



**CITY PLANNING COMMISSION**  
**520 E Cascade Avenue Sisters, OR 97759**  
**Thursday, January 7, 2016– 5:30 P.M.**

**AGENDA**

- I. CALL TO ORDER
- II. VISITOR COMMUNICATION  
*This is the time provided for individuals wishing to address the Planning Commission, at the Commission's discretion, regarding issues that are not already on the agenda. Citizens who wish to speak should sign up prior to the beginning of the meeting on the sign-up sheet at the podium. Please use the microphone and state your name and address at the time the Planning Commission calls on you to speak.*
- III. APPROVAL OF MINUTES- None
- IV. PUBLIC HEARINGS:
  - A. **Continued from November 19, 2015** - MOD #15-06: Modification of ClearPine subdivision preliminary plat (SUB #15-01) to revise the rear yard setbacks along northern property line. This application is being processed as a Type IV decision.
- V. WORKSHOP:
  - A. Continue discussion of future Development Code revisions from December 17, 2015 workshop
    - 1. Mobile Food Units
    - 2. Vacation Rentals
    - 3. Temporary Uses
- VI. OTHER COMMISSION BUSINESS
- VII. ADJOURN

*This agenda is also available via the Internet at [www.ci.sisters.or.us](http://www.ci.sisters.or.us). The meeting location is accessible to persons with disabilities. Requests for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting by calling Kathy Nelson, City Recorder, at the number below.  
520 E. Cascade Ave. – P.O. Box 39, Sisters, OR 97759 – 541-323-5213.*

# AGENDA ITEM SUMMARY



# CITY OF SISTERS PLANNING COMMISSION

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**Meeting Date:** January 7, 2016

**Staff:** Patrick Davenport

**Type:** Public Hearing (continued from 11/19/15)

**Dept:** CDD

**Subject:** Modification (MOD 15-06) to Approved Preliminary Subdivision Plat (SUB 15-01)

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**Action Requested:** Continue Public Hearing from November 19, 2015 and take action on subject Modification request.

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**Summary:** The subject request is to modify an approved Preliminary Subdivision Plat from the setback originally specified in the property's April 2001 Annexation Agreement. The request is to modify the existing setbacks per the original Agreement for this property which specified setbacks for future industrial buildings along the northern property as follows:

- 50' setback for structures less than 20' in height and;
- 100' setback for structures greater than 20' in height.

The purpose of the setbacks was to reduce the impact of future industrial uses on the residential property to the north. The 2001 Development Agreement containing these setback provisions expired in 2008, under ORS 94.504, which imposed a seven-year term on the Agreement. These setback requirements have been carried forward in subsequent land use applications since the Development Agreement was approved, therefore the setbacks as specified are still applicable.

The proposed setbacks are illustrated via two versions. One version is illustrated in Attachment D which provides a 20' setback along the northern property line for all structures. The second version proposes setbacks consistent with current Development Code requirements in concert with an alley constructed along northern property line.

During the November 19, 2015 regular meeting the Planning Commission received the staff report and public testimony on the subject land use application. The Planning Commission also received testimony from the applicant and Mr. Duane Lee, a property owner adjoining ClearPine subdivision on the north side as his attorney Ms. Merial Darzgen from Peterkin and Associates. The applicant and Mr. Lee indicated that they are relatively close in reaching a mutually satisfactory agreement and Mr. Lee requested additional time to consider the offer by the developer. After discussing the impact of the proposed revisions to the setbacks along the northern property line of ClearPine, Mr. Lee requested and successfully obtained a continuance of the public hearing to today (January 7, 2016).

The Planning Commission is requested to continue the public hearing and receive additional testimony from the applicant and all others requesting to participate. The original staff report and attachments from the November 17, 2015 are re-attached to this report as well as additional information received during and after the public hearing. The Planning Commission is also requested to take an action on the request by forwarding a recommendation to the City Council for final approval.

# AGENDA ITEM SUMMARY



# CITY OF SISTERS PLANNING COMMISSION

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**Meeting Date:** January 7, 2016

**Staff:** Patrick Davenport

**Type:** Public Hearing (continued from 11/19/15)

**Dept:** CDD

**Subject:** Modification (MOD 15-06) to Approved Preliminary Subdivision Plat (SUB 15-01)

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**AIS continued**

**Attachments: Complete agenda item packet from 11/19/15 meeting**

- A- Staff report with Conditions of Approval
- B- Application and applicant's request
- C- Approved Tentative subdivision plats illustrating two versions
- D- Proposed tentative subdivision plat (Option 1)
- E- Original Development Agreement dated April 21, 2001
- F- Letter from Duane Lee dated 09/21/15
- G- Letter and attachments from Duane Lee dated October 15, 2015
- H- Letter from Jeff and Gayle Reynolds dated October 29, 2015
- I- Recorded plats for Phase 1
- J- Draft Resolution 2015-15

