

The Regular Meeting of the  
Brian Head Planning Commission  
Town Hall - 56 North Highway 143  
Brian Head, UT 84719  
Zoom Meetings (click [here](#))  
Zoom Meeting ID# 825 8622 7922  
**TUESDAY, August 2, 2022 @ 1:00 PM**

## AGENDA

- A. CALL TO ORDER 1:00
- B. PLEDGE OF ALLEGIANCE
- C. DISCLOSURES
- D. PUBLIC INPUT/ REPORTS (Limited to three (3) minutes) Non-Agenda Items
- E. AGENDA ITEMS:
  - 1. **DISCUSSION/RECOMMENDATION on the changes for the Land Management Code chapter 9 regarding water acquisition for new subdivisions.** Bret Howser, Town Manager & Becky Bennett, Town Planner. The Commission will discuss and make a recommendation to the Town Council regarding the potential changes to the Land Management Code.
- F. ADJOURNMENT

**Date: August 2, 2022**

Available to Board Members as per Ordinance No. 11-003 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the Council may participate by means of a telephonic or telecommunications conference. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.

### CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in two public and conspicuous places within the Town Limits of Brian Head; to wit, Town Hall and Post Office on this 5<sup>th</sup> day of April 2022 and have posted such copy on the Utah Meeting Notice Website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

  
Rebecca Bennett, Town Planner





## STAFF REPORT TO THE PLANNING COMMISSION

**SUBJECT:** Discussion Re: LMC Ch 9 Water Acquisition  
**AUTHOR:** Bret Howser / Becky Bennett  
**DEPARTMENT:** Administration  
**DATE:** August 2, 2022  
**TYPE OF ITEM:** Recommendation

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### SUMMARY:

The Planning Commission will make a recommendation to the Town Council regarding the proposed Land Management Code changes for water acquisition from future subdivisions.

### HISTORY:

Brian Head contracted Alpha Engineering in 2021 to create a capital facilities plan that would describe how many years of buildout the Town has prior to needing more water rights to serve residents. Based on the past growth of two cabins per year, Alpha estimated that the town would suffice until roughly 2064. However, that was prior to the unprecedented amount of growth Brian Head has seen, and likely will continue to see for the upcoming years. Because of this growth and the imminent drought that the state will likely remain in, Staff worries about the future of water capacity in Brian Head. This report and proposed LMC change provide a summary of the water usage in town and a solution to the lack of water we may have in the future.

For the sake of this report, one single family residential parcel is counted as one “equivalent residential unit” or ERU and one condo unit is one ERU.

### ANALYSIS:

Staff is seeking to answer a relatively simple question that has a more convoluted answer. Does the Town have enough water?

First, what do you mean by “enough water”? The Town’s quantity of water can be broken down into a few categories:

- Water rights (or “paper water”)
- Flow of water from water sources (or “wet water”)
- Water storage capacity (water tanks)

According to Alpha Engineering, they assure us that our water storage capacity (tanks) is sufficient for the Town throughout buildout of the Town, so we are going to focus on water rights and water sources for this exercise.

### Do we have enough Paper Water?

This is actually two questions: 1) How much water rights do we have, and 2) how much will we need someday?

How much water rights do we have?

The following table shows the water rights currently owned or leased by the Town for municipal use (meaning residential, commercial, etc.). The Town jointly leases with Brian Head Resort an additional 150 acre feet of water rights for snowmaking purposes. And we have an agreement with the Resort that we will make any excess municipal water available for snowmaking. The attached excerpt from our Capital Facilities Plan breaks down those water rights in more detail.

| <b>Brian Head Town Water Rights</b> (in acre feet) |              |
|----------------------------------------------------|--------------|
| <b>Total Water Rights Held by Town</b>             | <b>1,206</b> |
| Leased                                             | 331          |
| Owned                                              | 485          |
| Awaiting Change Order                              | 240          |
| Leased for Snowmaking                              | 150          |
| <b>Total Municipal Use Water</b>                   | <b>1,056</b> |
| <b>Currently Available for Municipal Use</b>       | <b>816</b>   |

So the answer to the first question, “How much water do we have?”, is 816 acre feet right now and 1056 in the future (plus 150 that’s only for snowmaking). This answer may be complicated a little by the fact that some of the water we “have” we actually lease. Staff is looking into the stability and long-term predictability of these leases, and will clarify that further as the conversation progresses.

#### How much water rights do we need?

The second question, “How much water do we need?” requires us to project usage. To do that we followed this process:

1. Project the number of water connections we will have by type
2. Multiply that those connections by the expected usage by type

The following table shows the number of connections we expect to have (or “units”) by type at different stages of the Town’s development:

#### Projection of Connected Units

|                   | <b>Current</b> | <b>Permitted</b> | <b>Platted</b> | <b>Zoned</b> | <b>Total</b>   |
|-------------------|----------------|------------------|----------------|--------------|----------------|
| <b>Cabins</b>     | 292            | 35               | 1119           | 1048         | <b>2494</b>    |
| <b>Condos</b>     | 1,062          | 29               | 191            | 6393         | <b>7674.5</b>  |
| <b>Commercial</b> | 12             | 3                | 0              | 599          | <b>614</b>     |
| <b>Total</b>      | <b>1365.5</b>  | <b>67</b>        | <b>1310</b>    | <b>8040</b>  | <b>10782.5</b> |

This table shows the different types of units (cabins, condos, and commercial) split into four categories:

- Those that are currently connected to the system
- Those that currently have a permit to connect to the system

- A count of those that have already been subdivided or platted but are not connected to the system (either because they are not built or because they are on hauled water)
- An estimate of those parcels that are not currently subdivided could be developed to based on their zoned potential
  - This calculation is complex and based on several assumptions, including the following
 

|                            |      |     |
|----------------------------|------|-----|
| ▪ Avg R3 Condo Size        | 2000 | Ft2 |
| ▪ Avg GC Condo Size        | 1500 | Ft2 |
| ▪ Avg VC Condo Size        | 1500 | Ft2 |
| ▪ R3 Bldg to Parking Ratio | 67%  |     |
| ▪ Avg GC Unit Size         | 3500 | Ft2 |
| ▪ GC Bldg to Parking Ratio | 50%  |     |
| ▪ Avg VC Unit Size         | 1500 | Ft2 |
| ▪ GC Bldg to Parking Ratio | 80%  |     |
| ▪ Future Hotel Rooms       | 500  |     |
| ▪ Avg R3 Condo Floors      | 2.5  |     |
| ▪ Avg VC Condo Floors      |      | 1.5 |
| ▪ Avg GC Condo Floors      |      | 1   |
  - Any of these assumptions can be adjusted in our model on the fly to test the sensitivity of the model (so during Planning Commission or Council meeting, feel free to ask to change these assumptions)
  - All unbuilt commercial properties were included in this category because, while some of them may be built on as is without further subdivision (meaning they might fit better in the “Platted” category), staff expects that much of the commercial development will include one or more residential units associated with it, meaning they will be required to subdivide, putting them in this zoned potential category.
  - Perhaps the most un-anticipatable development in the zoned potential category may be hotels. Hotels add quite a few units on a small footprint, and in theory all commercial land could become hotels, which would blow up the projections for usage. But this likely won’t happen, so staff made the projections assuming traditional commercial use (not hotel) on commercial property, and then just added 500 hotel rooms to the whole projection at the end. That assumption of 500 units is highly debatable. Those units are actually included in the “Condo” category.

