



## AGENDA

### MEETING OF THE MINTURN PLANNING COMMISSION Minturn, CO 81645 • (970) 827-5645

**Meeting will be held via Zoom Conferencing and call-in.  
Public welcome to join meeting using the following methods:**

**Join from PC, Mac, Linux, iOS or Android:**

**<https://us02web.zoom.us/j/82454200964>**

**Phone:**

+1 651 372 8299 US

+1 301 715 8592 US

**Meeting ID: 824 5420 0964**

**Wednesday, August 26, 2020**

**Regular Session – 6:30 PM**

**CHAIR – Lynn Teach**

**COMMISSION MEMBERS:**

Jeff Armistead

Lauren Dickie

Burke Harrington

Christopher Manning

Jena Skinner

When addressing the Commission, please state your name and your address for the record prior to providing your comments. Please address the Commission as a whole through the Chair. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

### **Regular Session – 6:30pm**

**1. Call to Order**

- Roll Call
- Pledge of Allegiance

**2. Approval of Agenda**

- Items to be Pulled or Added

**3. Approval of Minutes**

- August 12, 2020

4. **Public comments on items, which are NOT on the agenda (5min time limit per person)**
5. **Planning Commission Comments**

### **DESIGN REVIEW AND LAND USE PUBLIC HEARINGS**

6. **Burke Harrington Construction New Conditional Use Permit Request for Contractor Storage Yard**  
**Burke Harrington, Applicant**  
The Applicant requests a public hearing of a Conditional Use Permit application encompassing a lease on Union Pacific Railroad Property for Contractor Storage Uses.

**Recommendation: Tabling**

### **PROJECTS AND UPDATES**

7. **Project Updates**
  - None
8. **Planning Director Report & Minor DRB Approvals by Director**
  - None
9. **Future Meetings**
  - September 9, 2020
  - September 23, 2020
10. **Adjournment**



**OFFICAL MINUTES**

**MEETING OF THE MINTURN PLANNING COMMISSION  
Minturn, CO 81645 • (970) 827-5645**

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**<https://us02web.zoom.us/j/83889374323>**

**Phone:**

+1 651 372 8299 US

+1 301 715 8592 US

**Meeting ID: 838 8937 4323**

**Wednesday, August 12, 2020**

**Regular Session – 6:30 PM**

**CHAIR – Lynn Teach**

**COMMISSION MEMBERS:**

Jeff Armistead

Lauren Dickie

Burke Harrington

Christopher Manning

Jena Skinner

When addressing the Commission, please state your name and your address for the record prior to providing your comments. Please address the Commission as a whole through the Chair. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

**Regular Session – 6:30pm**

**1. Call to Order**

- Roll Call

Lynn T. called the meeting to order at 6:30 pm.

- Roll Call

Those present at roll call: Lynn T., Jena S., Chris M., and Jeff A.

*Note: Lauren D. and Burke H. were excused absent.*

Staff Members Present: Town Planner Scot Hunn and Planner I Madison Harris.

- Pledge of Allegiance

## **2. Approval of Agenda**

- Items to be Pulled or Added

Motion by Jena S., second by Jeff A., to approve the agenda as presented. Motion passed 4-0.

*Note: Lauren D. and Burke H. were excused absent.*

## **3. Approval of Minutes**

- July 22, 2020

Lynn T. had two minor technical corrections.

Motion by Chris M., second by Jena S., to approve the minutes of July 22, 2020 as amended. Motion passed 4-0.

*Note: Lauren D. and Burke H. were excused absent.*

## **4. Public comments on items, which are NOT on the agenda (5min time limit per person)**

Brian Judge, 105 Edwards Village Blvd., Judge & Associates. – 165 Railroad Ave – Minturn International Trade Center Building.

Mr. Judge has had conversations with Staff about process. He is looking at the project as a two step project. Step 1: evaluate the building and bring it up to code. He had a building inspection done on the property and there are shortfalls that need to be addressed. There is very little info on the building, with work done on it over time with and without building permits. It is a 14,000 square foot building with a mix of residential units and office spaces. There are 5 active apartment units. He wants to do general site improvements and get a Certificate of Occupancy. Step 2: there is a lot of attic and basement space that isn't utilized. He wants to create 4/5 additional apartments in the building and a co-working main floor concept. He wants to activate the atrium space and improve the walkout basement level and turn it into a small, unique restaurant to activate the river facing section. He wants to increase to building footprint at the southwest corner with outdoor seating and dining. There will need to be a review of parking, but if one applies the philosophies of true mixed-use parking, then it can be worked through. They could maybe rent parking from the Railroad. There is a possibility of a landing zone or pedestrian bridge with a south facing access park. There will be a connection between the Saloon and 165 Railroad. He's looking into re-initiating the "whitewater park" concept. There are several encroachments onto the property, and no known easements. They would provide pedestrian access along the river and a pedestrian bridge. Offices would access from the north, and residents from the south.

Jeff A. thinks it looks great and there are a lot of good ideas being proposed. He is interested in parking as an issue. He commented about consideration of the restaurant. There may need to be some kind of discussion of how to address that. When using the term Phase 1 to get a certificate of occupancy, are you making everyone leave the building, bringing it up to code, and then bringing people back in? Or just working

around tenants?

- Mr. Judge said that the building is very empty now with maybe 6 tenants. 2 or 3 tenants that have shown an interest in staying while the rest haven't paid rent in a while. There is one long term apartment tenant who has lived there since 2012 that they want to accommodate. They want the tenants there to stay, so there will be creative solutions to keep them there.

Jena S. asked when they are scheduled to close.

- Mr. Judge said that the title is an issue on this property. Property boundary work needs to be clarified. It is currently slated for September 15. The focus is on Step 1: making a safe building.

Jena S. stated that parking should be dedicated to tenants first and foremost. She likes the improvements and thinks it is completely doable and heading in the right direction.

Lynn T. likes the idea and appreciates what he is doing.

Mr. Judge said that the restaurant is energizing something without the need for a huge impact. He will contact Staff in the next couple of days.

## 5. Planning Commission Comments

No Planning Commission comments.

