE 389, AS RECEPTION NO. 108072.

CITY OF ASPEN  
COUNTY OF PITKIN  
STATE OF COLORADO

NOTES

- 1) DATE OF FIELD WORK: DECEMBER, 2001--JUNE, 2001; SEPTEMBER, NOVEMBER 2019.
- 2) DATE OF PREPARATION: DECEMBER, 2001--JUNE, 2001; UPDATED SEPTEMBER--NOVEMBER 2019.
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- 4) BASIS OF SURVEY: THE OFFICIAL MAP OF THE CITY OF ASPEN APPROVED BY THE CITY ENGINEER C.E. BUCHANAN DATED DECEMBER 15 1959, THE PLAT OF THE VANDEMOER LOT SPLIT, THE PLAT OF THE PARRY SUBDIVISION, THE HOWER SUBDIVISION EXEMPTION PLAT, PARTIALS DOCUMENTS OF RECORD AND THE U.S. DEPARTMENT OF INTERIOR PLAT AND NOTES FOR SECTION 12, AS APPROVED BY THE CHIEF CADASTRAL SURVEYOR ON FEBRUARY 14, 1980.
- 5) THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SOPRIS ENGINEERING, LLC (SE) TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHT-OF-WAY AND/OR TITLE OF RECORD SE RELIED UPON THE ITEMS LISTED IN NOTE 4 AND THE TITLE COMMITMENT PREPARED BY LAND TITLE GUARANTEE COMPANY, ORDER NO. Q62002750 EFFECTIVE DATE SEPTEMBER 20, 2019.
- 6) PROPERTY ADDRESS: 949 WEST SMUGGLER STREET, ASPEN, CO 81611