With units projected, the next step is to determine what the projected usage for each unit may be. Staff proposes three methods for determining usage per unit.

1. Look at current usage per unit (by type) in Brian Head
2. Look at usage per unit (by type) in a more built-out resort municipality
  - a. This assumes that once Brian Head is more built out, it will also be a more popular destination, perhaps with more full-time residents as well. So usage per unit may be higher than it is currently because units will be occupied more often.
3. Use the State Engineer’s requirements
  - a. These requirements are found Dept of Environmental Quality rule R309

- b. They are not so much of a requirement as they are a starting point for sizing your water system. The state allows a municipality to argue that their needs are different than the requirement based on actual usage data.

The following table shows water usage from the past four complete years. Unfortunately, our data collection from water meters has been suspect over the years. Data in the table marked in red has been identified by staff as being an aberration and is therefore not used in the average calculation. For cabins, this means we're using just the past three years of data, for condos only the 2019 data. An example of one of these aberrations is in 2021, Chalet Village had a leak on their side of the meter. It leaked in the vicinity of 8-10 million gallons that ran through the meter and therefore appears in this data. They were aware of it but didn't fix it right away – they just chose to pay for it. It would be inaccurate to knowingly include this in the calculation of average usage per condo unit.

### Water Usage Data

|                   | 2018         |                | 2019         |                | 2020         |               | 2021         |                | Average  |         |          |
|-------------------|--------------|----------------|--------------|----------------|--------------|---------------|--------------|----------------|----------|---------|----------|
|                   | Units        | Usage*         | Units        | Usage*         | Units        | Usage*        | Units        | Usage*         | Gal/Unit | AF/Unit | gpd/Unit |
| <b>Cabins</b>     | 249          | 4,376          | 254          | 7,783          | 261          | 7,323         | 292          | 7,546          | 28,069   | 0.086   | 77       |
| <b>Condos</b>     | 1,064        | 99,385         | 1,064        | 16,753         | 1,065        | 6,557         | 1,062        | 31,687         | 15,745   | 0.048   | 43       |
| <b>Commercial</b> | 12           | 3,009          | 13           | 2,094          | 13           | 449           | 12           | 1,445          | 176,973  | 0.543   | 485      |
| <b>Snowmaking</b> | N/A          | 101,170        | N/A          | 80,670         | N/A          | 64,090        | N/A          | 119,628        |          |         |          |
| <b>Total</b>      | <b>1,325</b> | <b>207,940</b> | <b>1,331</b> | <b>107,300</b> | <b>1,339</b> | <b>78,419</b> | <b>1,366</b> | <b>160,306</b> |          |         |          |

\* in thousands of gallons

Ultimately, staff believes that the current usage rate is about .09 acre feet per year per cabin, .05 per condo (and hotel unit), and 0.5 per commercial establishment. Staff is currently working hard to improve our data collection methods and ability to pinpoint usage rates over time so we can update studies like this in the future and feel more confident in our projections.

Staff has also reached out to several other resort towns that are closer to build out than Brian Head to check their usage statistics. This is not data that front line staff generally knows or understands, so our initial response was lacking. We will keep working to try to ascertain this data, as it may give us a much better understanding of where our usage may end up.

The State requirements for water rights (in acre feet) and water source (in gallons per minute) are shown at right.

### State Engineer Requirements

|          | Water Rights Source |     |
|----------|---------------------|-----|
| Cabins   | 0.448               | 800 |
| Condos   | 0.448               | 800 |
| Commerci | 0.448               | 800 |
| Hotel    | 0.084               | 150 |

With units projected and estimates of water usage by unit type in hand, the following projections were able to be made by staff:

## What we need... *(in acre feet)*

| <b>Based on...</b>                   | <b>Existing</b> | <b>Permitted</b> | <b>Platted</b> | <b>Zoned Pot</b> | <b>Total</b> |
|--------------------------------------|-----------------|------------------|----------------|------------------|--------------|
| <b>Observed Usage</b>                | <b>83</b>       | <b>6</b>         | <b>106</b>     | <b>725</b>       | <b>919</b>   |
| Cabins                               | 25              | 3                | 96             | 90               | 215          |
| Condos                               | 51              | 1                | 9              | 309              | 371          |
| Commercial                           | 7               | 2                | 0              | 325              | 333          |
| <b>State Engineered Req'd Sizing</b> | <b>612</b>      | <b>30</b>        | <b>587</b>     | <b>3,420</b>     | <b>4,649</b> |
| Cabins                               | 131             | 16               | 501            | 470              | 1,117        |
| Condos                               | 476             | 13               | 86             | 2,682            | 3,256        |
| Commercial                           | 5               | 1                | 0              | 268              | 275          |

If we were to follow the State requirement for system sizing, we would need 612 acre feet to serve our existing customers, other 30 for permitted customers, and 587 for already subdivided (platted) units. That would more than exhaust the current water rights we own/lease. However, if our observed (current) usage rates persist, and we can get the State to approve our system sizing based on our observed usage, then we may have enough water rights to serve all of our existing, permitted, platted, and zoned potential units – although that wouldn't leave us with much (if any) excess municipal water rights to use for snowmaking (above the 150 acre feet reserved for snowmaking).

## Do we have enough Wet Water?

Again, two questions: 1) How much water can we get from our existing sources (wells/springs), and 2) how much will we need someday?

### How much water can we get from our existing wells/springs?

Short answer – 1,150,440 gallons per day (gpd). The attached section from the CFP shows a breakdown of water sources and reliable flows totaling 1,319,040 gpd. However, investigation currently underway on the Town Hall Well is indicating that the metered data we used for the CFP overstated flows from the Town Hall Well. So we subtracted 25% from the Town Hall Well's reliable flow data for purposes of this analysis.

### How much water will we someday need to get from our wells/springs?

The data to answer this question is basically the same as what we used to answer our water rights needs questions. We projected the units and applied our best estimates of usage per unit, only instead of expressing the figures in acre feet per year, we show it in gallons per day. The State requirement for gallons per day per unit are shown in the previous section (basically 800gpd per unit, 150 for hotel units).

