

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



Minturn Planning Commission
Chair – Lynn Teach
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Eric Rippeth
Darell Wegert

Town Council Public Hearing

Minturn North Construction Company

Conditional Use Permit for Temporary Construction Management Office and Storage

Hearing Date:	June 5, 2024
File Name and Process:	Minturn North Conditional Use Permit
Owner/Applicant:	Union Pacific Railroad / Rick Hermes, Minturn North Construction Company
Representative:	Rick Hermes
Legal Description:	N/A
Zoning:	Game Creek Character Area PUD Holding Zone
Staff:	Madison Harris, Planner I
Recommendation:	Approval, with Conditions

Staff Report

I. Summary of Request:

The Applicant, Rick Hermes, of Minturn North Construction Company requests review of a new Conditional Use Permit for leased portions of the Union Pacific Railroad (UP) property to allow for temporary construction management office and storage uses generally located east of the Meadow Mountain Business Park and the Eagle River, in between the rail line and Minturn Road.



Figure 2: Lease Area Boundary

From the application, the following description is provided by the Applicant:

“Due to the amount of construction that will be ongoing throughout the site, we believe the construction management office, unpaved parking, construction material and equipment storage and associated restroom facilities are better located on an adjacent 0.66-acre Union Pacific Railroad property across from Fourth Street. This location will have less impact on Taylor Avenue residents and Owners within the Minturn North PUD. By placing a management office at this location, we can see who is entering and exiting the construction site and it gives the sub-contractors a good place to check-in with added parking when needed. The more efficient we can be, the less impact there will be on existing surrounding land uses.”

As outlined within this report, **staff and the Planning Commission are recommending approval with conditions** of the proposed CUP.

II. Summary of Process and Code Requirements:

This is a Conditional Use Permit (CUP) review by the Town of Minturn Town Council, which should result in the Town Council making a formal decision for approval, approval with conditions, or denial of the CUP request in accordance with the standards, criteria and findings outlined in Section 16-21-620 – *Conditional Use*, Minturn Municipal Code.

Specifically, 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. Background:

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.

There are currently five CUPs approved for several business entities operating within the UP property. Conditional Use Permits for contractor storage on UP property have historically been approved with the following conditions or standards:

1. No vehicle shall exceed 40'2" in length. This restriction does not apply to storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be maintained in an orderly manner; must be contained and screened to the greatest extent possible with fencing and green mesh screening materials; and, shall not be stacked.
2. No storage of campers, pop-ups, conversion vans, camper trailers, or similar camping related vehicles is permitted. Storage of snowmobiles, ATV's, dirt bikes, and other personal recreational vehicles is permitted.
3. No inoperable or unlicensed vehicles are to be kept on the property for longer than five (5) days. (Pursuant to Section 7-2-70 Minturn Municipal Code).
4. Leased lots associated with the CUP are 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. (Pursuant to Section 7-4-50 Minturn Municipal Code).
5. CUP holders are to maintain and conduct business within the lease areas associated with the approved and valid CUP only.
6. Violations. The following schedule of fines for violations not remedied within 30 days:
 - a. The first violation will be fined \$100.
 - b. The second violation will be fined \$250.
 - c. The third and subsequent violations will be fined \$500.
7. Each CUP will be subject to annual review by the Town staff with regard to compliance with the terms of use and conditions of approval associated with the CUP. The Town staff shall provide a report to the Town Council following such annual review. The report shall, in a general manner, provide updates on the following:
 - a. Any violations or other incidences requiring staff response and Town resources out of the ordinary course of Town business and services. A violation will only be