SURVEYOR'S CERTIFICATE

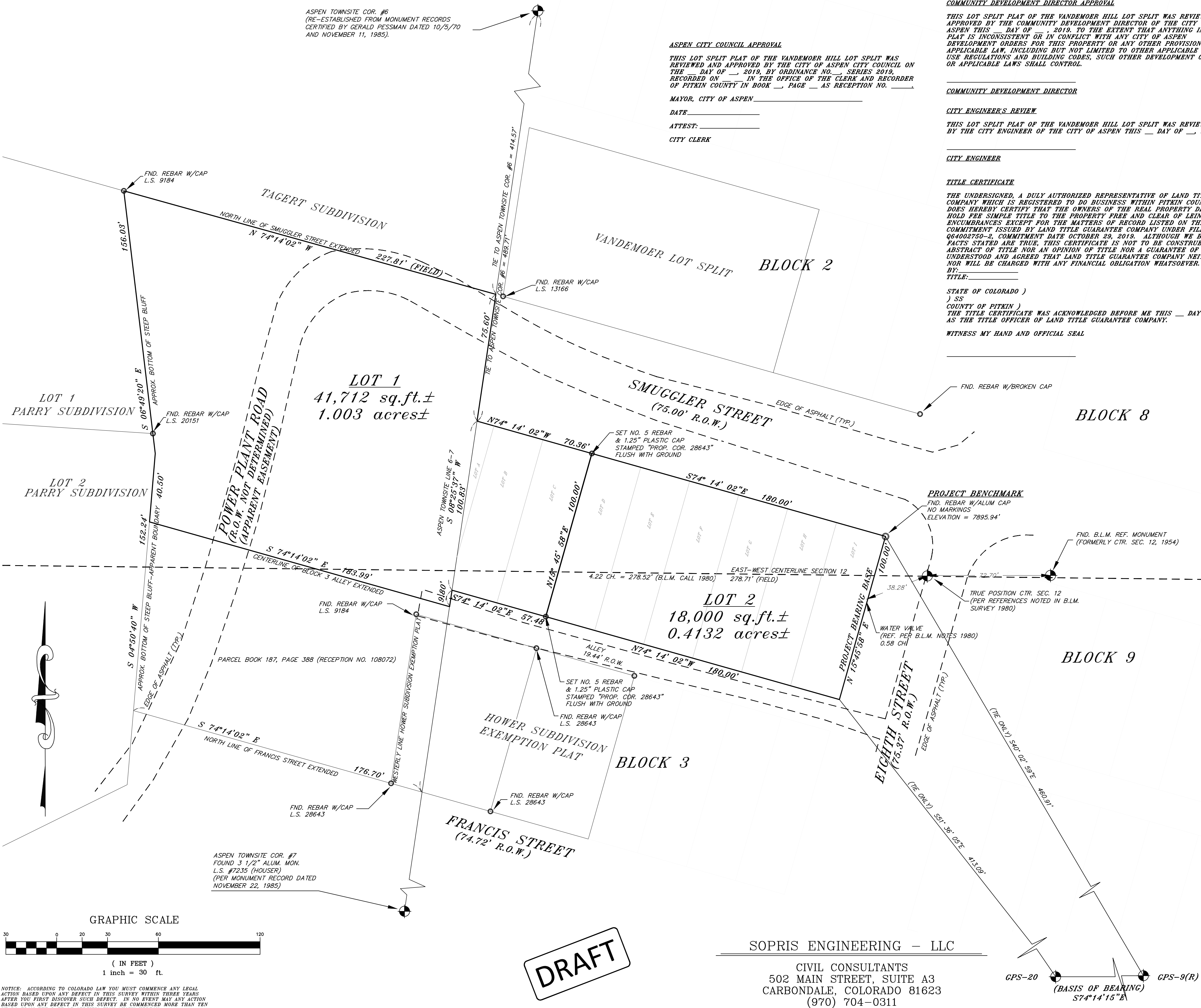
I, MARK S. BECKLER, HEREBY CERTIFY TO 949 WEST SMUGGLER STREET, LLC AND LAND TITLE GUARANTEE COMPANY, THAT THIS IS AN IMPROVEMENT SURVEY PLAT AS DEFINED BY C.R.S. § 38-51-102(9), AND THAT IT IS A MONUMENTED LAND SURVEY SHOWING THE CURRENT LOCATION OF ALL STRUCTURES, WATER COURSES, WATER FEATURES AND/OR BODIES OF WATER, FLOOD PLAINS, ROADS, TRAILS, VISIBLE UTILITIES, FENCES, HEDGES, OR WALLS SITUATED ON THE DESCRIBED PARCEL AND WITHIN FIVE FEET OF ALL BOUNDARIES OF SUCH PARCEL, ANY CONFLICTING BOUNDARY EVIDENCE OR VISIBLE ENCROACHMENTS, AND ALL EASEMENTS AND RIGHTS OF WAY OF A PUBLIC OR PRIVATE NATURE THAT ARE VISIBLE, OR APPARENT, OR OF RECORD AND UNDERGROUND UTILITIES DESCRIBED IN THE TITLE COMMITMENT REFERENCED IN NOTE 5 BELOW, OR OTHER SOURCES AS SPECIFIED ON THE IMPROVEMENT SURVEY PLAT.

MARK S. BECKLER L.S. #28643

CLERK AND RECORDER CERTIFICATE

THIS LOT SPLIT PLAT OF THE VANDEMOER HILL LOT SPLIT  
WAS FILED FOR RECORDING IN THE OFFICE OF THE CLERK  
AND RECORDER OF PITKIN COUNTY ON THE DAY OF \_\_,  
2019, AND IS RECORDED IN BOOK \_\_ ON PAGE \_\_ AS  
RECEPTION NO. \_\_.

CLERK AND RECORDER



NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL  
ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS  
AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION  
BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN  
YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