## DESIGN REVIEW AND LAND USE PUBLIC HEARINGS

### 6. 540 Taylor Avenue – Engel-Perkins Final Plan Review Continued from July 22, 2020 Meeting

**Allie Perkins and Andrew Engel, Property Owners and Applicants, with Representative Weston Bierma, Range Mountain Homes**

The Owners/Applicants request final plan review and approval for 540 Taylor.

**Recommendation:** Approval with Conditions

Scot H. summarized what happened at the last Planning Commission meeting. Andrew and Allie came before Planning Commission three weeks ago. There was a question of what was allowable in the side yard setbacks. When the Town updated specific requirements Article 2, there was some verbiage that detailed allowable encroachments. In the amendment of the language, that was accidentally deleted. In the old version of the code, what wasn't allowed was above ground improvements. What was in question was a window well and a retaining wall that is part of the site grading and retainage. According to Staff's interpretation of the Code, these are allowed. In speaking with Burke H. earlier in the week, he was fine with Scot H.'s interpretation.

Weston Bierma, Range Mountain Homes, stated that there is an updated topographical map. They are probably in position to submit for building permit, and have taken into account all comments given.

Scot H. pointed out Intermountain Engineering's comments on lessening the driveway and increasing snow storage.

- Mr. Bierma said they can snow melt later if they need to.

Jeff A. stated he was fine with it as long as everything is addressed. Does SafeBuilt still review building plans?

- Scot H. said no, it is now Colorado Code Consulting (CCC) out of Leadville.

Jeff A. asked who reviews this then?

- Scot H. said Public Works, Intermountain Engineering, CCC, and the Planning Department all review the new plans.

Jeff A. said as long as everything is addressed in the engineering report he approves.

- Scot H. pointed out to the applicants that a written cover sheet addressing everything that has changed would be helpful.

Jena S. was glad the survey is getting into alignment. She trusts that Staff will review everything and make sure the landscaping isn't on any drainage pipes so no roots will interfere.

Chris M. stated that all of his questions were answered.

Lynn T. said that as long as impervious coverage is under 50% she is ok with the project.

Jeff A. said that given that the window well and retaining wall are in the setback there should be some agreement with the neighbors because of disturbance in the implementation of that.

Mr. Bierma said they reached out to Century Link to get rid of the abandoned line.

Scot H. is trying to start the practice of a preconstruction meeting where we meet out on site with construction contractor, general contractor, etc. to lay out a plan of what to expect and how to control erosion and keep everything to do with the construction on the owner's property.

- Mr. Bierma said that he often would have those types of meetings after erosion control is implemented.

Motion by Jeff A., second by Jena S., to approve with conditions 540 Taylor Avenue Engel-Perkins Final Plan Review continued from July 22, 2020 meeting. Motion passed 4-0

*Note: Lauren D. and Burke H. were excused absent.*

1. The Applicant shall revise the site, grading and drainage plans to address comments outlined in a letter by B. Stempihar, Intermountain Engineering, dated July 16, 2020.

2. The Applicant shall revise the site and landscape plans to show a reduced width for the driveway along with increased landscaping/snow storage areas.
3. The Applicant shall revise the floor plans and elevation drawings to show all proposed exterior lighting fixture locations.

5 minute recess called at 7:17 pm. Resumed 7:24 pm.

## PROJECTS AND UPDATES

### 7. Project Updates

- Chapter 16 – Summary

Scot H. stated that Staff and Planning Commission started delving into Chapter 16 in late September/ early October of 2019. We've looked at uses, lot standards and requirements, definitions, and would like to clean up Administrative section. We would like to get through this to get to the next step which is integrate these changes to the draft created 2 years ago. This is just to confirm the changes made so far so as to start integrating them into the new Chapter 16.

Jeff A. said the only issue is lot size and buildable/allowable percentages.

Scot H. was encouraged by Town Manager Michelle Metteer to get the Council's temperature on growth/redevelopment strategies. Council does want to increase that so that preexisting nonconforming lots in Old Town Residential Zone District are allowed to make certain improvements to their property. We need to figure out how to do that. We need to come up with the right language.

Jena S. said that there could be some good intention, public benefit that would allow deviation from the Code without going through the process of the variance.

Lynn T. doesn't mind Building Coverage going to 45% from 40%, but then people will ask for variances beyond that.

- Scot H. stated that he can isolate Old Town Residential and increase the allowable coverage for that zone district to 45%. He can't guarantee that people won't come in for variance requests, but this gives a little more room. For most lots we are just talking about an extra 200 square feet which isn't much. At the staff level there is work to do to figure out the direction from Council for flexibility.

Jena S. hasn't experienced a return of people who keep coming back and asking for more. We need to build in flexibility because someone can't buy lots in town at the prices they are at if they need to tear down and rebuild. We need to work to keep people in Town. We need to be efficient in maintaining the houses that are here.

Jeff A. stated that the intention was never to do away with variances. We need to allow

for a little bit of growth if need be. Not a blanket allowance, but a provision to allow for some redevelopment. Not a use by right, but almost a conditional extra 5%. It will reduce the amount of variances, but still keep the process in place.

Lynn T. doesn't want to increase lot coverage in the downtown.

- Scot H. doesn't recall any changes to lot coverage being decided in the discussions on Old Town Commercial/100 Block so that won't be included in the draft. Just maybe a 0 lot line front setback. In discussions with Kit Austin there were talks about lowering building height on Main Street to 26', keeping the 45 degree angled bulk plane, and then stepping back and stepping up.

Lynn T. said there were discussions in varying setbacks last fall in order to not just have one straight line of buildings.

Jena S. recommends that we have the practice of utilizing conditions set in minutes to hold people to what they agree to.

Scot H. has been struggling with the 100 Block. Kit Austin has done great work, but he is the architect of a major land owner in the 100 Block. Scot H. has gotten the greenlight from Town Manager Michelle Metteer to conduct a virtual charrette for the 100 Block. The discussion would be on varying setbacks, protecting character, pedestrian realm, bulk plane, and making sure that Williams Street is not effected negatively.

Lynn T. asked if we needed to look into the fact that several zone districts do not have impervious standards?

- Scot H. said that those gaps have been filled by proposed standards.