The outcome of this analysis is shown on the following table:

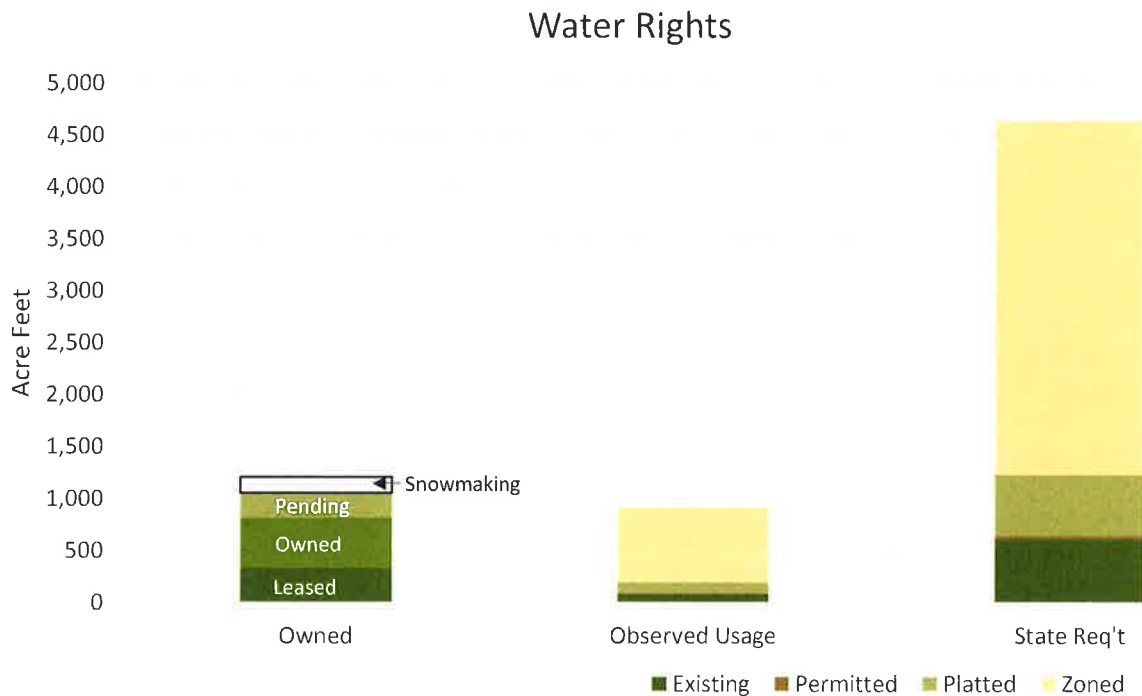
What we need... (in gallons per day)

| Based on...                          | Existing         | Permitted     | Platted          | Zoned Pot        | Total            |
|--------------------------------------|------------------|---------------|------------------|------------------|------------------|
| <b>Observed Usage</b>                | <b>74,065</b>    | <b>5,397</b>  | <b>94,293</b>    | <b>646,803</b>   | <b>820,558</b>   |
| Cabins                               | 22,456           | 2,692         | 86,054           | 80,594           | 191,795          |
| Condos                               | 45,791           | 1,251         | 8,239            | 275,780          | 331,061          |
| Commercial                           | 5,818            | 1,455         | 0                | 290,430          | 297,702          |
| <b>State Engineered Req'd Sizing</b> | <b>1,092,400</b> | <b>53,600</b> | <b>1,048,000</b> | <b>6,107,000</b> | <b>8,301,000</b> |
| Cabins                               | 233,600          | 28,000        | 895,200          | 838,400          | 1,995,200        |
| Condos                               | 849,200          | 23,200        | 152,800          | 4,789,400        | 5,814,600        |
| Commercial                           | 9,600            | 2,400         | 0                | 479,200          | 491,200          |

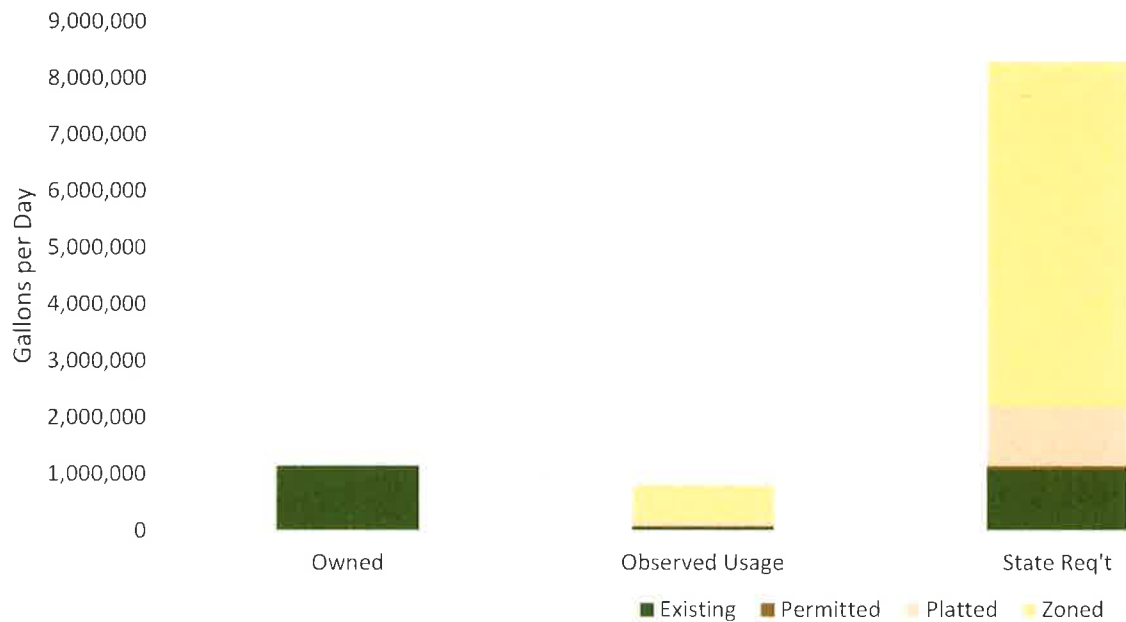
Similar to water rights, our sources seem to be sufficient for municipal use (not snowmaking, which is a different story altogether – we basically need another well right now to supply large quantities of snowmaking water in the short span of time that they need it) at the present rate of usage. However, if the State requirement is to be met, we barely have enough right now to meet our existing customers. The truth, of course, is probably somewhere in between.

## Conclusion

The following charts attempt to summarize the preceding analysis in one visual representation.



## Water Source



This analysis really comes down to whether you think we are going to be closer to our current observed usage rate at build-out, or whether we'll be closer to the state requirement. If it's the former, we're in pretty good shape. If it's the latter, then we may need to consider acquiring more water rights to be able to serve existing and platted municipal requirements as well as snowmaking needs, and we will need to develop additional wet water sources in order to meet our existing and platted municipal needs alone (not to mention our current need for additional wet water sources for current snowmaking needs).

### Standards for Review for LMC Changes:

The following are the Standards for Review for an amendment to the Land Management Code:

"The Town council may, from time to time, in a manner consistent with the Town General Plan, amend any provision of the Land Management code. However, amendments of this title shall not be approved, or final action taken until after the giving of public notice and the holding of public hearings, as may be required by state law and this title." 9-7-1.