SOPRIS ENGINEERING - LLC  
CIVIL CONSULTANTS  
502 MAIN STREET, SUITE A3  
CARBONDALE, COLORADO 81623  
(970) 704-0311



CITY OF ASPEN ZONE DISTRICT EXHIBIT

# VANDEMOER HILL LOT 1

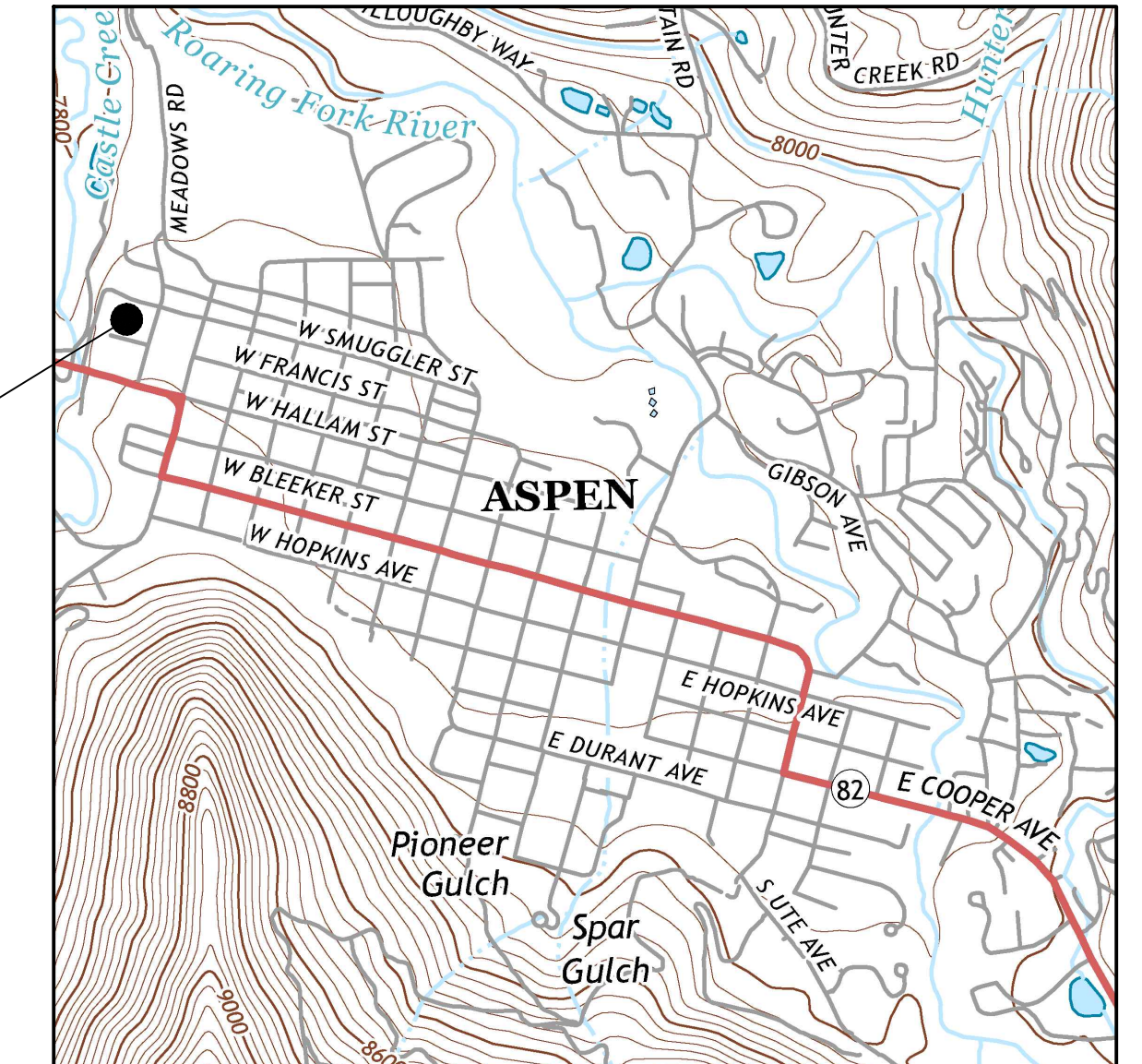
Exhibit 12

LOTS A,B,C,D,E,F,G,H AND I, BLOCK 3, CITY AND TOWNSITE OF ASPEN AND  
A PRACEL OF LAND SITUATED IN THE SW 1/4 AND THE NW 1/4 OF SECTION 12, TOWNSHIP 10 SOUTH, RANGE 85 WEST OF THE 6th P.M.  
CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO

SHEET 1 OF 1

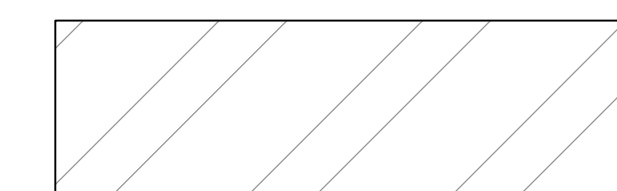


SITE

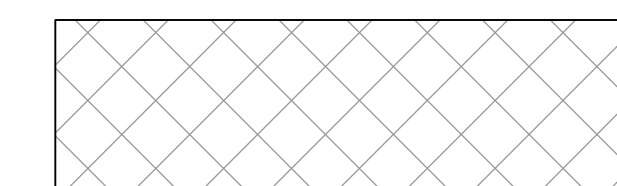


CITY OF ASPEN  
VICINITY MAP

### ZONE LEGEND



CITY OF ASPEN ZONE R-6



CITY OF ASPEN ZONE R-30

### NOTES:

1) CITY OF ASPEN ZONE BOUNDARIES  
ESTABLISHED USING CITY OF ASPEN GIS SHAPE  
FILE DATA, DOWNLOADED ON 11-15-19.

GRAPHIC SCALE



( IN FEET )  
1 inch = 20 ft.

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL  
ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS  
AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION  
BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN  
YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.



SOPRIS ENGINEERING - LLC

CIVIL CONSULTANTS  
502 MAIN STREET, SUITE A3  
CARBONDALE, COLORADO 81623  
(970) 704-0311



LOTS A,B,C,D,E,F,G,H AND I, BLOCK 3, CITY AND TOWNSITE OF ASPEN AND  
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CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO

[illegible][illegible]

SLOPE ANALYSIS TABLE LOT 1				
COLOR	RANGE BEG.	RANGE END	PERCENT	AREA SQ.FT.
	0.00	20.00	63.0	27,532
	20.00	30.00	4.2	1,832
	30.00	---	32.8	14,348

SLOPE ANALYSIS TABLE LOT 2				
COLOR	RANGE BEG.	RANGE END	PERCENT	AREA SQ.FT.
	0.00	20.00	99.4	17,886
	20.00	30.00	0.1	23
	30.00	---	0.5	91

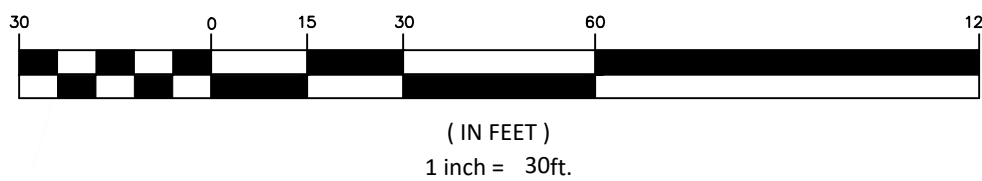
CITY OF ASPEN GIS NAVD 88 CONTOURS

PARCEL BOOK 540, PAGE 90 (SHARP PARCEL)  
(DUE TO MATHEMATICAL ERRORS IN THE DEED,  
PLACEMENT OF THIS PROPERTY CANNOT BE  
ACCURATELY DETERMINED)

CIVIL CONSULTANTS  
502 MAIN STREET, SUITE A3  
CARBONDALE, COLORADO 81623  
(970) 704-0311

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

GRAPHIC SCALE



20153 sb 2017-12-14 M:\2000dwgs\20153\20153-Vandemoer Slope Analysis\_2019 REVISION.dwg





## MEMORANDUM

**TO:** City Council  
**CC:** James R. True  
**FROM:** Pete Strecker, City Finance Director  
**DATE:** July 14, 2020  
**RE:** Isis Operations and Financing

---

**SUMMARY:** Aspen Film is seeking input from the Council regarding a renewed operational lease agreement with the current operator, Metropolitan / Rocky Mountain Cinemas LLC, (Metropolitan) commencing June 21, 2020 through January 31, 2021 (roughly seven months).

**BACKGROUND:** The City facilitated the issuance of Certificates of Participation (COPs) to finance the restoration of the Isis Building back in 2007. The City's interest in this action was to preserve a theater for the community; and at the same time, allow for some affordable housing and retail space to be worked into the property. When this financing was established, the lease payments from both the theater space and the retail spaces were identified as the dedicated revenue sources to support the lease purchase arrangement. Further, the Isis building spaces were condominiumized to separate the retail/affordable housing from the theater space, to define the assets pledged as collateral to the original debt, and to allow for future acquisition flexibility.