Scot H. said that these are the new proposed Commercial, Residential, and Mixed Use zones.

R-1	Old Town Residential Zone
R-2	South Town Residential, Game Creek Residential Zones
R-3	Martin Creek Residential Estate Zone
R-4	Cross Creek Residential – North Zone
R-5	Cross Creek Residential – South Zone
R-6	Multi Family (Towne Homes, Enclave, Trout Club)
C-1	Grouse Creek Commercial
C-2	Old Town Commercial Zone, South Town Commercial Zone
C-3	100 Block Commercial Zone
MU-1	Old Town Mixed-Use, Cross Creek Mixed-Use Zones



Scot H. wanted to confirm that we should let the dimensional limitation dictate bulk and mass. Why would we limit ADU space?

- Jeff A. said that as long as the math work then there shouldn't be a limit on square footage.
- Jena S. said that one unit should be slightly larger to remain the primary unit, but otherwise they should fit within the limitations.

Scot H. pointed out that there had been a suggestion to remove Single Family and Duplexes as a Use by Right from the Mixed Use Zone District.

- Jena S. said that it isn't taking anything from anyone, just when someone want to scrape and rebuild, they have to rebuild to commercial standards.

Scot H. said that Form Based Code might be something that we look into.

Discussion ensued about Single Family homes in a Mixed Use Zone District.

Scot H. asked what the Planning Commission thought of making Accessory Apartments and/or Employee Housing a Use by Right instead of Single Family and Duplexes. That way it would be Commercial first, but still allow Residential.

- Jena S. really likes the idea.

Jeff A. said that we need to have more specific language regarding what triggers the need to bring a pre-existing, nonconforming structure up to Code. Not just "demolished" as that is ambiguous.

- Scot H. said that Staff has direction from Council to look into that language.

Scot H. said that we have come to consensus regarding Building Coverage in the Mixed Use Zone District being 70% which allows for both Commercial and Residential uses on the same lot.

Jeff A. pointed out that the issue is parking.

The Planning Commission would like to have a discussion with the developer of and people who are from South Town Buena Vista as there are a lot of similarities between there and Minturn.

## **8. Planning Director Report & Minor DRB Approvals by Director**

- None

## **9. Future Meetings**

- August 26, 2020
- September 9, 2020

**10. Adjournment**

Motion by Chris M., second by Jena S., to adjourn the regular meeting of August 12, 2020 at 8:25 pm. Motion passed 4-0.

*Note: Lauren D. and Burke H. were excused absent.*

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Lynn Teach, Commission Chair

ATTEST:

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Scot Hunn, Planning Director

Minturn Planning Department  
Minturn Town Center  
302 Pine Street  
Minturn, Colorado 81645



Minturn Planning Commission  
Chair – Lynn Teach  
Jeff Armistead  
Lauren Dickie  
Burke Harrington  
Christopher Manning  
Jena Skinner

## Planning Commission Public Hearing

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### Burke Harrington Construction

### Conditional Use Permit for Contractor Storage

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<b>Hearing Date:</b>	August 26, 2020
<b>File Name and Process:</b>	Burke Harrington Construction Conditional Use Permit
<b>Owner/Applicant:</b>	Union Pacific Railroad / Burke Harrington, BHC
<b>Representative:</b>	Burke Harrington, Darin Tucholke
<b>Legal Description:</b>	N/A
<b>Zoning:</b>	Game Creek Character Area PUD Holding Zone
<b>Staff:</b>	Scot Hunn, Planning Director Madison Harris, Planner I
<b>Recommendation:</b>	<b>Tabling</b>

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### Staff Report

#### I. Summary of Request:

The Applicant, Burke Harrington, requests review of a new Conditional Use Permit for leased portions of the Union Pacific Railroad (UP) property to allow for contractor storage and contractor parking generally located approximately .2 miles north of the Turntable Restaurant, east of the Meadow Mountain Business Park and the Eagle River, and just west of the rail line.

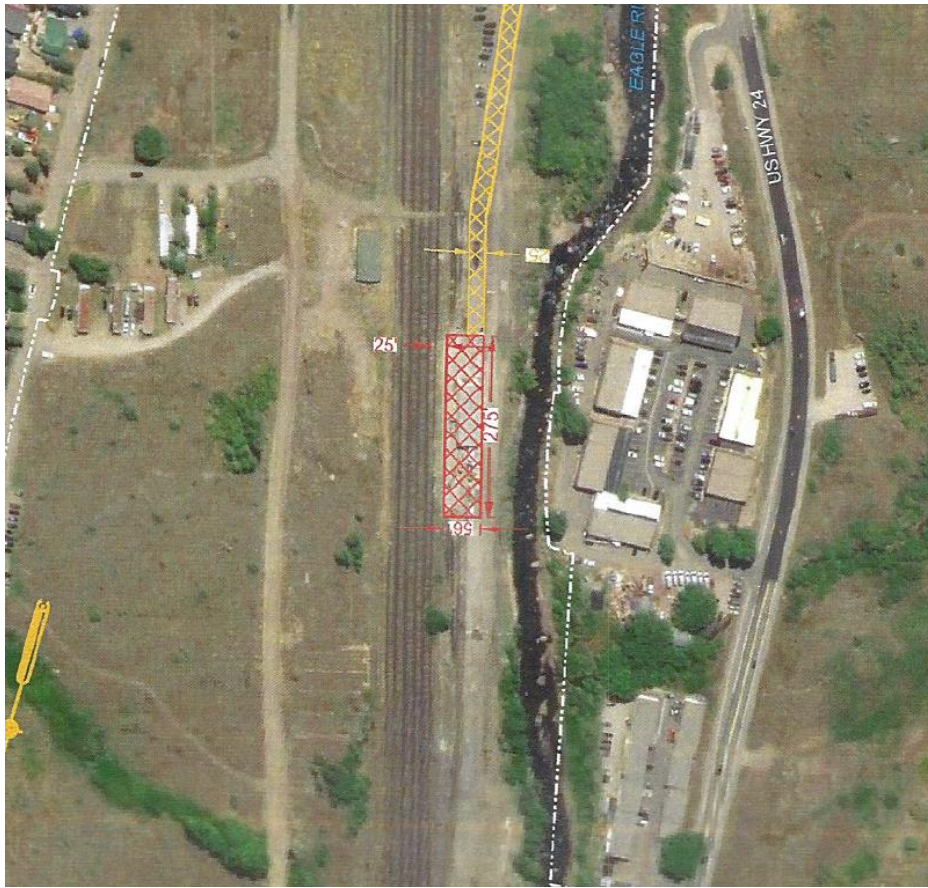


Figure 1: Vicinity Map

BHC has leased different properties from UP over the past 20 years for contractor storage uses. The current location of BHC operations on UP property, which is located closer to the Minturn Municipal Parking Lot, includes several buildings or enclosures where the majority of equipment and materials associated with BHC business operation are stored. The new location is intended to allow additional storage for BHC, mainly within an existing building.