**Additional items received since 11/19/15**

- K- Letter from Ms. Darzgen/Peterkin and Assoc. dated November 19, 2015
- L- Letter from applicant Mr. Peter Hall dated December 11, 2015

**CITY OF SISTERS  
PLANNING COMMISSION**



**EXHIBIT A**

**STAFF REPORT**

**File #:** MOD 15-06

**Applicant:** Peter Hall  
**Property Owners:** 3 Sisters Partners

**Request:** Modification of an approved preliminary subdivision plat (SUB #15-01)

**Hearing Date:** November 19, 2015, 5:30 pm, Sisters City Council Chambers, 520 E. Cascade Avenue, Sisters, Oregon

**Location:** ClearPine Subdivision

**Planner:** Patrick T. Davenport

**1. Project Request**

The Applicant requests modification of an approved subdivision plat (SUB #15-01) to revise the setbacks along the northern property line.

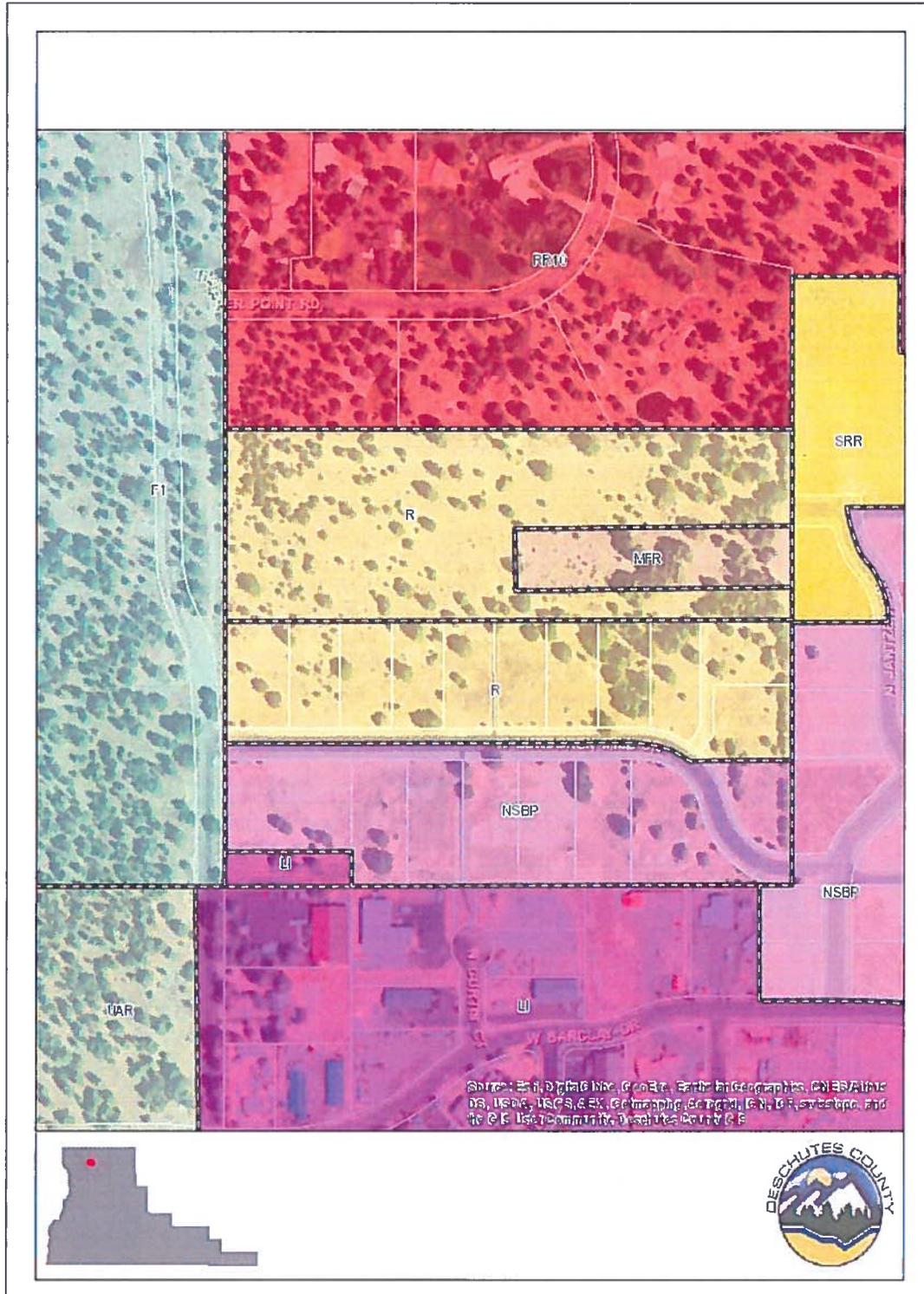
**2. Property Description**

The subject site consists of a 77- lot subdivision known as ClearPine. The development has received approval for a master plan and tentative subdivision plat (MP 15-01 and SUB 15-01). The lots range in size from approximately 5,000 to 6,500 square feet. Adjacent land uses and zoning designations for the surrounding properties are summarized as follows:

Direction	Current Zoning District	Current Use
North	Deschutes County jurisdiction	Rural/residential
East	Sun Ranch Residential (SRR) and North Sisters Business Park (NSBP)	Vacant lots
South	North Sisters Business Park (NSBP)	Vacant lots
West	Deschutes County Jurisdiction	US Forest Service

### ZONING/LOCATION MAP

- Phase 1 Plats have been recorded but do not appear on Dial Deschutes web site. Copies of recorded plats are attached as Exhibit H.