According to State Law, the Planning Commission is required to provide notice, hold a public hearing, consider written objections, then review and recommend to the Town Council whether to accept, reject, or accept with conditions.

Public notice was posted. The public hearing will be held at this Planning Commission meeting, and the Planning Commission will decide whether to recommend that the Council reject, accept, or accept with conditions.

### **STAFF RECOMMENDATION:**

Staff recommends that the Planning Commission adopt a change to chapter 9 of the LMC: Subdivisions that adds Water Acquisition. This proposed change would require parcels that would like to subdivide to bring their own water rights. Right now, the Town does not require any subdivisions or residential properties to bring water rights because we have enough water to suffice for the time being. However, as we grow and more residents begin to build in the R1 portions of town, staff fears that we will not have enough water rights for the entire buildout and potential multi-family subdivisions.

The proposed addition to chapter 9 is attached in the appendices. It closely follows Cedar City's requirements for new subdivisions. Every property that would like to subdivide must bring in a sufficient amount of water rights to cover the proposed development. If the property is already subdivided and the developer just wishes to build on it, they would not be required to bring water. This is only for new subdivisions.

To figure out the correct amount of water, staff recommends that the developer create a Water Study report detailing how much water the development will use. Staff can then compare that study with the usage we see in town at the time and recommend approval or denial. Then the Planning Commission and Council must review the proposal prior to accepting the land use application.

The developer would be required to deed over the water rights to the Town – that process is outlined in the proposed changes as well.

Many cities and towns in Utah are beginning to require that subdivisions bring in their own water. Cedar City allows developers to either bring their own water rights dated prior to July 24, 1934 or pay a large fee in lieu of water rights. Staff does not think that allowing developers to pay their way out is the responsible thing to do at this time. Parowan requires any subdivisions to bring their own water rights as well, but their cut off date is 1949. Enoch also requires all subdivisions to bring in water rights prior to 1934. Enoch requires one acre foot per ERU when subdividing more than 5 lots.

### **FINDINGS:**

1. Brian Head has limited water rights. Brian Head provides culinary and irrigation water for residential, commercial, and industrial uses consistent with Town ordinances. There are limited water rights in the Brian Head area.
2. Brian Head is experiencing sustained residential, commercial, and industrial growth and growth necessitates acquisition of additional water rights.
3. The State of Utah water engineer has determined that the water rights in Parowan Valley Aquifer and Cedar Valley Aquifer have been fully appropriated and has closed the basins to future appropriation of water rights.
4. The proposed land management code change is consistent with General Plan Policy A 1 and 2:
  - A. "Establish orderly, planned growth and development of Brian Head that enhances Brian Head's distinctive mountain resort environment and small-town character and provides consistent services and infrastructure suitable

for consumer expectations while remaining in harmony with the mountain atmosphere.”

1. “Utility and infrastructure improvements should meet consumer expectations and needs such as asphalt streets, water, sewer, natural gas, electricity, telecommunications, television, waste collection and recycling services.”
  2. “Require developers of projects to design improvements to be compatible with the severe weather conditions that exist and to incorporate natural vegetation that is capable of surviving in this environment into landscaping plans.”
- 
5. The proposed land management code change addresses a noted problem in the Town and fixes it based on collected data and similarly situated towns.
  6. The proposed land management code change meets the vision and intent set forth in the Community Vision: Brian Head is a rustic mountain village with diverse recreation where people and nature co-exist.

**PROPOSED MOTION:**

The Planning Commission can make a recommendation of denial, approval, or approval with conditions of the proposed land management code change.

Recommended motion: I move to recommend approval of the proposed changes to chapter 9 of the Land Management Code.

**ATTACHMENTS:**

A – Water Rights

B – Water Sources

C – Proposed Changes to the Code

**Table 11: Brian Head Water Sources**

| SOURCE                       | LOCATION                                                       | ELEVATION | RELIABLE FLOWS<br>(gpm) | RELIABLE FLOWS<br>(gpd) |
|------------------------------|----------------------------------------------------------------|-----------|-------------------------|-------------------------|
| <b>Salt Pile Spring</b>      | S 1140' and W 1332' from East Quarter Corner of S01, R36S, R9W | ~10,430'  | 54                      | 77,760                  |
| <b>Decker Spring</b>         | N 306' and E 438' from SW corner, S01, R36S, R9W               | ~10,360'  | 38                      | 54,720                  |
| <b>Seeps Spring</b>          | S 160' and E 1440' from North Quarter Corner of S11, T36S, R9W | ~10,330'  | 21                      | 30,240                  |
| <b>Mammoth Spring #1</b>     | N 824' and W 2173' from SE corner, S11, T36S, R9W              | ~10,450'  | 23                      | 33,120                  |
| <b>Mammoth Spring #2</b>     | N 664' and W 2030' from SE corner, S11, T36S, R9W              | ~10,450'  |                         |                         |
| <b>Mammoth Spring #3</b>     | N 797' and W 1786' from SE corner, S11, T36S, R9W              | ~10,450'  |                         |                         |
| <b>Bearflat Well</b>         | N 11168' and W 180' from SE corner, S34, T35S, R9W             | ~9,710'   | 420                     | 604,800                 |
| <b>Crystal Mountain Well</b> | N 300' and W 1100' from E quarter corner of S04, T36S, R9W     | ~9,580'   | 100                     | 144,000                 |
| <b>Town Hall Well</b>        | S 675' and E 162' from NW corner, S11, T36S, R9W               | ~9,810'   | 260                     | 674,400                 |
| <b>Gurr Well</b>             | N 1167' and W 192' from SE corner, S34, T35S, R9W              | ~9,435    | Unknown                 | Unknown                 |
| <b>TOTAL RELIABLE FLOWS</b>  |                                                                |           | 916                     | 1,319,040               |

**Table 11** under section **D. Water Source** and are all based on SLB&M, in Iron County, Utah.

**Table 8: Brian Head Town Municipal Use Water Rights**

| WATER RIGHT NO.                                | PRIORITY DATE | POINT OF USE ADDRESS                                       | SOURCE                                                           | QUANTITY            |
|------------------------------------------------|---------------|------------------------------------------------------------|------------------------------------------------------------------|---------------------|
| 75-661<br>75-662<br>75-663<br>75-664<br>a37313 | 1889          | Town of Brian Head<br>Dry Canyon<br>Agreement              | Underground<br>Water Wells                                       | 234.66<br>acre-feet |
| 75-1704<br>a17198                              | 1860          | Town of Brian Head                                         | Underground<br>Water Well<br>Crystal Mountain<br>Summit Drainage | 250.00<br>acre-feet |
| 75-1514<br>a12265                              | 1860          | Parowan Reservoir<br>Company/Brian<br>Head                 | Springs                                                          | 31.00<br>acre-feet  |
| 75-1515<br>a12266                              | 1860          | Parowan Reservoir<br>& Irrigation<br>Company/Brian<br>Head | Springs                                                          | 300.00<br>acre-feet |
|                                                |               |                                                            | TOTAL                                                            | 815.66<br>acre-feet |

Water rights service capacity:

- Based on *regulatory* Annual Supply Requirements of 0.448 AF per ERC, current water rights are adequate for 1,820 ERC (400 gpd/ERC).
- Based on *actual metered* Annual Usage of 0.081 AF per ERC, current water rights are adequate for 10,069 ERC.