- counted if the infraction has not been corrected within 30 days of notice being sent to the CUP holder.
- b.* Compliance with the overall terms of use permitted by the CUP as well as observations regarding the condition of the lease/CUP area.
- c.* Any changes in i) Lessee/Sub-Lessee; and, ii) uses within CUP area.
- d.* At staff's discretion, a recommendation may be made to Council to revoke the CUP having accumulated three violations in a calendar year (Jan 1 to Dec 31).
- 8. Lessees are required to meet with the Town Council every three (3) years for CUP review. The review shall include but not be limited to inspections by Town staff and the following reporting:
 - a.* Report from Code Compliance Office
 - b.* Report from Planning Department
- 9. Hours of operation: 7 days a week. 7:00 a.m. to 7:00 p.m.
- 10. Uses must be in compliance with the applicable laws, including Minturn Municipal Code, state and federal law. A violation of any law within the permitted premises shall be considered a violation of the CUP.
- 11. All uses and occupancy associated with activities approved for each individual CUP shall adhere at all times with the noise and vibration standards of the Town (pursuant to Section 16-18-30, Minturn Municipal Code).
- 12. All leased areas associated with the CUP must be fenced and screened (green mesh screening materials) along the perimeter of leased property.
- 13. Supplies, parking, vehicles, truck containers, and equipment within fenced area or designated leased area only
- 14. Proper fuel containment I inspected by Eagle River Fire Protection District for small volume (less than 100 gallons) in OSHA approved containers.
- 15. All overnight parking must be done within the fenced yard and/or building(s) associated with the approved CUP.
- 16. Any chemical storage will require material safety data sheets. No chemical storage within 30' live stream setback areas along the Eagle River and/or Game Creek.
- 17. Emergency access of 20' through the Union Pacific rail yard and at both access gates shall be maintained.
- 18. Off-season use will require site storage of snow and keeping emergency access cleared.
 - a.* Maintain proper snow storage or sufficient snow removal
- 19. Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.
- 20. Town staff inspects the site for compliance at any time.

Staff and the Planning Commission are recommending the following conditions:

- 1. No vehicle entering the property shall exceed 40'-2" in length. This restriction does not apply to the installation of the construction management office and storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be maintained in an orderly manner; must be screened to the greatest extent possible with fencing and green mesh screening materials.

2. No storage of campers, ATV's, dirt bikes, snowmobiles, pop-ups, conversion vans, camper trailers, or similar camping related vehicles or personal use vehicles are permitted.
3. No inoperable or unlicensed vehicles are to be kept on the property for longer than five (5) days. (Pursuant to Section 7-2-70 Minturn Municipal Code).
4. The CUP property is 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.
5. Minturn North Construction Company is to maintain and conduct business within the CUP area associated with the approved and valid CUP only.
6. Violations. The following schedule of fines shall be enforced for violations not remedied within thirty (30) days:
 - a. The first violation will be fined \$100.00
 - b. The second violation will be fined \$250.00
 - c. The third and subsequent violations will be fined \$500.00
7. The CUP will be subject to a quarterly review by the Town of Minturn Planning Staff with regard to compliance with the terms of use and conditionals of approval associated with the CUP for the first year of the CUP, and all subsequent years of the CUP there shall be an annual review by the Town of Minturn Planning Staff with regard to compliance with the terms of use and conditions of approval associated with the CUP. The Town Staff shall provide a report to the Town Council following such review. The report shall, in a general manner, provide updates on the following:
 - a. Any violations or other incidences requiring Staff response and Town resources out of the ordinary course of Town business and services. A violation will only be counted if the infraction has not been corrected within thirty (30) days of notice being sent to the CUP holder.
 - b. Compliance with the overall terms of use permitted by the CUP as well as observations regarding the condition of the CUP area.
 - c. Any changes in i). Lessee/Sub-Lessee; and ii). Uses within the CUP area.
 - d. At Staff's discretion, a recommendation may be made to Council to revoke the CUP having accumulated three violations in a calendar year (January 1 to December 31).
8. The CUP is valid for three (3) years. Applicant may request an extension of the CUP every year thereafter following a review with the Minturn Town Council. The review shall include but not limited to inspections by the Town Staff and the following reporting:
 - a. Report from a Code Compliance Officer.
 - b. Report from Planning Department
9. Working hours within the permitted area will coincide with the Minturn North PUD. Exterior hours may occur between the hours of 7:00 am MST and 6:00 pm MST Monday – Saturday. Interior hours may occur between the hours of 7:00 am MST and 6:00 pm MST Monday – Sunday.
10. Uses must be in compliance with the applicable laws, including Minturn Municipal Code, state and federal law. A violation of any law within the permitted premises shall be considered a violation of the CUP.