## **Background**

The subject property is existing ClearPine subdivision. The Master Plan and Subdivision applications (MP 15-01 and SUB 15-01) were approved by the Planning Commission on 04/30/2015 and an additional review was performed by the City Council via its call up authority and was approved on 06/25/15. Historical land use decisions are provided below:

- PA-99-4 / ZC 99-1 Deschutes County Decisions that were followed by Annexation
- SUB 05-07– Three Sisters Business Park Subdivision
- CP06-04, CP06-03, Z05-02 -Comprehensive Plan Amendment converting 12.58 acres to R and MFR and 16.91 acres to LI/NSBP
- CP14-01 and ZC 14-01 – Comprehensive Plan Amendment and Zone Change converting 8.32 acres of LI/NSBP to R
- MP 15-01 and SUB 15-01 – Master Plan and Tentative Subdivision Plan on 20.02 acres, for a 77 – lot subdivision

The subdivision is zoned Residential (R) and Multifamily Residential (MFR) and its existing approval enables the construction of 77 single family detached residential units on lots ranging from approximately 5,000 to 6,500 square feet in area with the R zone. The MFR zoned area was not part of this approval.

## **Setbacks Along Northern Property Line**

The original UGB annexation agreement for this property specified setbacks for industrial buildings along the northern property as follows: 50' setback for structures less than 20' in height and a 100' setback for structures greater than 20' in height. The purpose of the setbacks was to reduce the impact of future industrial uses on the residential property to the north. The 2001 Development Agreement containing these setback provisions expired in 2008, under ORS 94.504, which imposed a seven-year term on the Agreement. These setback requirements have been carried forward in subsequent land use applications since the Development Agreement was approved, therefore the setbacks as specified may still be applicable.

Since the setbacks along the northern property line were not addressed as part of the approval for MP #15-01 and SUB #15-02, two development versions are currently in effect at this time. One version illustrates an alley to be constructed along the northern property line and the other version illustrates no alley to be constructed along the northern property line.

An opportunity exists to finalize the design of the lots along the northern property line during the public hearing, depending upon the final decision regarding this Modification request.

#### 4. Applicant's Request

The applicant/developer has submitted a modification request to revise the aforementioned setbacks along the northern property line. The current setback provisions restrict normal building standards on approximately 3 acres, or 15% of the Applicant's (ClearPine) subdivision and has offered two Options for consideration:

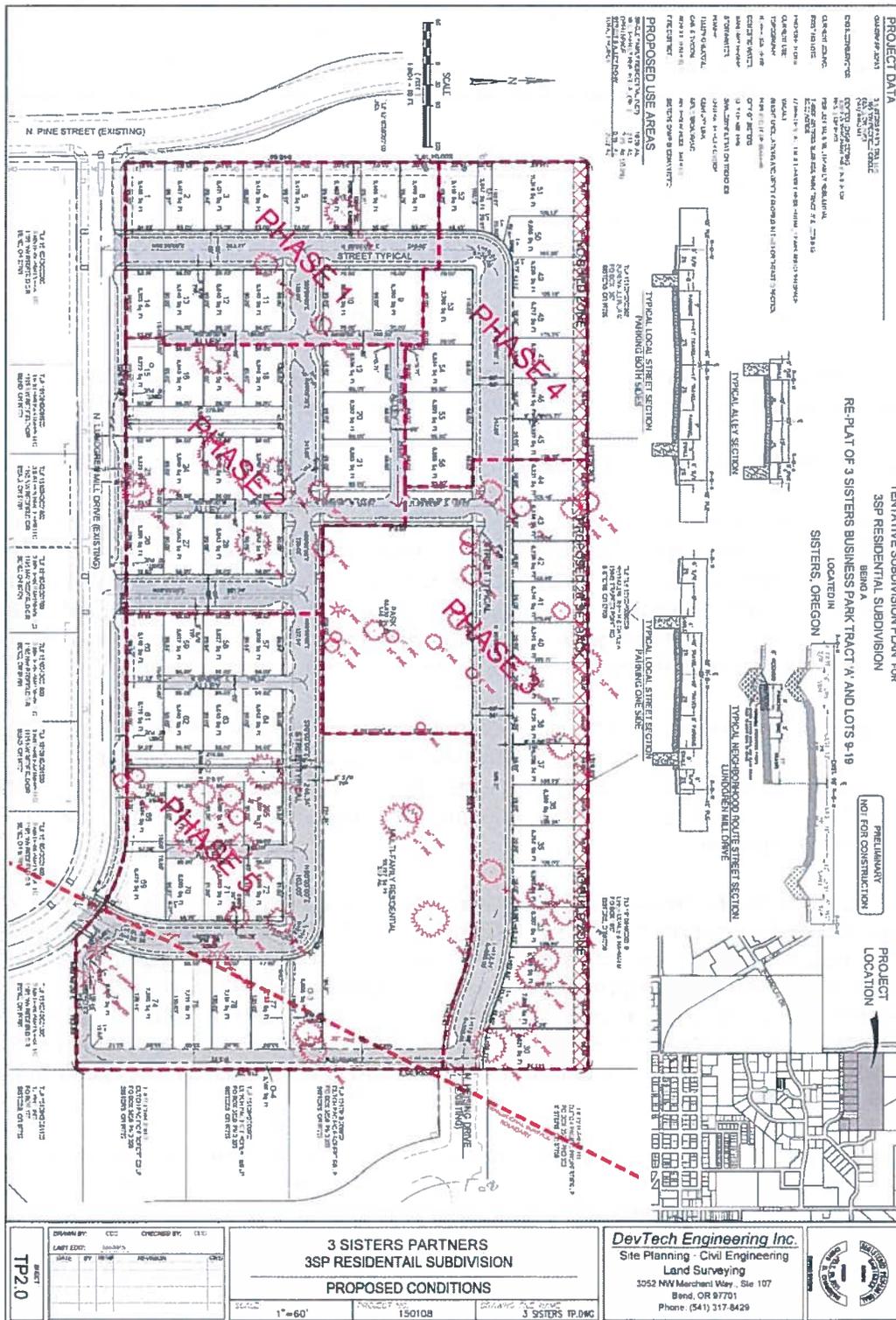
- Option 1: Apply a 20' no build zone (20' setbacks for all structures along the northern property line)
- Option 2: Revert to the minimum Sisters Development Code setbacks per 2.2.2:

<b>Rear Yard Setbacks</b>	
Primary Building/Living Space (Enclosed habitable area)/Attached garage (street accessed)	15 ft. min
Accessory Building	5 ft. per story min.
Detached Garage (street accessed)	5 ft. per story min.





**APPLICANT'S PRELIMINARY PLAT: PROPOSED CONDITIONS**



## 5. Review Procedures

**Conclusionary Findings.** Pursuant to the applicable chapters found in the Sisters Development Code, this modification request can either be approved, approved with conditions, or denied on the basis of whether the applicable standards and criteria can be satisfied either as submitted, or as mitigated through conditions of approval. The applicant has provided a Burden of Proof dated September 4, 2015 and is attached to this staff report.

**Applicable Criteria;** Sisters Development Code (SDC) - Chapter 2.2 (Residential District); 4.1 (Types of Applications and Review Procedures); and 4.3 (Land Divisions and Lot Lines Adjustments).

### 4.1.700.J General Provisions: Major Modifications.

1. **An applicant may apply to modify an approval at any time after a period of 60 days has elapsed from the time a development approval has become final.**

Response: The application was approved on 06/25/15. The applicant meets this criteria.

2. **Unless otherwise specified in this Code and is not considered a minor modification, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.**

Response: The request is not considered a minor modification and is not a substitute for an appeal. The modification is not a substantially new proposal and although the reduction of setbacks from the existing requirements may impact the adjoining properties, staff does not consider the request to have *significant, additional* impacts from what has been previously approved.

3. **An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.**

Response: Only one aspect of the previously approved subdivision plat is requested to be modified. The request is not considered to have *significant, additional* impacts on the surrounding properties beyond what is already approved.

- 4. An application for a modification of a Type I approval shall be processed as a Type I application. An application for a modification of a Type II approval shall be processed as a Type II application. An application for a Type III approval shall be processed as a Type III application. The Communication Development Director shall have the discretion to forward any Type I or Type II modification to the Planning Commission for review.**

Response: The original application (SUB #15-01) was reviewed and approved by the Planning Commission as a Type III application but the City Council called up the decision, provided a de novo review and conditionally approved both MP #15-01 and SUB #15-01.

The setbacks along the northern property line were approved by City Council via a development agreement dated April 20, 2001. Therefore, the proposed Modification to the setbacks specified in the April 20, 2001 Development Agreement will require a review by the Planning Commission with a recommendation to the City Council for the final decision.

- 5. The effect, if any, of a modification upon the original approval time limitation shall be established in the modification decision.** The modification, if approved, will not have any effect on the previous conditions of approval. All terms in the conditions of approval per the City Council's decision on 06/25/15 remain in effect should this Modification request be approved.