## **ii. Brian Head Resort Water Rights**

Brian Head Town supplies water to Brian Head Resort for snow making. The water rights dedicated for snow making are sourced from Crystal Mountain Well and Town Hall Well, for a total of 150 acre-feet. Change application a22707 indicated that 22.5 acre-feet of water may be consumed by pond evaporation and other water losses in the snowmaking process, and the remaining 127.50 acre-feet must return to the system as snowmelt.

The Town is able to supply additional water beyond the snow making water right to Brian Head Resort as long as they possess the required water rights for the town residents.

**Table 9: Brian Head Town Snow Making Water Rights**

| WATER RIGHT NO.           | PRIORITY DATE | POINT OF USE ADDRESS                                             | SOURCE                  | FLOW                         |
|---------------------------|---------------|------------------------------------------------------------------|-------------------------|------------------------------|
| <b>75-1693<br/>a22707</b> | 1860          | Parowan Reservoir Company/Brian Head Town/Brian Head Ski Limited | Underground Water Wells | 0.24 CFS or 150.00 acre-feet |
|                           |               |                                                                  | TOTAL                   | 127.50 acre-feet             |

**iii. Brian Head Town Water Rights Leased to Parowan Valley**

Brian Head Town currently leases water rights to farmers in the Parowan Valley. These rights were originally purchased as a single water right and were known as the Heil Water Right. This water right was split into two separate rights, 75-2019 and 75-2034. A change application was filed to segregate 156.92 acre-feet from the valley to the mountain (water right 75-2034). With the change in water use from irrigation to culinary use, the state engineer limited Brian Head Town's use to the historically consumed amount, which is 94.67 acre-feet. Additionally, the application and the agreement with the Parowan Reservoir Company limits the use based on the size of Bristlecone Pond. Originally, the Town was allowed to use twice the usable capacity of the pond. That has since been reduced to 1.5 times the capacity, and will decrease to 1 times the useable capacity of the pond in eight years.

If wastewater treatment is provided on the mountain, the limitation based on consumption and storage-based limitations would be removed.

**Table 10: Brian Head Town Water Rights Leased to Parowan Valley**

| WATER RIGHT NO.           | PRIORITY DATE | POINT OF USE ADDRESS                | SOURCE                 | FLOW             |
|---------------------------|---------------|-------------------------------------|------------------------|------------------|
| <b>75-2019<br/>t46905</b> | 1945          | Brian Head Special Service District | Underground Water Well | 243.08 acre-feet |
| <b>75-2034</b>            | 1945          | Brian Head Special Service District | Underground Water Well | 156.92 acre-feet |
|                           |               |                                     | TOTAL                  | 400.00 acre-feet |

## **Title 9 – Land Management Code**

### **Chapter 9 SUBDIVISIONS**

#### **9-9-1: PURPOSE:**

#### **9-9-2: SUBDIVISION PROCESS:**

#### **9-9-3: PLAT AMENDMENTS:**

#### **9-9-4: SUBDIVISION BY METES AND BOUNDS:**

#### **9-9-5: CONVERTIBLE OR EXPANDABLE AREA FOR CONDOMINIUMS:**

#### **9-9-6: WATER ACQUISITION**

#### **9-9-1: PURPOSE:**

It is the town's intent to promote the orderly growth and development of subdivisions to ensure that subdivisions meet local and state codes, and to ensure that growth conforms to the Town General Plan, this title and design standards. (2010 Code, amd. ord. 21-005, 05-11-2021)

#### **9-9-2: SUBDIVISION PROCESS:**

Subdivision of land must comply with the provisions of this chapter and Utah Code Annotated section [10-9a-601](#) et seq. Until a final plat is recorded according to these provisions, the following may not occur: lots transferred, sold or offered for sale, contracted for sale, deeded or conveyed, building permit issued on said lots; terrain altered; any vegetation removed from the proposed subdivision site; or engaging in any site development. The steps of the subdivision process are as follows: (amd. ord. 21-005, 05-11-2021)

- A. Pre-application Conference: Prior to submission of formal materials for a proposed subdivision, a subdivider shall participate in a pre-application conference with the Planning and Zoning Department. This will provide the subdivider an opportunity to consult with and receive assistance from the Town regarding the regulations and design requirements applicable to the subdivision of the property prior to a significant investment in technical/engineering and legal work. (amd. ord. 21-005, 05-11-2021)
- B. Schematic Plan Review:
  - 1. Purpose: The schematic plan is intended to be an informal and abbreviated submittal, to allow the applicant and the review boards to determine the basic feasibility of the proposal before incurring the time and expense of a formal application for the preliminary and final plats. Town staff and Planning Commission recommendations,

suggestions and interpretations during the schematic plan review are advisory and shall not be considered binding on the Town.

2. Review Process:

- a. Submittal: See chapter 4
- b. Planning and Zoning Review: The Planning and Zoning Department and other necessary town staff shall review the documents submitted for schematic plan review to determine if they are complete as required in chapter 4 of this title and meet the standards for review for Schematic Plan Renew. The application and staff comments are then forwarded to the Planning Commission.
- c. Planning Commission Review: Within a reasonable time after the Planning and Zoning Department review, the schematic plan shall be presented to the Planning Commission at a regular meeting. During this review, the Planning Commission shall provide additional comments and input as they pertain to this title to assist the applicant in preparing the preliminary plat application.

3. Standards For Review: The applicant shall demonstrate that:

- a. Conformance To General Plan: The proposed subdivision conforms to the Town General Plan, zoning regulations, Public Works Standards, Design Standards (chapter 12)
- b. Water: The proposed water source is connected to the Town's water distribution system and has adequate supply, capacity, and method of distribution within the subdivision. (2010 Code, amd. ord. 15-004, 4-28-2015)
- c. Sewer: The proposed sewage system is connected to the Town's sewer system and meets State and Town standards and regulations. (2010 Code, amd. ord. 15-004, 4-8-2015)
- d. Fire Protection: The proposed method for fire protection complies with this title and other regulations as applicable.
- e. Appropriate Use: The proposed uses for the property are appropriate to the zone district and the layout/design is responsive to the constraints of topography, soil types, geologic hazards, watercourses and floodplains, visual impacts and preservation of views.
- f. Public Services: Adequate public services are available to meet the needs of the proposed subdivision, including roads, water, sewer, storm water, gas, electric, telecommunications, trails, transit, snow storage areas, police and fire protection, and recreation. If adequate services do not exist at the time of application, provision must be made for expansion of services concurrent to the subdivision development at the expense of the subdivider.