While the Applicant proposes to continue to use and maintain the lease area associated with his first CUP, he is now proposing to use another lease area located further north within the UP property for additional storage associated with the same business. The current proposal by the Applicant includes:

1. Use of an approximately 2,700 square foot building in a 15,400 square foot lease area for storage of construction related equipment and materials.
2. Use of fenced area surrounding the building for parking of business-related vehicles.



**Figure 2: Lease Area Boundary**

The proposal also includes uses by Darin Tucholke, a sub-lessor or co-signer on the lease who will also use the area for storage of vehicles and equipment associated with another local business. From the application, the following description is provided by the Applicant:

*“The building will be used for construction material, vehicle, and tool storage for or related to Burke Harrington Construction. The leased area will be fenced and screened. There is very little or no activity on a daily basis. We do not run our company from this property so there is no employee parking or worker impact. We also use the building storage for personal and household goods that change with the seasons and storage of client belongings when renovating properties. It is a big convenient indoor space that meets our needs.”*

As outlined within this report, **staff is recommending tabling** of this review until such time that the Town can complete annual compliance reviews for all existing CUPs on UP property in the fall 2020.

## **II. Summary of Process and Code Requirements:**

This is a Conditional Use Permit (CUP) review by the Town of Minturn Planning Commission, acting as the Town of Minturn Zoning Board of Appeals – the body responsible for review of

CUPs and for forwarding recommendations to the Town of Minturn Town Council for approval, for approval with conditions, or denial of CUP requests in accordance with the standards, criteria and findings outlined in Section 16-21-620 – *Conditional Use*, Minturn Municipal Code.

Specifically, the Planning Commission’s recommendation and any action of the Town of Minturn Town Council should be based on the following standards and findings:

*(e) Conditions and procedure of issuance.*

- (1) The Town Council may approve the application as submitted or may approve the application subject to such modifications or conditions as it deems necessary to accomplish the purpose of this Article, or the Town Council may deny the application*

*(d) Administrative procedure.*

- (1) Upon receipt of a completed and proper application, the Planning Director shall set a public hearing for the Planning Commission and give public notice as required by this Chapter.*
- (2) Criteria; findings. Before acting on a conditional use permit application, the Planning Commission and Town Council shall consider the following factors with respect to the proposed use:*
  - a. The relationship and impact of the use on the community development objectives of the Town.*
  - b. The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.*
  - c. The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.*
  - d. The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.*
  - e. Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:*
    - 1. That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.*

2. *That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*
3. *That the proposed use will comply with each of the applicable provisions of this Chapter.”*

### **III. Chronology/Background:**

In 2017, the Minturn Town Council listed compliance and enforcement of the Minturn Municipal Code, as well as adherence to recommendations of the 2009 Community Plan, as a priority for the entire town. In doing so, the Council also focused on uses and, in certain instances, ongoing code enforcement and nuisance-related issues occurring at the UP properties located within the “Game Creek Character Area PUD Holding Zone District” which is generally situated north of the Eagle River Inn and Saloon buildings, west of Taylor Avenue, and east of the Eagle River.

In order to address such issues and concerns, the Town initiated outreach to existing leaseholders on UP property in 2017 with several existing lease holders operating contractor storage, as well as commercial uses (Turn Table Restaurant and lodging uses) on UP property with the goal to allow those uses to continue, but only via the approval of Conditional Use Permits (CUPs) as a means to regulate those uses more closely through the imposition and enforcement of “conditions” or standards for storage (fencing, screening, hours of operation, for instance).

According to the Minturn Municipal Code, any uses occurring on the UP properties – located within the “Game Creek Character Area PUD Holding Zone District” - require the approval of a Planned Unit Development (PUD), or, if master planning the UP property is not proposed, a Conditional Use Permit. Unfortunately, UP has been largely uninvolved in the CUP process; typically, UP executes leases for various lease areas within the railroad property without consultation with the Town, leaving the Town to discover 1) new leases and uses occurring in the railyard through code enforcement activity, and 2) changes in lessors (subleasing) making it difficult for the Town to determine who to contact as a matter of code compliance.

Conditional Use Permits were ultimately issued in late 2018 for the following business entities operating with leases on the UP property:

- Burke Harrington Construction (BHC)
- Happy Hammer Carpentry (Cozzens Construction)
- The Turntable Restaurant / Minturn Mountain Motel
- Minturn Builders Alliance Cooperative

The CUPs were approved with the following conditions or standards:

1. Request that only business- related items related to the expressed business be located on leased property. No vehicle shall exceed 40' 2" in length.
2. No recreational vehicles or ATV' s of any kind. Not limited to boats, snowmobiles,

- ATV' s. RV' s, campers, pop-ups, conversion vans, trailers, un-related work vehicles, etc.
3. No inoperable / unlicensed vehicles kept on property for longer than five (5) days. Sec. 7-2-70.
  4. Leased lots to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. Sec. 7-4-50.
  5. Lessees are to maintain business in contained areas only.
  6. Annual report by the Code Compliance Officer to Council — re: Violations
    - a. 3 violations in 1 year
    - b. Recommendation to Council to revoke CUP
  7. Lessees to meet with Town Council every 3 years for CUP review.
    - a. Report from Code Compliance Office
    - b. Report from Planning Director
  8. Hours of operation: 7 days a week. 7:00 a.m. to 7:00 p.m.
  9. Maintain noise and vibration standards. Sec. 16-18-30
  10. All leased areas to be fenced and screened (Green covering) on all perimeter fencing of leased property
  11. Supplies, parking, vehicles, and equipment within fenced area or designated leased area only
  12. Proper fuel containment/inspected by Eagle River Fire Protection District for small volume (less than 100 gallons) in OSHA approved containers.
  13. All parking must be done within the fenced yard and/or building
  14. Any chemical storage will require material safety data sheets. No chemical storage within 30' river setback
  15. Emergency access of 20' through the yard and at both access gates
  16. Off-season use will require site storage of snow and keeping emergency access cleared.
    - a. Maintain proper snow storage or sufficient snow removal
  17. Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.
  18. Town staff inspects the site for compliance at any time.