11. All uses associated with activities approved by the CUP shall adhere at all times with the noise and vibration standards of the Town (pursuant to Section 16-18-30, Minturn Municipal Code).
12. The CUP boundary must be gated, fenced and screened (green mesh screening materials).
13. Supplies, parking, vehicles, storage containers, structures, and equipment must be placed within the CUP boundary.
14. No fuel containment shall be permitted within the CUP boundary.
15. All overnight parking must be done within the approved and fenced CUP boundary.
16. No chemical storage is permitted within the approved CUP boundary.
17. A 20' ingress/egress access shall be maintained.
18. Proper snow storage areas must be maintained and sufficient for snow removal within the approved CUP area. The ingress/egress access shall be maintained at all times for emergency access.
19. Minturn North Construction Company is required to be under a valid lease agreement with Union Pacific Railroad.
20. Town Staff shall be allowed access to the site to inspect for approved CUP compliance at any time.
21. The Town Council shall determine that the CUP agreement shall be completed and expired upon final Certificates of Occupancy for all 39 lots.

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.

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

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.***

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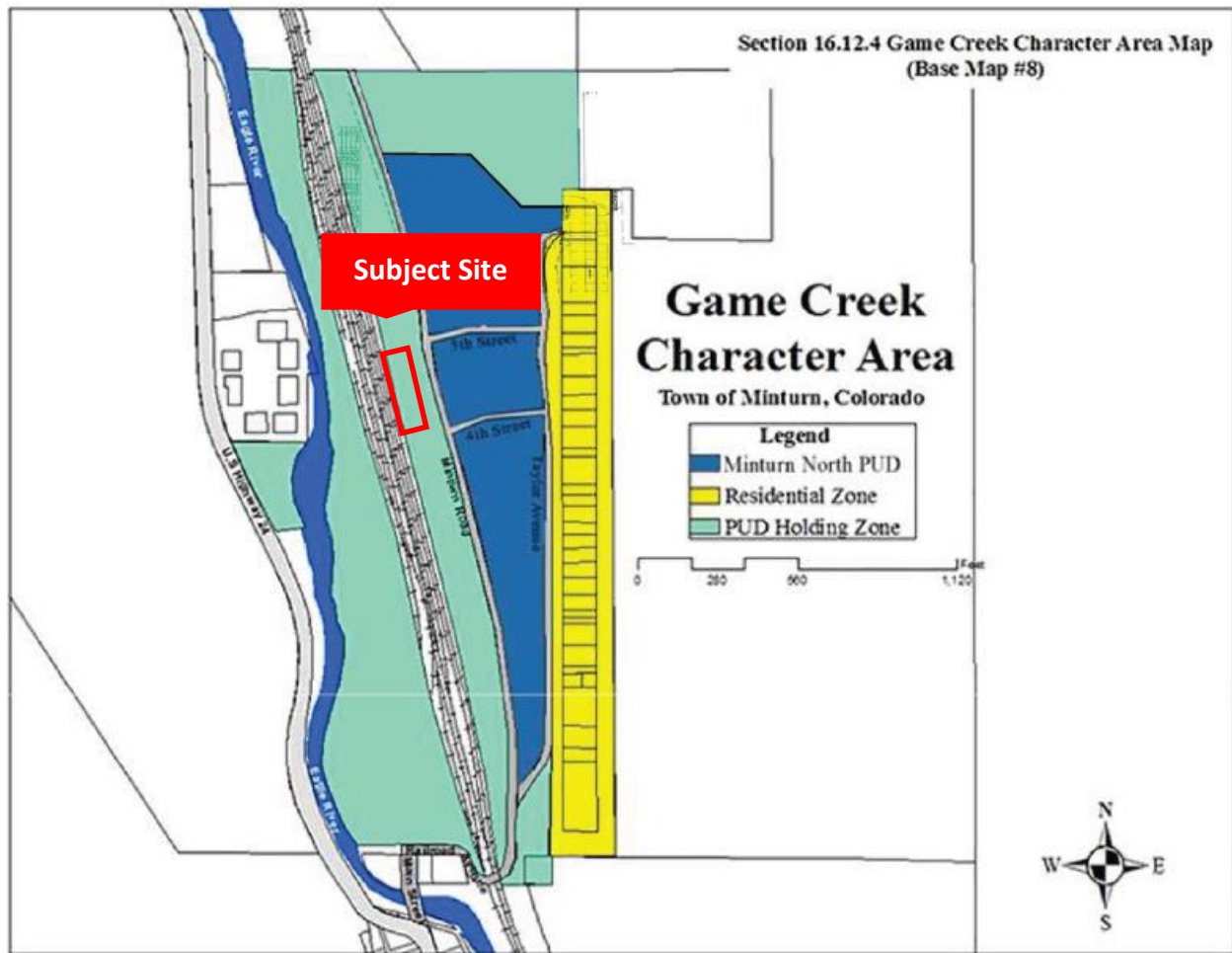