4. Vested Rights: Submission of a schematic plan does not constitute the beginning of any vested rights for the applicant. Vested rights shall accrue only upon the filing of a complete preliminary plat application with all required information and fees. However, if there is a compelling, countervailing public interest or the Town has initiated proceedings to amend this title or other applicable ordinances at the time of the preliminary plat application, then there shall be no vesting as it pertains to the compelling, countervailing public interest or pending ordinance change. (amd. Ord. 21-005, 05-11,2021)
5. If the applicant does not proceed with the preliminary plat review application within six (6) months of completing the schematic plan review, the applicant shall resubmit the proposed schematic plan and the Planning and Zoning Administrator shall determine whether the schematic plan review process shall be repeated. (ord. 21-005, 05-11-2021)

C. Preliminary Plat:

1. Purpose: The purpose of the preliminary plat is to review and resolve most of the technical details of the subdivision design in order to minimize changes and revisions which might otherwise be necessary on the final plat. The preliminary plat, and all information and procedures relating thereto, shall in all respects be in compliance with the provisions of this title and any other applicable ordinances.
2. Standards For Review: The applicant shall demonstrate that:
  - a. Compliance with Schematic Plan: The proposal does not significantly deviate from the schematic plan insofar that the schematic plan was consistent with local ordinances and state statute.
  - b. Water: The proposed water distribution system is connected to the Town's water system and meets the requirements of the Town; (2010 Code, amd. ord. 15-004, 4-28-2015)
  - c. Sewer: Provision has been made for a public sewer collection system and is connected to the Town's sewer system and meets Town requirements. (2010 Code, amd. ord.15-004, 4-28-2015)
  - d. Public Services: Preliminary engineering plans provide evidence that public services (roads, trails, transit, storm water, snow storage, fire, police, gas, electricity, telecommunications, and recreation) meet the requirements of this title and applicable codes.
3. Review Process:
  - a. Application: After completing the schematic plan review required in this title, the subdivider shall file an application for preliminary plat approval. See Chapter 4 of this title for the information required to be included on or with the preliminary plat.

The applicant shall provide the Town with sufficient information so that it can provide notice by transmittal letter to such public agencies and utilities as deemed appropriate by the Planning and Zoning Administrator, or designee. In the transmittal letter, the Town shall request that each of the affected entities, as set forth in Utah Code Annotated section 10-9a-103(3), as amended, forward a report of its findings and recommendations to the Planning and Zoning Department and Planning Commission by the date of the public hearing set for the preliminary plat approval. The developer shall pay for all costs incurred.

b. Town staff Review:

- i. Within a reasonable amount of time, the Planning and Zoning Administrator and/or staff shall review the preliminary plat application for general compliance with these regulations: Public Works Standards, Design Standards and other applicable ordinances. If the preliminary plat is not complete or not in general compliance, the Planning and Zoning Administrator shall notify the subdivider in writing and specify the respects in which it is deficient. When the submission is complete the Planning and Zoning Administrator, or designee, shall forward the preliminary plat to the Planning Commission.
- ii. The Public Works Department and Town Engineer shall review submittals, plans and plats as to engineering requirements for street widths, grades, alignments, snow removal and storage, surface water flow and flood control, and for consistency of the proposed public improvements with this title and other applicable ordinances. (2010 Code, amd. ord. 15-004, 4-28-2015)

- c. Planning Commission Review: When the filing of a preliminary plat of a subdivision and any other information required is deemed complete and accurate by the Planning and Zoning Department, the Planning Commission shall hold a public hearing consistent with UCA §10-9a-602 et seq. as amended, to review and recommend thereon. If the Planning Commission finds that the proposed plat complies with the standards for review as well as all other requirements of this title, it shall forward to the Town Council a recommendation to approve, or approve with conditions, the plat. If the Planning Commission finds that the proposed plat does not meet the requirements of this title or other applicable ordinances, it shall recommend to deny such plat.

- d. Town Council Review: Upon receipt of a recommendation from the Planning Commission, the Town Council shall meet to approve as recommended, approve as modified by the Town Council, or deny the proposed preliminary plat.

4. **Effect Of Approval Of Preliminary Plat:** Approval of the preliminary plat shall in no way relieve the applicant of responsibility to comply with all ordinances, all issues identified during the schematic plan review (unless formally waived by the Town Council), and to provide all improvements and easements necessary to meet Town Standards and Specifications.
5. **Expiration Of Preliminary Plat Approval:** Application for final plat approval shall be made within twelve (12) months after approval or conditional approval of the preliminary plat by the Town Council. This time period may be extended for no more than an additional six (6) months by the Town Manager for good cause shown if the subdivider petitions for an extension prior to the end of the original six (6) month period. Only one extension may be granted. Failure to submit the application for final plat within the allotted time period shall cause the previous approvals to be null and void. Fees previously paid by the applicant shall not be refunded. (ord. 08-016, 8-12-2008, amd. ord. 21-005, 05-11-2021)

**D. Final Plat:**

1. **Purpose:** The purpose of the final plat review is to obtain formal land use authority approval of the detailed engineering and legal requirements of the final plat prior to recording the subdivision plat pursuant to UCA §10-9a-604(b)(i) as amended. The final plat and all information and procedures relating thereto shall be in compliance with the provisions of this title. The final plat and improvement plans submitted shall conform in all respects to those regulations and requirements specified during the schematic plan and preliminary plat procedures. (2010 Code, amd. ord. 21-005, 05-11-2021)
2. **Standards For Review:** The applicant shall:
  - a. Comply with all conditions of schematic and preliminary plat approval.
  - b. Include acceptable final engineering plans for the water distribution system, final agreements from the water provider, and provisions for perpetual maintenance for the water system.
  - c. Meet all planning, engineering, and surveying requirements of the Town for maps, data, surveys, analyses, studies, reports, plans, designs, documents, wetlands designations, and other supporting materials.
  - d. Provide evidence to show that there is no encumbrance, lien or conveyance restricting the intended use of the lot.

- e. Provide evidence from the County Treasurer that all ad valorem taxes applicable to the property have been paid.
- f. Include all dedications for streets, roadways, easements, trails and/or rights of way, as necessary.
- g. Provide signature blocks on the plat signed by a representative of public utilities which identify their approval.

