



RECEPTION#: 652942, R: \$0.00, D: \$0.00  
DOC CODE: RESOLUTION  
Pg 1 of 12, 12/27/2018 at 03:04:26 PM  
Janice K. Vos Caudill, Pitkin County, CO

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY,  
COLORADO, GRANTING THE APPEAL SUBMITTED BY CASTLE CREEK INVESTORS INC.  
AND MODIFYING HEARING OFFICER DETERMINATION 3-2018 APPROVING THE  
CASTLE CREEK INVESTORS INC. ACTIVITY ENVELOPE**

**Resolution No. 152-2018**

**RECITALS**

1. Pursuant to Section 2.8.4 (Actions) of the Pitkin County Home Rule Charter (“HRC”), all matters not required to be acted upon by ordinance or formal resolution may be acted upon by informal resolution.
2. Castle Creek Investors Inc. (“Applicant”) has appealed Hearing Officer Determination No. 3-2018 (Attachment B), which approved an Activity Envelope with Conditions. The appeal was based on the position that the Hearing Officer made demonstrable errors in the application of the facts in the record to standards of the Pitkin County Land Use Code, specifically as related to the following provisions of the Determination No. 03-2018:
  - A. Recital No. 11 states, “The Hearing Officer further finds that the existing “lunch cabin” utilized by Aspen Skiing Company for powder tours is not accessory to a future residential dwelling unit. Therefore it is a principal use. Only one principal use on the property is allowed. Therefore, prior to issuance of a building permit for a residential cabin, the existing “lunch cabin” structure and associated vault privy shall be removed.”
  - B. Condition No. 5 states, “Prior to issuance of a building permit for a residential dwelling unit, the Applicant shall obtain permits and remove the existing “lunch cabin” structure and associated vault privy.”
3. The Castle Creek Investors Inc. property is located on the ridge of Richmond Ridge. It is comprised of the General Jackson, Timber, Jennie, Black Diamond, and Pearl Lodes USMS 6716 and Tillie and Prudence Lodes USMS 6978, and is more specifically described in Attachment A. The parcel identification number is 273731300050.
4. The property is zoned Rural/Remote and contains 53.39 acres.
5. Access to the parcel is taken directly from Richmond Hill Road which intersects the property. An existing driveway previously approved by the County provides access from Richmond Hill Road to the proposed Activity Envelope.
6. Through a review of the chain of title by a licensed attorney in the State of Colorado, the Applicant has demonstrated that the parcel was created prior to June 12, 1978, and has not merged with adjacent property, and, therefore, is exempt from growth management for one single family dwelling, subject to the limitations of the Rural/Remote zone district.
7. In 2001 pursuant to BOCC Resolution No. 110-2001, Special Review, GMQS Exemption, 1041 Hazard Review and Conceptual Submission was approved. The approval lapsed on July 5, 2016, while the vested rights expired in 2004. The 1041 Hazard Review Site Plan is recorded in Plat Book 60 at Page 54 as Reception No. 466360.

8. Since approximately 1970, the parcel has been utilized for guided powder tours. The Applicant has a lease agreement with Aspen Skiing Company for use of the property for powder tours in the winter. The tours utilize the “lunch cabin” and a vault privy on the property. The cabin does not contain utilities, or a kitchen or bath facilities. The vault privy was permitted and installed under Permit No. 02070 to comply with a condition of BOCC Resolution No. 110-2001 to abandon and replace the then existing outhouse. In 2012, a Certificate of Occupancy was issued for the reconstruction of the 270 square foot lunch cabin in the same location.
9. On December 27, 2017, the Applicant submitted an application requesting Activity Envelope Review approval to re-establish the Activity Envelope approved pursuant to BOCC Resolution No. 110-2001. The application was forwarded to the Hearing Officer for consideration, based on objections and concerns raised by adjacent property owner, Larsen Family LP.
10. On April 17, 2018 at a duly noticed public hearing, the Hearing Officer continued the hearing to May 15, 2018. The Hearing Officer considered the application on May 15, 2018, at which time evidence and testimony was presented with respect to the application. At the May 15, 2018 public hearing, Hearing Officer Tom Smith issued Determination No. 03-2018 approving the Activity Envelope with Conditions.
11. A notice of appeal was submitted by the Applicant on May 30, 2018. A draft of the verbatim transcript of the May 15, 2018 meeting was submitted on July 31, 2018.
12. The BOCC heard this request at duly noticed public hearing on November 14, 2018, at which time evidence and testimony were presented with respect to the application.
13. The BOCC directed staff to draft a Resolution affirming the appeal and modifying the Hearing Officer Determination to be considered by the BOCC at its regular meeting on December 19, 2018.
14. The sole issue raised by the Applicant on Appeal was in regard to Condition No. 5 of Hearing Officer Determination No. 3-2018, which provides:

“Prior to issuance of a building permit for a residential dwelling unit, the Applicant shall obtain permits and remove the existing ‘lunch cabin’ structure and associated vault privy.”
15. The Hearing Officer’s determination was based on his stated understanding that there can only be one principal use of any given property. *See* Trans. p. 77.
16. Pitkin County Land Use Code, Section 2-20-180(g) provides

An appeal is not a de novo consideration of the merits of the development application that gave rise to the appeal. The appeal body identified in Table 2-1 shall only reverse, modify, or remand a decision on appeal if it finds that that there has been a clear and demonstrable error, abuse of discretion, or denial of procedural due process in the application of the facts in the record to the standards of this Land Use Code.
17. The BOCC finds that the Hearing Officer made a clear and demonstrable error, based on the following findings:
  - a. Section 4-10-20 of the Pitkin County Land Used Code provides that “[o]nly one principal residential use, either by right or by special review, is permitted per lot or parcel;”

- b. Section 4-10-20, therefore, does not prohibit multiple principal uses of a property; but, instead, limits a property to one principal residential use;
  - c. Thus, the Applicant may use its parcel for two uses identified in Land Use Code, Table 4-1 (a common example being use of properties in the rural zone districts of the County for both a Single Family Dwelling Unit as well as Ranching both of which are identified as principal uses of a parcel);
  - d. Therefore, the Hearing Officer did not correctly apply the standards of the Land Use Code in requiring the Applicant to remove the lunch cabin prior to obtaining a building permit for a residential dwelling on Applicant' property.
18. In light of the foregoing, the BOCC further determines that it is appropriate pursuant to Sec. 2-20-180(h)(1) of the Land Use Code ("Code") to modify the Hearing Officer Determination based on the applicable provisions of the Code.
19. The BOCC agrees with Hearing Officer Determination No. 03-2018, with the exception of the Recital No. 11 and Condition No. 5, which are hereby stricken.
20. The BOCC finds that it is in the best interests of the citizens of Pitkin County to approve this Resolution.
21. The BOCC further authorizes the Chair to execute this Resolution on behalf of the County.

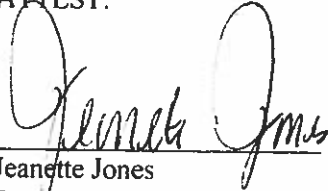
**NOW, THEREFORE, BE IT RESOLVED** by the BOCC that it hereby grants the appeal submitted by Castle Creek Investors Inc. and upholds the Castle Creek Investors Inc. Activity Envelope approval, subject to the conditions of Hearing Officer Determination No. 03-2018, as modified herein, which conditions shall run with the land and be binding on all successors in interest:

1. The Applicant shall adhere to all material representations made in the application or in public meetings or hearings and shall consider those representations to be conditions of approval, unless amended by other conditions.
2. The Applicant shall comply with all conditions of Hearing Officer Determination No. 03-2018, except as amended herein.
3. Finding No. 11 of Determination No. 03-2018 shall be eliminated.
4. Condition No. 3 of Determination No. 03-2018 shall include the following addition: The floor area of the new residential cabin shall be reduced by the floor area of the Lunch Cabin (270 square feet) unless Special Review approval is obtained pursuant to Sec. 5-20-70(i)(2).
5. Condition No. 5 of Determination No. 03-2018 shall be eliminated.
6. Failure to comply with the conditions of Determination No. 03-2018 and this Resolution may result in revocation of this approval or any subsequent permit(s) or approval(s) related to this property, or vested rights associated with this property.