### **Public Notices**

On October 22, 2015, the City mailed a notice to properties located within 250 feet of the project. One written comment has been received from adjoining property owner and has been attached to this staff report. The City also posted the site with a notice of land use action on October 22, 2015 and published a notice in the Nugget newspaper on October 28, 2015.

### **Public Comments**

Three letters from adjoining property owners were received and have been attached to this staff report. Two letters from Mr. Duane Lee dated September 21, 2015 and October 15, 2015 (with attachments) were sent by Mr. Duane Lee, and one letter from Jeff and Gayle Reynolds dated October 29, 2015. Both property owners expressed concerns regarding heights of future dwellings and lack of fencing being proposed by the applicant/developer.

Neither prior Conditions of Approval for this development or the Sisters Development Code require a fence, berm or other type of screening when the subject residential development is proposed adjacent to lower density residential development. The height limit restrictions for the proposed dwellings which were imposed upon the subject property are still in effect and are the subject of the modification request. The Planning Commission has the ability to consider any appropriate mitigation measures to address the concerns in the attached letters.

**Recommendations:**

The Planning Commission is being requested to hear statements from all participants and make a recommendation with draft conditions to be forwarded to the City Council for final approval.

**Exhibits**

The following exhibits make up the record in this matter. These are contained in file MOD #15-06 and are available for review at the City of Sisters City Hall:

- A- Staff report with Conditions of Approval**
- B- Application and applicant's request**
- C- Approved Tentative subdivision plats illustrating two versions**
- D- Proposed tentative subdivision plat (Option 1)**
- E- Original Development Agreement dated April 21, 2001**
- F- Letter from Duane Lee dated 09/21/15**
- G- Letter and attachments from Duane Lee dated October 15, 2015**
- H- Letter from Jeff and Gayle Reynolds dated October 29, 2015**
- I- Recorded plats for Phase 1**
- J- Draft Resolution 2015-15**

Conditions of Approval. Below are the DRAFT Conditions of Approval for the Planning Commission's Consideration.

1. (Option #1 or Option #2) is hereby approved.
2. All applicable conditions of approval specified in previously approved land use applications affecting the subject property not modified by this application remain in effect.
3. Other conditions as approved by the Planning Commission (if any).

**MASTER PLANNING APPLICATION FORM**

**CITY OF SISTERS**  
 Community Development Department  
 P.O. Box 39, 520 E. Cascade Avenue  
 Sisters, OR 97759  
 Ph: 541-323-5207 Fax: 541- 549-0561



- |   |  |  |   |
|---|--|--|---|
| <input type="checkbox"/> ACCESSORY DWELLINGS    | <input type="checkbox"/> MINOR CONDITIONAL USE   | <input type="checkbox"/> LOT LINE ADJUSTMENT     | <input type="checkbox"/> SUBDIVISION      |
| <input type="checkbox"/> ANNEXATION (III/IV)    | <input type="checkbox"/> DEVELOPMENT REVIEW      | <input type="checkbox"/> MASTER PLAN             | <input type="checkbox"/> TIME EXTENSION   |
| <input type="checkbox"/> APPEAL                 | <input type="checkbox"/> FINAL PLAT REVIEW       | <input checked="" type="checkbox"/> MODIFICATION | <input type="checkbox"/> TEMPORARY USE    |
| <input type="checkbox"/> CODE TEXT AMENDMENT    | <input type="checkbox"/> HISTORIC LANMARKS COMM. | <input type="checkbox"/> PARTITION               | <input type="checkbox"/> TYPE I           |
| <input type="checkbox"/> COMP. PLAN AMENDMENT   | <input type="checkbox"/> FLOOD PLAIN REVIEW      | <input type="checkbox"/> REPLAT                  | <input type="checkbox"/> VACATION RENTALS |
| <input type="checkbox"/> CODE INTERPRETATION    | <input type="checkbox"/> LOT CONSOLIDATION       | <input type="checkbox"/> SITE PLAN REVIEW        | <input type="checkbox"/> VARIANCE         |
| <input type="checkbox"/> CONDITIONAL USE PERMIT |  |  | <input type="checkbox"/> ZONE CHANGE      |

APPLICANT: 3 Sisters Partners, LLC PHONE: 541 468-0141

ADDRESS OF APPLICANT: 1195 NW Redfield Circle Bend, OR 97703

PROPERTY OWNER: Peter Hall PHONE: \_\_\_\_\_

ADDRESS OF PROPERTY OWNER: same

PROPERTY ADDRESS: W. Lundgren Mill Drive

TAX LOT NUMBER: T15 R10 Section Tax lot(s) \_\_\_\_\_

PROPERTY SIZE (ACRES OR SQUARE FEET): 20.02 acres

EXISTING ZONING OF PROPERTY: Residential

COMPREHENSIVE PLAN DESIGNATION OF PROPERTY: Residential

DESCRIBE PROJECT OR REASON FOR THIS REQUEST: To remove property line setbacks on northern boundary. Related to SUB-15-01.

\*The applicant will be the primary contact for all correspondence and contact from the City unless other arrangements are made in writing.