3. Review Process:

- a. Application: The subdivider shall file an application for final plat approval with the Planning and Zoning Department in such form and quantities as prescribed by chapter 4. (amd. ord. 21-005, 05-11-2021)
- b. Planning and Zoning Department Review: The Planning and Zoning Administrator shall ensure that the final plat and associated documents have been checked by the applicable town departments (Public Works, Public Safety), Town Engineer and Town Attorney for completeness and general compliance with this title and for incorporation of any changes required during the preliminary plat procedure, and that other applicable approval agencies have granted approval. If the submission is not complete, not in general compliance with or does not incorporate conditions of previous approvals, the Planning and Zoning Administrator shall notify the applicant in writing and specify the respects in which it is deficient. When the submission is complete, in general compliance with applicable ordinances, and incorporates all prior conditions of approval the Planning and Zoning Administrator shall forward the final plat to the Planning Commission for review. (amd. ord. 21-005, 05-2021)
- c. Planning Commission Review: Upon receipt of the final plat, the Planning Commission shall examine the plat to determine whether the plat conforms to the standards for review and shall forward its recommendation onto the Town Council for final approval or denial. (2010 Code, amd. ord. 15-004, 4-28-2015)
- d. Town Council Review: Upon receipt of the final plat and the Planning Commission's recommendation, the Town Council shall examine the plat to determine whether the plat conforms to the preliminary plat, all applicable town ordinances and codes and the standards of the town, and with all requirements imposed as conditions of previous acceptances. The Town Council may:
  - i. Approve the final plat as presented.

- ii. Disapprove the final plat and advise the subdivider in writing of the changes or additions that must be made for approval; or
- iii. Table or continue the application to allow the subdivider to make revisions. The subdivider shall be responsible for notifying the Town that the final plat has been revised and is ready for recommendation. (2010 Code, amd. ord. 21-005, 05-11-2021)

4. Expiration Of Final Plat Approval: If the final plat is not recorded or the requirements set forth as a condition of final approval are not met by the subdivider within twelve (12) months from the date of final plat approval, such approval shall be null and void. This time period may be extended for good cause shown, for additional six (6) month period by the Town Manager. The subdivider must petition for an extension prior to the expiration of the original twelve (12) months, or an extension previously granted. Up to two (2) extensions may be granted, if the Town Manager finds that each extension will not be detrimental to the town. If any of the fees charged as a condition of subdivision approval, including, but not limited to, inspection fees, park fees, flood control fees, as well as the amounts the Town uses to estimate bonds to ensure completion of improvements, have increased, the Town Manager may require the subdivider pay such increases as a condition of granting the extension. (amd. ord. 21-005, 05-11-2021)

E. Security Agreement: Prior to recording a final plat, the subdivider shall provide sufficient financial guarantee consistent with chapter 13 (amd. ord. 21-005, 05-11-2021)

F. Plat Recorded: After final approval, filing of security agreements and signing of the plat by the Town Manager, Mayor, Town Engineer, Town Attorney, utility companies and other required entities, the plat and covenants, conditions, and restrictions (CC&Rs) shall be recorded in the office of the County Recorder by the Town Clerk, with all recording costs paid by the subdivider. (2010 Code, amd. ord. 15-004, 4-28-2015)

G. Acceptance of Subdivision Improvements:

- 1. Subdivision improvement or such conditions imposed under this title shall be deemed accepted by the Town only upon complete final inspection by the appropriate Town officials and the issuance of a certificate of acceptance by the Town Manager or designee.
- 2. Conditions for Acceptance: In order for the subdivision public improvements such as streets, sewer and water to be accepted, the following shall occur:
  - a. Upon substantial completion of the subdivision improvements, the subdivider shall submit a written request for the Town to conduct a substantial completion inspection.

- b. Within a reasonable time of the request, and weather permitting, the Town shall conduct an inspection of the improvements to ensure that they have been installed per the letter to the subdivider identifying required corrections to be completed prior to the one-year warranty period beginning. At the beginning of the warranty period, the Town shall release all funds, except for a retention bond as allowed per Utah Code Annotated. During the one-year warranty period, the Town may provide services to the subdivision such as water, sewer, snow removal and garbage collection.
- c. At the end of the one-year warranty period, the subdivider may submit a written request to the Town for a final acceptance inspection of the subdivision improvements. Upon completion of any required corrections or repairs, the Town shall issue a letter of final acceptance and release any retention due to the subdivider. (2010 Code)

#### **9-9-3: SUBDIVISION PLAT AMENDMENTS:**

- A. Any landowner whose land has been platted as provided in this title may, upon application to the Town, have such plat, or portion therefor, or any street or alley therein contained, altered, amended, or vacated in compliance with the provisions of this section and UCA §10-9a-601 et seq. (2010 Code, amd. ord. 21-005, 05-11-2021)
- B. Lot Line Adjustment: Any relocation of a lot line boundary between adjoining lots or parcels, whether or not the lots are located in the same subdivision, with the consent of the owners of record which does not result in a change in the number of lots in the subdivision is exempt from the full subdivision process or plat amendment process. The Planning and Zoning Department may approve a lot line adjustment upon determination that the resultant lots are consistent with all other provisions of this title. (ord. 21-005, 05-11-2021)
- C. Minor Plat Amendments:
  - 1. As provided for in UCA §10-9a-608(2), any plat amendment which meets the following criteria qualifies for the streamlined plat amendment process described in this section:
    - a. Does not increase the number of lots in the subdivision by more than ten (10) lots;
    - b. Does not reduce the number of lots in the subdivision by more than ten (10) lots;
    - c. Does not alter the plat in a manner that changes existing boundaries of other attributes of lots within the subdivision that are not owned by the petitioner or designated as common area;
    - d. Does not require additional public utilities or infrastructure to provide adequate public service to the newly divided lots; and

- e. Does not create a lot that is smaller than the smallest lot within the existing subdivision plat.

(ord. 21-005, 05-11-2021)

2. Standards for Review:

- a. The proposed subdivision and use conform to the Town General Plan, Zoning Regulations, Public Works Standards, Design Standards (chapter 12 of this title) and other relevant sections of this title.
- b. The proposed method for fire protection complies with this title, and other regulations as applicable.
- c. The layout/design is responsive to the constraints of topography, soil types, geologic hazards, watercourses and floodplains, visual impacts, and preservation of views.
- d. Adequate public services are available to meet the needs of the proposed subdivision, including roads, water, sewer, storm water, gas, electric, telecommunications, trails, transit, snow storage areas, police and fire protection, and recreation.
- e. Provide evidence to show that there is no encumbrance, lien or conveyance restricting the intended use of the lot.
- f. Provide evidence from the County Treasurer that all ad valorem taxes applicable to the property have been paid.
- g. Provide signature blocks on the plat signed by a representative of public utilities which identify their approval.