Following approval of the CUPs, no significant code enforcement investigations or actions (notices of violation) on UP property were necessary or taken in 2019, with business activities occurring on each lease site in general compliance with the approved CUP terms of use.

However, in Spring 2020 the Town began receiving complaints regarding the state of some of the lease areas. Complaints and investigations by the Town identified issues related to:

- A lack of 100% screening (or lack of maintenance of green mesh fabric on fencing) of lease area boundaries
- Noise and/or hours of operation
- Use of sites for operation contractor yards rather than for “contractor storage”
- Parking of unregistered/unlicensed vehicles
- Storage of non-business-related vehicles, trailers and equipment



Following investigations by the Town, two CUP holders – Burke Harrington Construction and Minturn Builders Alliance – were notified of violations of the terms of their respective Conditional Use Permits.

### **General Chronology:**

- **September 2018** – Business owners operating on UP property applied for Conditional Use Permits to continue contractor storage/light industrial uses.
- **November 2018** – Following public hearings before the Planning Commission and Town Council, the Council signed resolutions permitting these uses conditional on adherence with the approved contractor standards.
- **December 2019** – Burke Harrington Construction obtains a new lease through Union Pacific Railroad but no update of a new lease or CUP application is received by the Town.
- **May 2020** – The Town received several complaints regarding the storage of non-work-related vehicles, the absence of fencing and/or green screening around lease area boundaries, and the operation of machinery outside of specified operating hours 7am-7pm.
- **June 2020** – Site visits were conducted with Minturn Builders Alliance representative and Burke Harrington to discuss issues of non-compliance.
- **June 2020** – Letters were sent to these CUP holders (Minturn Builders Alliance and Burke Harrington Construction) detailing specific areas of non-compliance and providing a warning period to correct the potential violations before official violation notices were sent.
- **July 2020** – Two violation notices were sent to Burke Harrington Construction for failure to remove a non-work-related vehicle and for failure to erect screening fence.
- **August 2020** – Burke Harrington Construction installs fencing and mesh screening material while also removing the offending vehicle on the existing CUP lease area.
- **August 2020** – Burke Harrington Construction applies for a new Conditional Use Permit for contractor storage at the proposed lease site.

### **IV. Zoning Analysis:**

#### **Zoning**

The subject property is located within the “Game Creek Character Area” PUD Holding Zone District. The description and purposes of the PUD Holding Zone District are as follows:

#### ***Sec. 16-12-10. - Character Area characteristics.***

*The Game Creek Character Area is visually prominent from the north entryway into the Town. The area is predominantly devoted to railroad use and will require a comprehensive planning effort prior to redevelopment. In addition to the rail yard, the area contains the Taylor Avenue neighborhood, some commercial uses and a community parking lot. The area is bisected by the railroad right-of-way, which is intended to remain as a continuous transportation corridor. Most of the area lacks adequate street rights-of-way and utilities. The Community Plan has identified this area as an appropriate area for extension of the Old Town commercial core, mixed-use and residential development; however, high impact industrial uses are discouraged. Enhancement of the Eagle River corridor is a community priority.*

**Sec. 16-12-30. - Game Creek PUD Holding Zone.**

- (a) *This area is currently owned by the Union Pacific Railroad; however, trains are no longer utilizing the corridor or the rail yard. **The historic industrial zoning is no longer appropriate due to the probable abandonment of the rail line and potential conflict with future commercial and residential development.** Redevelopment of this area will have a significant impact on the future character and size of the Town.*
  
- (b) *It is an objective of the Town to plan and redevelop the rail yard as a master planned development that is compatible with the existing Town character. Future development and land use decisions for this area need to incorporate community input and involve an open public process. The PUD Holding Zone and the PUD review process will provide for the flexibility, innovation and public input necessary to achieve the goals and objectives of the Community Plan and this Chapter. This area has been identified in the Community Plan as an area suitable for expansion of Old Town and as a "potential Town Center" site. Development in this area needs to incorporate appropriate residential and low-impact land uses along Taylor Avenue to minimize impacts to the existing neighborhood. The rail corridor should be maintained and improved access to and across the Eagle River should be incorporated into proposed development plans.*
  
- (c) *PUD or special review required: Planned Unit Development master development plan for the PUD Holding Zone is the preferred review process for future development of the Game Creek Holding Zone. **If circumstances arise that do not provide for the submittal of a PUD master development plan for the entire Game Creek PUD Holding Zone, the owners may apply to the Town for a Planned Unit Development on a portion of the property or may apply for a special review use permit for consideration of a temporary use.***