<u><i>Peter Hall</i></u>	<u>Peter B. Hall</u>	<u>9/3/15</u>
Signature of Applicant	Printed Name	Date
_____	<u>same</u>	_____
Signature of Property Owner	Printed Name	Date

PLEASE DO NOT WRITE BELOW THIS LINE — FOR OFFICE USE ONLY

DATE RECEIVED 9/3/15 FILE NO. MOD 15-06 CHECK NO. 1445

CASH - AMOUNT PAID \$1000.00 RECEIPT NO. 125608

CHECKED BY: pd

Use this table to determine the documents/maps needed to complete your application package. Incomplete application packets will delay the processing of your application.

X – Information is required.  
 O – Other Information may be required.  
 SEE PLANNING STAFF

	Application & Filing Fee	Burden of Proof / Needs Analysis	Other Studies	Existing Site Conditions	Proposed Site Plan	Elevations	Floor Plans	Preliminary Title Report	Tentative Plat	Landscape Plan	Drainage / Grading Plan	Letter of Authorization	Legal Description	PDF's of each drawing	Refer to Code section?
Annexation	X	X	O					X				X	X		
Appeal	X	X	X												X
Code Interpretation	X	X													
Code Text Amendment	X	X	O												
Comp. Plan Amend.	X	X	O												
Conditional Use Permit	X	X	O	X	X	X	X	X		X	X	X	O	X	
Development Review	X	X		X	X	O	O	X				X		O	
Flood Plain Review	X	X		X	X			X				X			
Home Occupation Permit	X			X	X	X	X	X				X		X	X
Lot Line Adjustment	X	X		X	X	X	X	X			O	X		X	
Lot Consolidation	X	X						X	X			X	X	X	
Master Plan Development	X	X	O	X	X	O	O	X	X	X	X	X	X	X	X
Partition	X	X	O	X	X			X	X			X		X	
Replat	X	X	O	X	X			X	X			X		X	
Site Plan Review	X	X	O	X	X	X	X	X		X	X	X	X	X	
Subdivision	X	X	O	X	X			X	X			X	X	X	
Temporary Use Permit	X	X	O	X	X			X	X			X		X	
Time Extension	X	X	O	X	X	O	O	X				X		X	
Variance	X											O			X
Zone Change	X	X	O	X	X	O	O	X	O	O	O	X		X	X
	X	X	O					X				X			X



September 4, 2015

Patrick Davenport, Planning Director  
City of Sisters, Oregon  
P.O. Box 39  
Sisters, Oregon 97759

RE: MOD #15-06

This letter shall serve as the Burden of Proof for the requested land use action contained with MOD #15-06.

Applicant: Peter Hall, 3 Sisters Partners, LLC, 1195 NW Redfield Circle, Bend Oregon, 97703.

Intent of Modification to an Approved Decision: To remove certain property setbacks from the Deschutes County plat for the northerly property line in "Tract A" that include a "50-foot setback for buildings of 20 feet or less in height" and "100-foot setback for buildings more than 20-feet high".

Background: The setbacks were originally imposed in conjunction with a prior development agreement (Deschutes County document 2001-21131). The intent of the 2001 agreement was to impose significant setbacks on future Industrial development on Tract A, as a result of Tract A being annexed into the City of Sisters UGB. The setbacks were intended to keep large industrial buildings some distance away from the adjacent property owners in Trapper Point Subdivision. According to ORS statute 94.504, the 2001 Development Agreement expired in April 2008 (7-year agreement expiration).

Recent Land Use: IN 2014, MP #15-01 and SUB #15-01 granted Applicant approval to build a new residential subdivision called ClearPine on Tract A. Construction of Phase 1 infrastructure is currently nearing completion, as authorized by these land use actions.

Applicable Code: According to City of Sisters Development Code section 2.2.300, rear-yard setbacks in the Residential District (R) are provided as follows:

- Primary Building/Living Space w/Attached Garage = 15ft minimum.
- Detached Garage = 5' per story min. (therefore 5-10 ft minimum).



- Eaves are allowed to encroach another 3 feet (making the effective edge of structure setbacks 2' & 7' for detached garages, and 12' for living space).

Proposal

The Applicant is proposing the current 50' and 100' setback restrictions be removed and replaced with either, a) standard R District rear-yard setbacks, or alternatively, b) a 20' residential rear-yard building setback along the entire northern boundary of Tract A, with its boundary against the Trapper Point Subdivision. The latter will provide additional separation between new housing units in ClearPine, and existing, more rural housing units in Trapper Point. For this reason, the Applicant is willing to offer the compromise in option b.

Request: The Applicant, 3 Sisters Partners, LLC, requests the Planning Commission recommend one of the two options in the Applicant's Proposal. Further, the Applicant requests the City Council approve one of the two options proposed, and provide the required release to Deschutes County to allow removal of the setback restrictions originally imposed on the plat by Development Agreement 2001-21131.