**NOTICE OF PUBLIC HEARING PUBLISHED IN THE ASPEN TIMES WEEKLY on the 1st day of November, 2018.**

**APPROVED AND ADOPTED** on the 19<sup>th</sup> day of December 2018.

ATTEST:

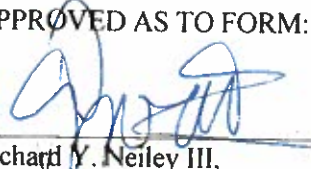
  
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Jeanette Jones  
Deputy County Clerk

BOARD OF COUNTY COMMISSIONERS  
OF PITKIN COUNTY, COLORADO

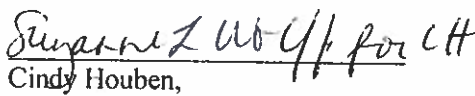
  
\_\_\_\_\_  
Patti Clapper, Chair

Date: 12-27-2018

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Richard Y. Neiley III,  
Assistant County Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Cindy Houben,  
Community Development Director

Attachment A

GENERAL JACKSON, TIMBER, JENNIE, BLACK DIAMOND AND PEARL  
LODES, U.S.M.S. NO. 6716 AND TILLE AND PRUDENCE LODES, U.S.M.S.  
NO. 6978. EXCEPT THAT PORTION THEREOF AS SET FORTH IN DEED  
RECORDED MAY 19, 1970 IN BOOK 248 AT PAGE 552.

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ATTACHMENT B



**DETERMINATION OF THE HEARING OFFICER OF THE COMMUNITY DEVELOPMENT  
DEPARTMENT OF PITKIN COUNTY, COLORADO, APPROVING THE CASTLE CREEK  
INVESTORS INC SUMMIT PARCEL ACTIVITY ENVELOPE**

Hearing Officer Determination No. 3-2018

**RECITALS**

1. Castle Creek Investors Inc. ("Applicant") has applied to the Pitkin County Community Development Director ("Director") to establish an Activity Envelope for future development of a cabin and associated improvements in the Rural/Remote zone district.
2. The application has been forwarded to the Hearing Officer for consideration, based on objections and concerns raised by adjacent property owner Larsen Family LP.
3. The property is located on the east side of Richmond Ridge. It is comprised of the General Jackson, Timber, Jennie, Black Diamond, and Pearl Lodes USMS 6716 and Tillie and Prudence Lodes USMS 6978, and is more specifically described in Attachment A. The parcel identification number is 27373100050.
4. The property is zoned Rural/Remote and contains 53.39 acres.
5. Through a review of the chain of title by a licensed attorney in the State of Colorado, the Applicant has demonstrated that the parcel was created prior to June 12, 1978, and has not merged with adjacent property, and, therefore, is exempt from growth management for one single family dwelling, subject to the limitations of the Rural/Remote zone district.
6. The Applicant has a lease agreement with Aspen Skiing Company for use of the property for powder tours in the winter. The tours utilize the "lunch cabin" and a vault privy on the property. The cabin does not contain utilities, or a kitchen or bath facilities. The vault privy was permitted and installed under Permit No. 02070 to comply with a condition of BOCC Resolution No. 110-2001 to abandon and replace the then existing outhouse.
7. Access to the parcel is taken directly from Richmond Hill Road. An existing driveway previously approved by the County provides access from Richmond Hill Road to the proposed Activity Envelope.
8. On April 17, 2018 at a duly noticed public hearing, the Hearing Officer continued the hearing to May 15, 2018. The Hearing Officer considered the application on May 15, 2018, at which time evidence and testimony was presented with respect to the application.
9. The Hearing Officer finds that the proposed Activity Envelope complies with the Land Use Code ("Code") as follows:
  - A. The Activity Envelope does not exceed ½ acre permitted in the R/R zone district pursuant to Sec. 5-10.
  - B. The wildfire hazard within the Activity Envelope is rated as medium and can be mitigated.
  - C. The Activity Envelope is comprised of slopes of less than 30%.

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- D. The Applicant commits to adhere to all of the Code provisions pertaining to water courses and drainage, sediment and erosion control, irrigation and groundwater, and to demonstrate compliance at the time of building permit application.
- E. There are no known or mapped regulated wildlife habitat areas on the parcel. Impacts to wildlife can be mitigated pursuant to Sec. 7-20-70.
- F. The parcel is not within any mapped geological hazard areas.