Tenants within both spaces had lease terms such that at the end of the debt repayment period, both tenants would be able to purchase their condominiumized spaces for \$10.00. If either or both tenants wished (any time subsequent to when first possible call date was achieved – 10 years after the initial financing was established), they could also exercise an earlier purchase opportunity, with the purchase price equal to the remaining debt obligation at the time, plus any accrued interest. The retail space was recently sold under this early purchase option, and presently only the theater spaces remain under the initial lease agreement.

With the impact from public health orders and COVID on the local economy, since mid-March there has been a complete closure of the Isis theaters and Metropolitan has not made monthly operating payments due under the previous operating agreement that has now expired. Without this income from Metropolitan, Aspen Film has similarly not maintained its monthly lease payments to the City since April. Including July invoicing, the outstanding balance due to the City is \$62,597.68 (without any penalties or interest charges).

**DISCUSSION:** While the lease payments from Aspen Film are the identified revenues to support the outstanding debt, the City is in a position where it is the guarantor on the 2007 Certificates of Participation. As such and in order to protect the City's AAA credit rating, the City has a significant motivation to ensure that the \$2,030,000 principal balance is addressed such that there is no default on this outstanding debt.

With the newly proposed operating agreement from Metropolitan / Rocky Mountain Cinemas, there is no guarantee – and in fact, it is unlikely – that monthly payments will cover the current debt repayment schedule (equal to \$15,649.42/month). This should be kept in mind as the next principal and interest payment of \$129,488 is due on September 1, 2020 under the current debt schedule.

The new terms specify that Aspen Film will be paid the sum of 15% of monthly admissions plus food and beverage sales for the next seven months. These forward looking terms, plus requested renegotiated monthly payments due under the previously expired operating agreement for April, May and June wherein April rent is completely forgiven, and May and June rent is paid over a six month period (all CAM charges would be paid for these three months over the same six month period).

**REQUEST:** Aspen Film is requesting input from the Aspen Public Facilities Board to gain an understanding of support for the proposed operating agreement. The Board should know that the operating agreement is not directly linked to the outstanding debt as that agreement is between the City and Aspen Film; thus, Aspen Film is the party that is responsible for monthly lease payments and not Metropolitan.

**OPTIONS:** Currently, there are two additional options to consider when looking at the outstanding debt obligation for the theater space and how this operating agreement works into the current situation. Note that these options are not mutually exclusive:

- Option one is to look at a possible subdivision and sale of the street level spaces within this condominium space to an outside party. This sale would likely generate proceeds sufficient to pay the outstanding debt and would leave the remaining below grade theater spaces for Aspen Film to operate. This option was considered in 2007, when the Isis building was originally re-developed and had Council support at that time. This option was not exercised at that time and has expired. Conversion of any portion of this property to retail commercial use would be a change-in-use that would need to be approved through an appropriate land use process.
- Option two would be to refinance the debt under a direct placement bank loan arrangement and restructure the principal payments such that the near-term principal (and possibly interest) due in 2020 be delayed to allow for more time to negotiate and for improved economic environments to operate. The City's Finance Director already has one viable bank bid for this option. The initial proposal included an additional \$80K for improvements to the building which could be cut from the proposal, but as presented currently, this refinancing would reduce debt

service payments to zero in 2020 and reduce 2021 payments by roughly another \$100K to allow for time during this difficult cashflow period for Aspen Film. This restructuring is estimated to save roughly \$414,000 on a net present value basis as well, due to a significantly reduced interest rate and a two year shortening of the remaining term on the debt.

**FINANCIAL/BUDGET IMPACTS:** The operating agreement by itself does not have a financial impact. However, if the Metropolitan payments create a shortfall in the obligation of Aspen Film to cover the debt, this shortfall may have to be borne by the City's General Fund as this is the only source of discretionary resources within the City budget – and this would likely require cuts to other General Fund operations as a result.