  
\_\_\_\_\_  
Peter Hall, 3 Sisters Partners, LLC

9/4/15  
Date





**PROJECT DATA**

**OWNER/APPLICANT:** 3 SISTERS PARTNERS LLC  
1195 NW REDFIELD CIRCLE  
BEND, OR 97701  
(541) 486-0141

**ENGINEERS/SURVEYOR:** DevTech Engineering Inc.  
2022 NW MERCHANT WAY, SUITE 107  
BEND, OR 97701  
THREE SISTERS BUSINESS PARK TRACT 'A' & LOTS 9-19  
20.02 ACRES

**CURRENT ZONING:** 77 RESIDENTIAL - 1 MULTI-FAMILY RESIDENTIAL, 1 PARK AND OPEN SPACE

**EXISTING LOTS:** VACANT

**PROPOSED LOTS:** SLIGHT UNDULATIONS AND GENTLY SLOPING IN THE NORTHEAST DIRECTION

**CURRENT USE:** PUBLIC CITY OF SISTERS

**TOPOGRAPHY:** CITY OF SISTERS

**STREETS/ALLEYS:** CITY OF SISTERS

**DOMESTIC WATER:** CITY OF SISTERS

**SANITARY SEWER:** SWALES/INFILTRATION TRENCHES

**STORMWATER:** CENTRAL ELECTRIC COOP

**POWER:** CENTURY LINK

**TELEPHONE/COM:** BEND BROADBAND

**CABLE TV/COM:** SISTERS SCHOOL DISTRICT

**SCHOOL DISTRICT:** SISTERS-CAMP SHERMAN RFPD

**FIRE DISTRICT:** SISTERS-CAMP SHERMAN RFPD

**PROPOSED USE AREAS**

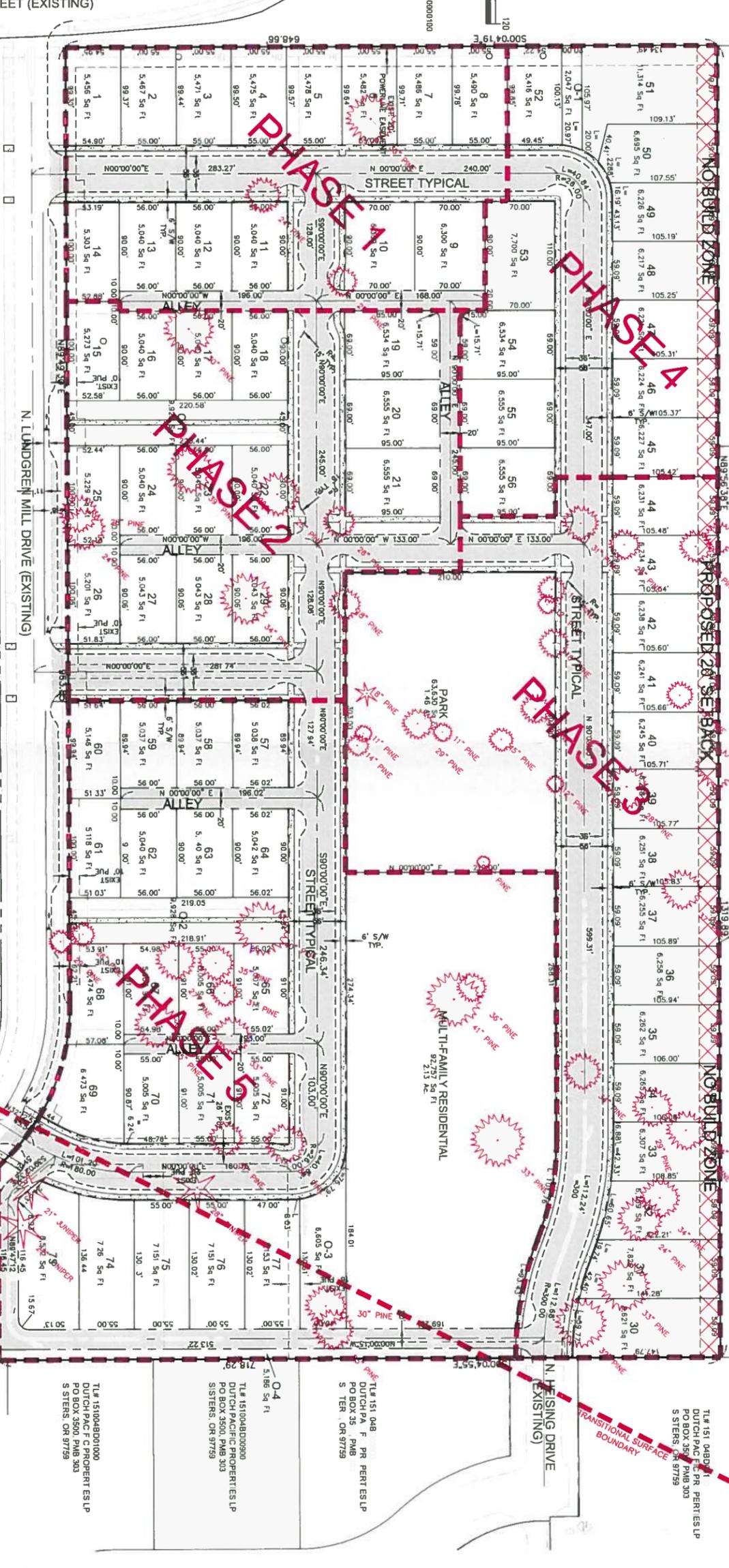
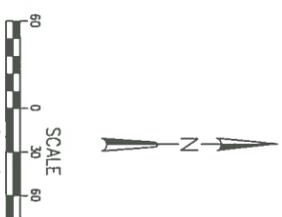
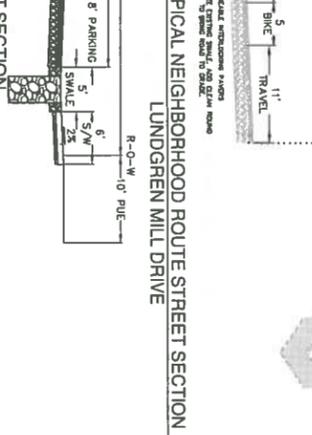
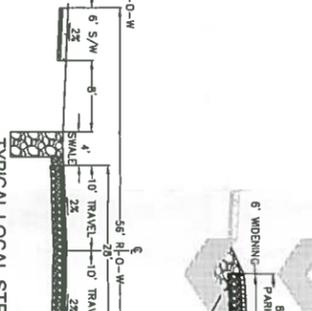
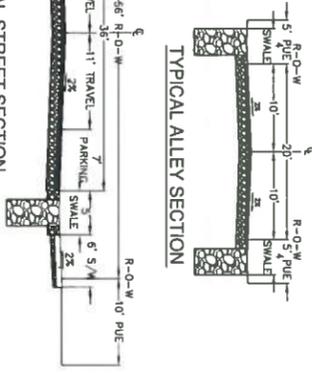
SINGLE FAMILY RESIDENTIAL (NET) 10.50 AC  
MULTI-FAMILY RESIDENTIAL (NET) 2.13 AC  
OPEN SPACE 2.23 AC (15.0%)  
STREET & ALLEY R.O.W 5.16 AC  
TOTAL PROJECT 20.02 AC