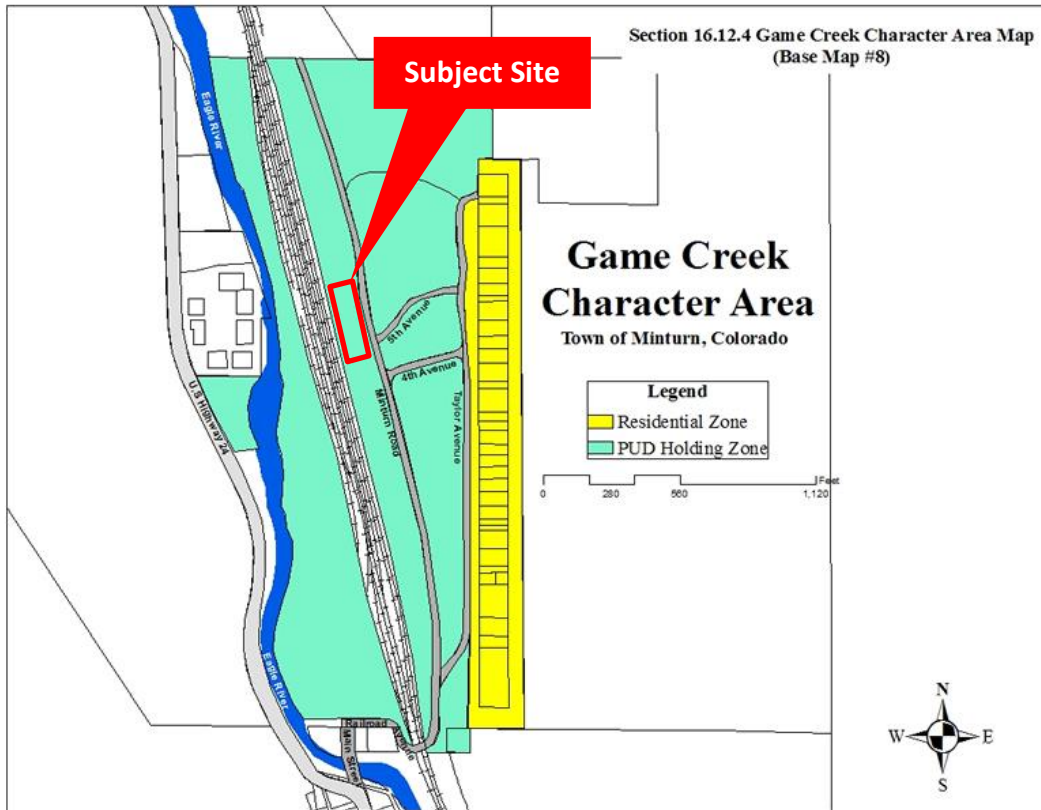


Figure 3: Game Creek Character Area Zoning Map

### Dimensional Limitations and Development Standards

The only applicable dimensional limitation and/or development standard for the PUD Holding Zone is the 30’ river setback to be measured from the mean highwater mark on the Eagle River. The lease area boundary for the proposed Burke Harrington Construction Conditional Use Permit is located approximately 50 feet from the Eagle River.

Because it is anticipated by the Town that any future development or redevelopment of the holding zone will be master planned and reviewed as part of a Planned Unit Development (PUD) or special use permit, dimensional limitations and other standards are also anticipated to be established as part of any such review.

The Town of Minturn Design Standards and Guidelines, under Section C – *Design Criteria*, subsection ‘c’ – *Materials and Screening*, offers the following guidance:

#### c. Screening

*Both residential and commercial areas within the Town shall be required to screen certain visually obtrusive areas, including, but not limited to, refuse storage, general storage, loading areas, mechanical equipment and parking areas.*

*“The screening may occur with landscaping, compliant with Sections 16-16-140, 16-16-150 and 16-16-160, or these uses may be screened with fencing or by*

*containing the uses within a structure or parapet walls. Fences shall not exceed 3-feet in height for opaque fences and 4 feet in height for fences with you can see through. Higher fences may be used to screen the sides and rear of the lot but should not exceed 6 feet in height. In no case shall a fence or screening structure obstruct a driver's view of an intersection.”*

## **V. Issues and Discussion Topics:**

### **Visibility / Unsightliness**

While a majority of equipment associated with the business is to be stored within an existing building, areas outside the building and within the lease area will be used for storage and parking of vehicles as well. This area is visible from certain vantage points from Taylor Avenue residential zone district and U.S. Highway 24.

The Applicant signed a lease with UP in late 2019 for the new location but is only now applying for a CUP. Prior to applying for this CUP, the Applicant started to install chain link fencing and intends to install green mesh screening. As with CUPs approved in 2018, certain conditions and standards directed at ensuring that the site is maintained in an orderly fashion and also limiting the storage of certain equipment and/or vehicle types and sizes will apply to this CUP.

An advantage in this case – for the Applicant and the Town – is the fact that the existing building is fully enclosed, in relatively good repair, and, therefore, should serve to reduce any impacts from the storage of materials.

## **VI. Staff Findings and Analysis:**

The following section provides staff responses to each of the applicable Conditional Use criteria.

### **a. *The relationship and impact of the use on the community development objectives of the Town.***

#### **Staff Response:**

Under “Community Character / Urban Design” of the 2009 Community Plan (the Town’s comprehensive plan), strategy number CCS 1.8 states – *“Enforce ordinances aimed at maintaining the health, safety, welfare and aesthetic of the town – snow, trash, nuisance abatement and zoning/land use.”*

Under “Economy” of the 2009 Plan, the Economy vision statement states, in part, that *“A diverse mix of businesses catering to the local community and tourist are necessary for a stable, year-round economy. Special efforts should be made to promote the existing businesses in town and to also facilitate new business development.”*

In 2018, the intent of the Town – working *with* existing lease holders to identify and propose solutions to existing conditions and issues – was to provide the CUP process so

that existing uses could continue as a means to protect existing business operations in the Town and, therefore, to maintain the diversity and mix of businesses, contribute to the year round economy, and protect the health, safety, welfare, and the aesthetics of the town. Testimony and participation at public hearings before approval of the CUPs lead to the development of the contractor storage standards and terms of use that were attached to the CUPs as conditions of approval.

However, in the interim year and a half, compliance with those conditions – and maintenance of the sites - has waned or was never fully realized. In 2020, this has resulted in numerous complaints being received by the Town and has caused the Town to spend considerable time and resources responding to those complaints while increasing monitoring of business operations and existing conditions at all of the existing CUP lease areas.

The UP property – and the lease areas - is one of the first things people see when they enter Town from the North, and often it is not an aesthetically pleasing sight. While it is true that this is a unique piece of land which allows light industrial/contractor storage uses that are not permitted elsewhere in Town and thus adds to the diversity and mix of businesses, it has become apparent that more work is needed to ensure that such uses can remain in this area while not becoming a detriment to the image of the town, the enjoyment of adjacent or nearby properties, or the resources and efficacy of the Town government.