10. Winter maintenance of roadways and driveways is prohibited.

11. The Hearing Officer further finds that the existing "lunch cabin" utilized by Aspen Skiing Company for powder tours is not accessory to a future residential dwelling unit. Therefore it is a principal use. Only one principal use on the property is allowed. Therefore, prior to issuance of a building permit for a residential cabin, the existing "lunch cabin" structure and associated vault privy shall be removed.

**NOW, THEREFORE, BE IT RESOLVED** by the Pitkin County Community Development Hearing Officer that he does hereby approve the Castle Creek Investors Inc. Activity Envelope Review, subject to the following conditions, which shall run with the land and be binding on all successors in interest:

- 1. The Applicant shall adhere to all material representations made in the application or in public meetings or hearings and shall consider those representations to be conditions of approval, unless amended by other conditions.
- 2. Prior to submission of any future permit applications, the Applicants shall be required to submit for approval by the County Attorney and Community Development an Activity Envelope in accordance with Land Use Code Section 2-30-20(g) and Application Manual Section 2.1.1. The above referenced approvals shall be a condition precedent to finalization and recordation. The following changes shall occur to the proposed Activity Envelope:
  - A. Change the Title to "Castle Creek Investors Inc. Summit Parcel Activity Envelope"
  - B. Replace the BOCC signature block with the Hearing Officer signature block.
  - C. Include the legal description of the parcel.
  - D. Depict easements located on the property. Note that the easement on the Tillie mining claim has not been approved by Pitkin County for use and development.
  - E. Depict all improvements on the parcel, including the driveway to the Gregg property and all existing roads.
- 3. Prior to submission of any building permit applications, the Applicant shall be required to submit for approval an application for Site Plan Review, pursuant to Secs. 2-30-20 and 7-10-50 of the Code. The Site Plan Review application shall demonstrate compliance with the standards in Sec. 7-20-120(d) for development within the Scenic View Protection Area as seen from Highway 82. Approval of this activity envelope does not ensure approval of site plan review. With the Site Plan Review application, the Applicant shall also request Special Review approval to establish building setbacks.
- 4. The parcel is recognized to have one development right up to 1,000 square feet for a residential dwelling unit, plus additional floor area as allowed in the RR zone district pursuant to the Code.
- 5. Prior to issuance of a building permit for a residential dwelling unit, the Applicant shall obtain permits and remove the existing "lunch cabin" structure and associated vault privy.

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6. With the building permit application submittal, the Applicant shall:
  - A. Provide proof of an adequate water supply (in terms of quantity and availability) for domestic and fire protection purposes, and for irrigation purposes, if applicable.
  - B. Submit a drainage and erosion control plan for review and approval by the Planning Engineer. All historic and natural drainage patterns shall be maintained. Stormwater shall be detained onsite and allow infiltration of runoff prior to discharge.
  - C. Complete a fireplace/woodstove permit from the Community Development Department if applicable.
  - D. Submit a detailed revegetation plan for disturbed areas with appropriate seed mixes and a tree mitigation plan for removal of any trees with larger than 6" DBH if any such trees are to be removed.
  - E. Submit a detailed exterior lighting plan with the corresponding fixture cut sheets.
  - F. Pay the applicable road and employee housing impact fees.
  - G. Obtain an OWTS permit from Environmental Health.
7. The roads commonly known as the Little Annie Road and Richmond Hill Road in their present width and alignment as they traverse the property owned by the Applicant have historically been used by the public and Applicant shall not obstruct a continuation of such historic use by the public.
8. Winter maintenance of roadways and driveways is prohibited, except if the prohibition on plowing of limited service area roads is varied by the BOCC pursuant to the Road Maintenance and Management Plan.
9. The Applicant shall comply with the following standards for Development in a Moderate Wildfire Hazard Area:
  - A. Defensible Space: The area around all buildings/structures, limited by property boundaries that may limit a property owner's ability to comply with this section, shall incorporate landscaping with wildfire defensible space considerations as follows. Actual vegetation manipulation to meet these conditions may not be necessary where the natural vegetation patterns have already fulfilled these conditions:
    1. Brush, debris and non-ornamental vegetation shall be removed within a minimum ten-foot (10') perimeter around all structures.
    2. All branches from trees and brush within 30 feet of all structures (or to the property line) shall be pruned to a height of ten (10) feet above the ground with removal of ladder fuels from around trees and brush.
    3. Tree crown separation for coniferous trees shall be at least 10'. Tree crowns for aspen may touch and interconnect, as long as ladder fuels have been removed from beneath trees.
    4. Flammable mulches are not allowed within 2' of all structures. Aspen trees shall be at least 10' from the house.
    5. Up to 5 evergreen trees are allowed within 30' of all structures, but should be limbed to 10' and shall not have any flammable fuels underneath the trees. These trees shall be separated by at least 20', unless clumped together (no more than 3 trees in a