Figure 3: Game Creek Character Area Zoning Map

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 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 which 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:

Staff has not identified any issues specific to this proposal. This proposal is similar to other CUPs associated with contractor storage and the Applicant has provided evidence to demonstrate that the use can meet all of the conditions and terms of use.

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 “An Economically Vibrant Community: Commercial Development & Industry” of the 2023 Imagine Minturn Community Plan, it states, in part, that “*Data from the Town’s business licenses show a diverse and entrepreneurial mix of businesses. Construction and trades again represent a large proportion of businesses, ranging from general contracting and construction businesses to heavy construction.*”

The UP property – and the lease areas - is one of the first things people see when they enter Town from the North. 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, 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.

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 requested storage uses within the lease boundaries will likely 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 so long as the conditions of the CUP are adhered to and enforced.

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:

As part of the construction management plan submitted to the Town all contractor traffic should only be accessing the site via Minturn Road. There will likely be a material increase in local traffic, due to the development project, but unlikely to be as a result of the approval of the CUP. Congestion, pedestrian safety, traffic flow and control, access, maneuverability and snow removal in the immediate vicinity of the subject property should all be priorities for the Applicant.

- 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 utilize the fenced and screened area for storage of materials and equipment and a temporary construction office. No additional site (exterior) lighting is proposed with this CUP request and staff does not anticipate that the use of the lease area will generate noise, glare, or dust outside of the approved working hours as laid out in the recommended conditions.

- 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 redevelopment:

"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."

The continued leasing of UP lands in the Game Creek Character Area for temporary light-industrial and storage uses appears contrary to the above statement from the Minturn Municipal Code. Yet, a primary purpose of the Conditional Use Permit review - the Town's primary zoning and code enforcement tool to control uses on private property - is to ensure that permitted uses are, in effect, temporary and inspected on a regular basis for compliance; that, any such approval granted by the Town is valid so long as the terms and conditions are adhered to.

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:

Staff believes that as proposed, and if conditioned properly, the requested CUP for contractor storage will comply with the applicable provisions of the Town's zoning code (Chapter 16).

VII. Staff Recommendation: Approval with Conditions

Staff and the Planning Commission suggest the proposed Conditional Use Permit for Temporary Construction Management Office and Storage uses for Minturn North Construction Company, as conditioned, will conform with the Town's community plan as well as the applicable provisions and requirements of Chapter 16 - Zoning.