In accordance with the terms of CUP approvals for the contractor storage uses on UP property, the Town will be conducting an annual review of each existing CUP in fall 2020, nearly two years following their original approval. Staff anticipates that as part of this review process the Town will re-examine the 18 conditions or standards/terms of use to better understand which standards are “working” or enforceable, and which are not.

For these reasons, staff is recommending that the Planning Commission *table* its review of the proposed Burke Harrington Construction Conditional Use Permit application until such time that the Town can conduct reviews of each of the existing CUPs to ensure that any new or additional conditional uses approved on UP property are properly conditioned; that such conditions can be enforced by the Town cooperatively with the CUP holders to increase compliance and minimize future impacts; and, that oversight of the CUPs does not continue to be a drain on Town resources.

- b. The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.*

**Staff Response:**

The operations of Burke Harrington Construction, inclusive of parking and requested storage uses within the lease boundaries, likely will have minimal material impact or effect on the distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and/or needs.

- c. The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.*

**Staff Response:**

Use of the proposed lease area for contractor storage associated with an existing business in close proximity to an existing storage site associated with the same business will likely not result in a material increase in local traffic, congestion, pedestrian safety, traffic flow and control, access, maneuverability and snow removal in the immediate vicinity of the subject property. However, the proposal also includes uses by a sub-lessor/co-signer who will also use the area for storage of vehicles and equipment associated with another local business. It is unknown what level of additional traffic will be generated by this sub-lessor.

- d. The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.*

**Staff Response:**

Staff believes that the main factor impacting the character of the surrounding area or, importantly, the compatibility of the use within the Game Creek Character Area is the visual or aesthetic quality of the lease area. The Applicant has stated that his intent is to primarily utilize an existing building for storage of materials and equipment; and, to not use the lease area outside that building but for occasional parking of personal vehicles. Fencing/screening has already been erected around the lease area boundaries. No additional site (exterior) lighting is proposed with this CUP request and staff does not anticipate that the use of the building will generate noise, glare, or dust; simply, the proposal does not include any activities outside the building other than parking of vehicles associated with two local businesses.

- e. Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:*
- 1. That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.*

**Staff Response:**

Generally, the subject site is located within a historically industrial and commercial area. Yet, the Town's master plan and guiding policy statements for the Game Creek Character PUD Holding Zone anticipate the discontinuance of industrial uses in favor of commercial and residential re-development:

*“The Game Creek Character Area is visually prominent from the north entryway into the Town. The area is predominantly devoted to railroad use and will require a comprehensive planning effort prior to redevelopment. In addition to the rail yard, the area contains the Taylor Avenue neighborhood, some commercial uses and a community parking lot. The area is bisected by the*

*railroad right-of-way, which is intended to remain as a continuous transportation corridor. Most of the area lacks adequate street rights-of-way and utilities. The Community Plan has identified this area as an appropriate area for extension of the Old Town commercial core, mixed-use and residential development; however, high impact industrial uses are discouraged. Enhancement of the Eagle River corridor is a community priority.”*

- Town of Minturn Municipal Code Section 16-12-10

It should be noted that the Community Plan does provide goals and strategies geared toward supporting existing businesses, and the uses proposed for this CUP primarily include storage within an existing building. As such, staff suggests that the use proposed does not constitute “high impact industrial uses.”

A primary purpose of the Conditional Use Permit review is to ensure that permitted uses are, in effect, temporary and inspected on some regular basis for compliance; that, any such approval granted by the Town is valid so long as the terms and conditions are adhered to which has been an issue with existing contractor storage CUPs in recent months requiring more staff time than originally anticipated.

For these reasons, staff is recommending that the Planning Commission *table* its review of the proposed Burke Harrington Construction Conditional Use Permit application until such time that the Town completes a review of existing CUPs.

- 2. That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

**Staff Response:**

Generally, the location and uses proposed, if properly conditioned, should not be detrimental to the public health, safety or welfare, nor should they be materially injurious to the properties or improvements in the vicinity if the site is maintained in accordance with the standards of the Minturn Municipal Code and any conditions of approval.

- 3. That the proposed use will comply with each of the applicable provisions of this Chapter.*

**Staff Response:**

If appropriate conditions of approval are attached with any granting of a CUP in this instance, and if such conditions are enforceable (jointly) by the Town and the Applicant, staff believes that this finding can be met.

**VII. Staff Recommendation:     **Tabling****

Staff suggests that, due to ongoing issues related to code compliance and enforcement of existing CUP terms of use issued for several lease holders on UP property – and because of the Town’s interest in reviewing each of those existing CUPs for conformance as part of an annual review to occur in October 2020 – the review of the Conditional Use Permit for Burke Harrington Construction be **tabled until a date certain** to allow for the Town to evaluate existing uses, as well as the criteria/standards that were originally established for contractor storage uses in the Game Creek Character Area to ensure that, as intended, the criteria are achieving the correct results for CUP holders, adjacent property owners and the Town.





# CONDITIONAL USE PERMIT APPLICATION

TOWN OF MINTURN PLANNING AND ZONING DEPARTMENT

P.O. Box 309 - 302 Pine Street- Minturn, Colorado 81649-0309

Phone: 970-827-5645

Email: [planner@minturn.org](mailto:planner@minturn.org)

**Project Name:**

Burke Harrington Construction

**Project Location**

Street Address: 400 N Main St

Legal Description (Lot, Block, Subdivision):

Parcel Number(s):

**Application Request:**

Construction storage building. Fencing and screening will be around leased area.

**Applicant:**

Name: Burke Harrington

Mailing Address: POB 425  
Minturn, Co. 81645

Phone: 9703762256

Email: [office@bhcvail.com](mailto:office@bhcvail.com)

**Property Owner:**

Name: Union Pacific Railroad

Mailing Address: 1400 Douglas St MS1690  
Omaha, Nebraska 68179

Phone: 4025442255

Email: [aldancer@up.com](mailto:aldancer@up.com)

**Required Information:**

Lot Size: 15,400 sq ft	Type of Residence (Single Family, ADU, Duplex)	# of Bedrooms 0	# On-site Parking Spaces
# of Stories: 2	Snow storage sq ft: a lot	Building Footprint sq ft: 2700	Total sq ft Impervious Surface:

**Signature:**

\$800+Costs attributable to the review by consultant time are billed at actual hourly rates. Cost assessed after first hour.