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- clump) in which case the clump shall be separated by at least 30' from another clump or individual tree.
6. No trees shall be within 15' of any window.
  7. All branches that extend over the roof eaves shall be trimmed and all branches within fifteen (15) feet of chimneys shall be removed.
  8. All deadfall up to a one hundred (100) foot perimeter or the property line shall be removed.
  9. The property owner shall be responsible for the continued maintenance of the defensible space vegetation requirements.
- B. Roofing Materials: Class A covering or Class A assembly as defined by the currently adopted Building Code. No wood shakes or shingles. All other adopted Building Code compliant methods and materials permitted. Roofs with less than a 3:12 pitch are not permitted unless they comply with the following:
1. All roof coverings shall be constructed of non-combustible materials and installed on a Class A roof assembly.
  2. All roof coverings shall have a surface that shall facilitate the natural process of clearing roof debris.
  3. Protrusions above the roofline, such as parapets, shall be prohibited.
  4. Roofs shall be installed as required by the adopted Building Code and shall have a minimum pitch of 1:48.
  5. All roof designs, coverings, or equivalent assemblies shall be specifically approved by the Fire Marshal prior to submittal of a building permit application.
- C. Roof Venting:
1. Soffit venting shall be located in the outer 1/3<sup>rd</sup> portion of the overhang.
  2. Attic, soffit and other roof venting shall be of non-corrosive metal mesh with maximum 1/4" openings.
- D. Projections at the Roofline, including Soffits, Rafters, Porch or Deck Roofs, Fascias, or Other: Sheath with non-combustible materials, or combustible materials underlain with 5/8" Type X gypboard or equal, or minimum 4x6 rafters with 2x T&G decking.
- E. Decks, Decking, Cantilevered Floors, or Other Projections Below the Roofline: Minimum 6x6 posts, 6x10 beams, 3x8 joists, 3x decking, and 2x railings, or equivalent log construction.
- F. Maintenance and Miscellaneous Requirements
1. Roofs and gutters shall be kept clear of debris.
  2. Roof vents shall be screened with corrosive resistant wire mesh, with mesh one-fourth (1/4) inch maximum.
  3. Any outbuilding shall adhere to the same wildfire requirements.
  4. Yards shall be kept clear of all litter, slash and flammable debris.
  5. All flammable materials shall be stored on a parallel contour a minimum of fifteen (15) feet away from any structure.