(ord. 21-005, 05-11-2021)

3. Review Process:

- a. Planning and Zoning Review: The Planning and Zoning Department and other necessary Town staff shall review the documents submitted for schematic plan review to determine if they are complete as required in chapter 4 of this title and meets the standards for review.
- b. Public Notice: Notice for at least one public meeting at which the Planning Commission will consider the amended plat shall be given to adjoining property consistent with UCA §10-9a-207.
- c. Planning Commission Review: Upon receipt of the amended plat, the Planning Commission shall examine the plat to determine whether the plat conforms to all applicable Town ordinances and codes and the standards for review, and with all

requirements imposed as conditions of previous acceptances. The Planning Commission may:

- i. Approve the amended plat as presented.
  - ii. Disapprove the amended plat and advise the applicant in writing of the changes or additions that must be made for approval; or
  - iii. Table or continue the application to allow the applicant to make revisions. The applicant is responsible for notifying the Town that the amended plat has been revised and is ready for reconsideration.
- d. Plat Recorded: After final approval and signing of the amended plat by the Town Manager, Mayor, Town Engineer, Town Attorney, utility companies and other required entities, the approved amended plat shall be recorded in the office of the County Recorder by the Town Clerk, with all recording costs paid by the subdivider.
4. Expiration of Amended Plat Approval: If the amended plat is not recorded or the requirements set forth as a condition of final approval are not met by the subdivider within six (6) months from the date of amended plat approval, such approval shall be null and void.
- D. Major Plat Amendments: All plat amendments which do not qualify under subsection (B) or (C) shall be considered major plat amendments and will be consider under the process described in 9-9-2 and consistent with UCA §10-9a-608 and §10-9a-609.
1. At the applicant's request, the Planning and Zoning Administrator may choose to waive the Schematic Plan Review process required by section 9-9-2 of this title if it is determined following the pre-application conference that the proposed plat amendments substantially meet the standards for review and that additional conditions are not likely to result from the Schematic Plan Review. The applicant will still be responsible for any costs associated with adjustments to the preliminary plat which result from the Preliminary Plat Review.
  2. Public Notice Requirements: In addition to the requirements of 9-9-2, notice for the public hearing during the Preliminary Plat Review shall be given to adjoining property owners consistent with 9-1-8 of this title and UCA §10-9a-207.

(ord. 21-005, 05-11-2021)

#### **9-9-4: SUBDIVISION BY METES AND BOUNDS:**

##### **A. Purpose**

1. The intent of subdivision by metes and bounds is to streamline the subdivision review and approval process for previously unsubdivided parcels in coordination with the existing utilities and public infrastructure where no more than ten (10) residential parcels or no more than two (2) commercial parcels will result from the subdivision. (2010 Code, amd. ord. 21-005, 05-11-2021).

B. Standards for Review: When the subdivider is prepared to record sell specific parcels of property not previously subdivided, he or she must demonstrate to the satisfaction of the Town the following:

1. The proposed parcels conform to the previously approved general plan and this title;
2. No additional public utilities or infrastructure are required to provide adequate public service to the newly divided lots; (ord. 21-005, 05-11-2021)
3. The utility and/or vehicular access to remaining undeveloped property will not be impaired;
4. The proposed parcels will have access to existing necessary utilities;
5. That remnant parcels which did not previously exist are not created which, due to size, configuration or location, do not meet current zoning requirements and/or are not able to be developed; and
6. The proposed subdivision meets the criteria for exemption from the plat requirement set forth by the UCA §10-9a-605, as amended.

C. Review Process: Subdivisions which qualify under this section shall be considered under the Minor Plat Amendment process described in section 9-9-3 (C) of this title.

#### **9-9-5: CONVERTIBLE OR EXPANDABLE AREA FOR CONDOMINIUMS:**

Land use approvals depicted with convertible or expandable space shall comply with the requirements of Utah Code Annotated, title 57, chapter 8 and the declaration associated with the project. Conversions and expansions of units shall go through a plat amendment process unless the original plat approval specifically identifies the proposed conversions and expansions of the project, and the amended plat and declaration are in harmony and conformance with the original project approval. In such cases, the amendment documents may be recorded when they have been reviewed, signed, and approved for recordation by appropriate Town staff. (2010 Code, amd. Ord. 15-004, 4-28-2015)

#### **9-9-6: WATER ACQUISITION**

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##### **A. Purpose and Findings:**

- a. Brian Head's primary purpose for establishing this ordinance is to acquire the water rights necessary to serve its expanding population.

##### **B. Time to acquire water rights:**

- a. All property that has not previously dedicated water rights shall be required to dedicate water rights at the time of annexation, or if already in Town limits, at the time the property subdivides.

##### **C. Amount of Water Rights**

- a. Prior to final approval or recordation of the final plat of any subdivision or other development activity requiring culinary water service from the town, the developer shall transfer and dedicate to the town, the unencumbered, clear title to a sufficient quantity of water system shares, water rights and/or sources, necessary to provide and deliver culinary and irrigation water to each lot, dwelling unit and/or other use within the new development.

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- b. Sufficient Quantity of Water Defined: A "sufficient quantity of water" shall be decided as a result of the developer's produced water study. The water study shall include open space and all other real property included in the proposed subdivision and/or development. The Commission and Council must review and approve the proposed amount of water based on the buildout study provided by Staff. The council may reasonably adjust this amount depending on the type of subdivision and development requested and the water requirements thereof.

##### **D. Acquisition of Excess Water Rights**

- a. If at any time an owner is required to deed water rights to the Town, and if that owner owns more water rights which have been used on the property relating to the land use application than the owner is required to deed to the Town, then the Town shall request that the owner either sell the excess rights to the town or enter into an agreement with the Town giving the Town the first right of refusal should the owner decide to sell said water rights in the future.

##### **E. Type of Water Rights**

- a. Water rights shall be sub-surface water rights that have a priority date prior to January 1, 1934 and be available for use in water right area 75.

##### **F. Transferring Water Rights**

- a. The developer shall submit a title report showing the type of water right, ownership of the right, and any liens or encumbrances. The developer shall also provide a title insurance policy in such a sum that is adequate to cover the appraised value of the water rights the policy is covering.
- b. A change application with the State of Utah shall be completed at the expense of the party developing the land. Information to be included in the change application will be provided by Brian Head Town, including the points of diversion. The change application must be approved by the State Engineer prior to transferring water rights to the Town on the books of the State of Utah Division of Water Rights. This transfer may also be conditioned on approval of the land use

application pending before the Town that caused the developer to transfer the water rights.

- c. A deed transferring the water rights to Brian Head Town shall be completed and held prior to the land use application approval. The deed transferring ownership may be held either by the Town or in an escrow account paid for by the developer. Once the land use application and change application receive approval, the deed will be recorded.
- d. If the Division of Water Rights has not made a final decision on the change application prior to the land use approval, then the land use application will be tabled until a final decision is made.
- e. If at any point in this process, the change application is denied by the Division of Water Rights then the request will be denied and the land use application will die.

#### G. Exceptions

##### a. Public Lands Exception

- i. If at the time of annexation, the annexed property is owned by the Bureau of Land Management or the US Forest Service then that acreage is not subject to the requirements of this ordinance that mandate the deeding of water rights. This exception only applies to annexation and not when the property is platted as a residential subdivision or receives a building permit.

##### b. Town of Brian Head Exception

- i. Nothing in this ordinance shall require the town to deed water or pay a fee if the Town develops land.

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