Therefore, staff and the Planning Commission are recommending approval, with the following conditions for the Town Council's consideration:

1. No vehicle entering the property shall exceed 40'-2" in length. This restriction does not apply to the installation of the construction management office and storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be maintained in an orderly manner; must be screened to the greatest extent possible with fencing and green mesh screening materials.
2. No storage of campers, ATV's, dirt bikes, snowmobiles, pop-ups, conversion vans, camper trailers, or similar camping related vehicles or personal use vehicles are permitted.

3. No inoperable or unlicensed vehicles are to be kept on the property for longer than five (5) days. (Pursuant to Section 7-2-70 Minturn Municipal Code).
4. The CUP property is 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.
5. Minturn North Construction Company is to maintain and conduct business within the CUP area associated with the approved and valid CUP only.
6. Violations. The following schedule of fines shall be enforced for violations not remedied within thirty (30) days:
 - a. The first violation will be fined \$100.00
 - b. The second violation will be fined \$250.00
 - c. The third and subsequent violations will be fined \$500.00
7. The CUP will be subject to a quarterly review by the Town of Minturn Planning Staff with regard to compliance with the terms of use and conditionals of approval associated with the CUP for the first year of the CUP, and all subsequent years of the CUP there shall be an annual review by the Town of Minturn Planning Staff with regard to compliance with the terms of use and conditions of approval associated with the CUP. The Town Staff shall provide a report to the Town Council following such review. The report shall, in a general manner, provide updates on the following:
 - a. Any violations or other incidences requiring Staff response and Town resources out of the ordinary course of Town business and services. A violation will only be counted if the infraction has not been corrected within thirty (30) days of notice being sent to the CUP holder.
 - b. Compliance with the overall terms of use permitted by the CUP as well as observations regarding the condition of the CUP area.
 - c. Any changes in i). Lessee/Sub-Lessee; and ii). Uses within the CUP area.
 - d. At Staff's discretion, a recommendation may be made to Council to revoke the CUP having accumulated three violations in a calendar year (January 1 to December 31).
8. The CUP is valid for three (3) years. Applicant may request an extension of the CUP every year thereafter following a review with the Minturn Town Council. The review shall include but not limited to inspections by the Town Staff and the following reporting:
 - a. Report from a Code Compliance Officer.
 - b. Report from Planning Department
9. Working hours within the permitted area will coincide with the Minturn North PUD. Exterior hours may occur between the hours of 7:00 am MST and 6:00 pm MST Monday – Saturday. Interior hours may occur between the hours of 7:00 am MST and 6:00 pm MST Monday – Sunday.
10. Uses must be in compliance with the applicable laws, including Minturn Municipal Code, state and federal law. A violation of any law within the permitted premises shall be considered a violation of the CUP.
11. All uses associated with activities approved by the CUP shall adhere at all times with the noise and vibration standards of the Town (pursuant to Section 16-18-30, Minturn Municipal Code).
12. The CUP boundary must be gated, fenced and screened (green mesh screening materials).

13. Supplies, parking, vehicles, storage containers, structures, and equipment must be placed within the CUP boundary.
14. No fuel containment shall be permitted within the CUP boundary.
15. All overnight parking must be done within the approved and fenced CUP boundary.
16. No chemical storage is permitted within the approved CUP boundary.
17. A 20' ingress/egress access shall be maintained.
18. Proper snow storage areas must be maintained and sufficient for snow removal within the approved CUP area. The ingress/egress access shall be maintained at all times for emergency access.
19. Minturn North Construction Company is required to be under a valid lease agreement with Union Pacific Railroad.
20. Town Staff shall be allowed access to the site to inspect for approved CUP compliance at any time.
21. The Town Council shall determine that the CUP agreement shall be completed and expired upon final Certificates of Occupancy for all 39 lots.