Fee Paid: \_\_\_\_\_ Date Received: \_\_\_\_\_ Planner: \_\_\_\_\_

Burke  
**HARRINGTON CONST.**



**BHC**

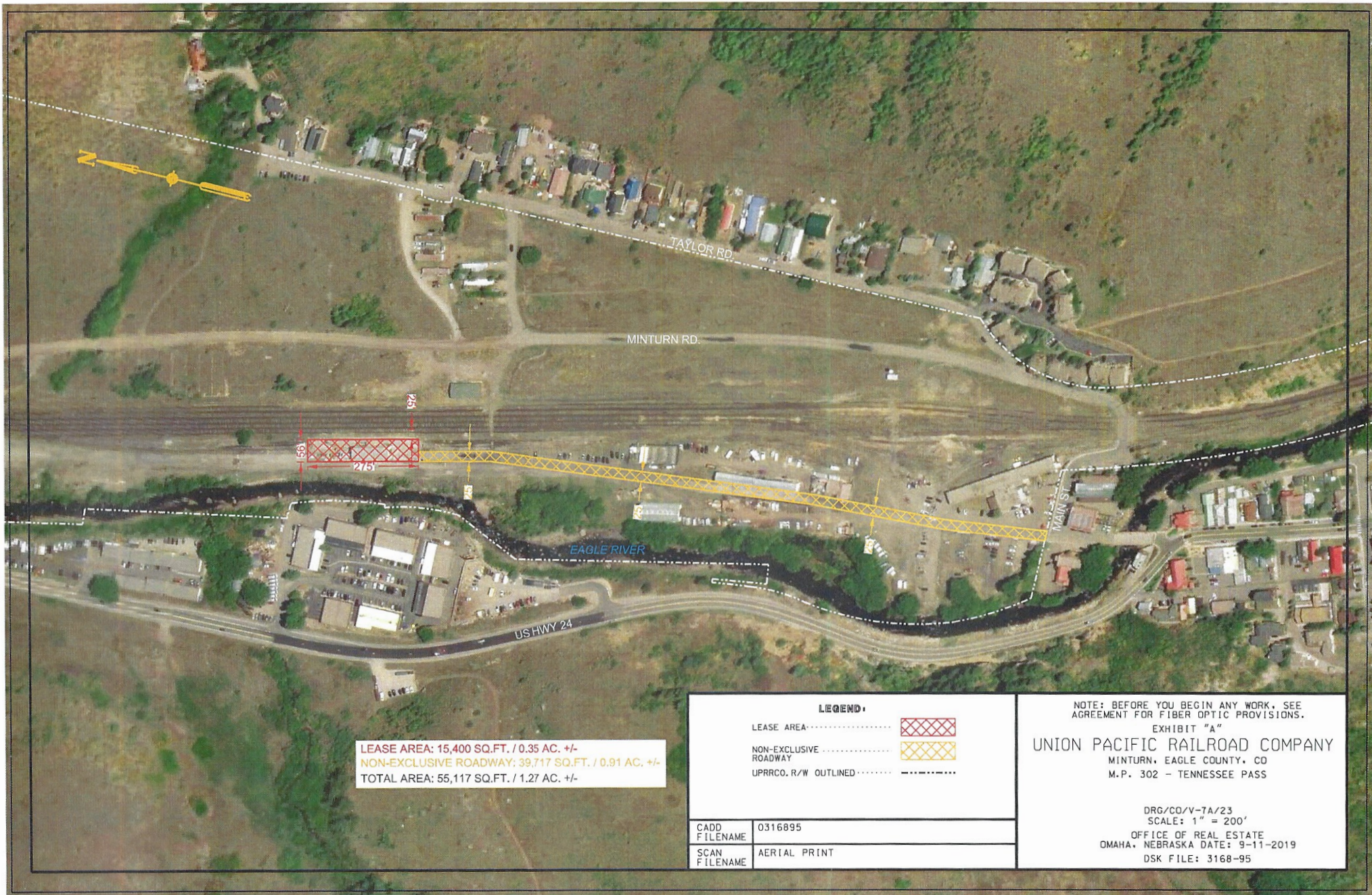
PO Box 2943, Vail, CO 81658  
970.476.1026 p 970.476.7167 f  
970.376.2256 c  
bhcco@comcast.net

July 24,2020

Letter of Intent for use of Building 1682 at 400 N Main St under a conditional use permit:

The building will be used for Construction material ,vehicle, and tool storage for or related to Burke Harrington Construction. The leased area will be fenced and screened. There is very little or no activity on a daily basis. We do not run our company from this property so there is no employee parking or worker impact. We also use the building storage for personal and household goods that change with the seasons and storage of client belongings when renovating properties. It is a big convenient indoor space that meets our needs.

Burke Harrington  
9703762256



LEASE AREA: 15,400 SQ.FT. / 0.35 AC. +/-  
 NON-EXCLUSIVE ROADWAY: 39,717 SQ.FT. / 0.91 AC. +/-  
 TOTAL AREA: 55,117 SQ.FT. / 1.27 AC. +/-

**LEGEND:**

- LEASE AREA ..... [Red cross-hatch symbol]
- NON-EXCLUSIVE ROADWAY ..... [Yellow cross-hatch symbol]
- UPRRCO. R/W OUTLINED ..... [Dashed line symbol]

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"  
**UNION PACIFIC RAILROAD COMPANY**  
 MINTURN, EAGLE COUNTY, CO  
 M.P. 302 - TENNESSEE PASS

CADD  
 FILENAME  
 SCAN  
 FILENAME

0316895  
 AERIAL PRINT

DRG/CO/V-7A/23  
 SCALE: 1" = 200'  
 OFFICE OF REAL ESTATE  
 OMAHA, NEBRASKA DATE: 9-11-2019  
 DSK FILE: 3168-95