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6. Weeds and grasses within the ten (10) foot perimeter shall be maintained to a height not more than six (6) inches.
  7. Firewood/wood piles shall be stacked on a parallel contour a minimum of fifteen (15) feet away from the structure.
  8. Swimming pools and ponds shall be accessible by the local fire district.
  9. Fences shall be kept clear of brush and debris.
  10. Wood fences shall not connect to other structures.
  11. Fuel tanks shall be installed underground with an approved container.
  12. Propane tanks shall be buried, if possible, or installed according to NFPA 58 standards and on a contour away from the structure with standard defensible space vegetation mitigation around any aboveground tank. Any wood enclosure around the tank shall be constructed with materials approved for two (2) hour fire-resistive construction on the exterior side of the walls.
  13. Each structure shall have a minimum of one ten (10) pound ABC fire extinguisher.
  14. Addresses shall be clearly marked with two (2) inch non-combustible letters and shall be visible at the primary point of access from the public or common access road and installed on a non-combustible post.
  15. Utilities shall be extended underground.
10. All plants used for landscaping and revegetation shall be native species. Areas disturbed by construction shall be re-vegetated within one growing season of the project's completion. Landscaping shall be completed, or a financial guarantee in a form acceptable to the Community Development Director shall be submitted to ensure completion of landscaping prior to issuance of the Certificate of Occupancy for the residence.
11. The Applicant shall comply with the following conditions to mitigate impacts on wildlife:
- A. Native vegetation shall be maintained outside of the activity envelope.
  - B. Dogs shall be kenneled within fifty feet of the residential buildings or leashed under human supervision when outside a required kennel. Construction dogs are prohibited.
  - C. Landscaping shall not include nut, berry or fruit producing trees or shrubs to minimize an attractant to bears.
  - D. Trash/garbage shall be kept in an approved bear resistant container or enclosure as required by the County's Wildlife Protection Ordinance.
  - E. All outside doors shall utilize only solid round handled doorknobs unless another type is required by the applicable building code for disabled accessibility purposes.
  - F. Bird feeders, including hummingbird feeders, shall be hung away from any deck or window, and shall be at least 10' from the ground suspended between 2 trees or posts. All seed feeders shall include a seed catchment pan to catch discarded seeds. Bird feeders should be removed from April through November.
  - G. Fencing shall be prohibited, except for fencing immediately adjacent to the residence to contain pets or to fence a garden.
  - H. Retain tall, overly mature and standing dead trees whenever possible as nesting habitat.
  - I. Livestock (including horses) shall be prohibited.
12. The Applicant shall comply with the County's Noxious Weed Management Plan.
13. No development shall occur outside the approved activity envelope, with the exception of vegetation removal necessary to remove weeds or comply with the wildfire mitigation measures

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described above. In addition, a garden of not more than 2,500 square feet is permitted as outlined in section 3-40-20 of the Code. No structures shall be permitted outside of the approved activity envelope.

14. Prior to commencement of any earthmoving or construction activity, the Applicant shall stake the corners of the activity envelope and install construction fencing around the perimeter of the envelope. The fencing shall remain in place until issuance of Certificate of Occupancy. No vegetation shall be damaged or removed outside the activity envelope, except as may be required for wildfire mitigation purposes or weed management.
15. Areas disturbed by construction shall be revegetated no later than one growing season after completion of work.
16. The Applicant shall provide adequate engineering of any retaining walls over 4' in height. All retaining walls shall be a maximum of 7' in height.
17. No calculations for height, bulk, setback, size, floor area, or any other building and zoning requirements have been conducted. These requirements will be considered at the time of building permit. Any structures represented in the application may not be permitted under building and zoning regulations.
18. No development in excess of 30" above or below natural grade shall occur within the setbacks of the lot, as specified above and shown on the recorded Site Plan, with the exception of driveways and associated retaining walls of up to 6' above or below natural grade and fencing. Landscaping in the form of berms shall not exceed four feet from the most restrictive grade.
19. Failure to comply with the conditions of this approval may result in revocation of this approval, or any subsequent permit(s) or approval(s) related to this property, or vested rights associated with this property
20. Statutory vested rights for the approval contained herein are granted pursuant to the Pitkin County Land Use Code and Colorado Statutes, subject to the exceptions set forth in the Pitkin County Land Use Code § 4-140 and C.R.S., § 24-68-105. The statutory vested rights granted herein shall expire on May 17<sup>th</sup>, 2021.

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NOTICE OF PUBLIC HEARING PUBLISHED IN THE ASPEN TIMES WEEKLY on the 22<sup>nd</sup> day of March, 2018.

APPROVED AND ADOPTED this 17<sup>th</sup> day of May, 2018.

PUBLISHED AFTER ADOPTION FOR VESTED REAL PROPERTY RIGHTS in the Aspen Times Weekly on the 5 day of JULY, 2018.

COMMUNITY DEVELOPMENT  
DEPARTMENT HEARING OFFICER  
OF PITKIN COUNTY, COLORADO

By [Signature]  
Thomas Fenton Smith, Hearing Officer

Date 5.17.18

ATTEST:

[Signature]  
Bonnie Shiles, Administrative Assistant

APPROVED AS TO FORM:

[Signature]  
John Ely, Richard Y. Neiby  
Asst. County Attorney

APPROVED AS TO CONTENT:

[Signature]  
Cindy Houben,  
Community Development Director