**TENTATIVE SUBDIVISION PLAN FOR  
3SP RESIDENTIAL SUBDIVISION**

BEING A  
RE-PLAT OF 3 SISTERS BUSINESS PARK TRACT 'A' AND LOTS 9-19  
LOCATED IN  
SISTERS, OREGON

PRELIMINARY  
NOT FOR CONSTRUCTION

**PROJECT  
LOCATION**



CDC	CHECKED BY:	CDC
9/8/2015	REVISION	CKD

**3 SISTERS PARTNERS  
3SP RESIDENTIAL SUBDIVISION  
PROPOSED CONDITIONS**

SCALE: 1"=60'

150108

3 SISTERS TP.DWG

**DevTech Engineering Inc.**  
Site Planning · Civil Engineering  
Land Surveying  
3052 NW Merchant Way., Ste 107  
Bend, OR 97701  
Phone: (541) 317-8429

PLANNED  
BY  
CHECKED  
DATE  
SCALE  
PROJECT NO.

5/18/2015  
1:240

**EXHIBIT D**

**VOL: 2001 PAGE: 21131**  
**RECORDED DOCUMENT**

STATE OF OREGON  
COUNTY OF DESCHUTES



\*2001-21131 \* Vol-Page

Printed: 05/04/2001 13:15:05

**EXHIBIT E**

**DO NOT REMOVE THIS CERTIFICATE**

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received and duly recorded in Deschutes County records:

DATE AND TIME: May. 4, 2001; 1:12 p.m.

RECEIPT NO: 35251

DOCUMENT TYPE: Development Agreement

FEE PAID: \$0.00

NUMBER OF PAGES: 15

A handwritten signature in black ink, appearing to read "Mary Sue Penhollow".

MARY SUE PENHOLLOW  
DESCHUTES COUNTY CLERK

APRIL 20, 2001

REVIEWED  
LEGAL COUNSEL

2001-21131-1

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT, hereinafter referred to as "Agreement," is made and entered into by and between CITY OF SISTERS, hereinafter referred to as "City"; SISTERS SCHOOL DISTRICT NO. 6, hereinafter referred to as "School District;" and DESCHUTES COUNTY, hereinafter referred to as "County."

**RECITALS**

- A. School District owns a 29 acre parcel of real property identified on the Deschutes County Assessor's Map as 15-10-04, Tax Lot 500, as more particularly described in the attached Exhibit "A," and hereinafter referred to as "School District property."
- B. Barclay Meadows Business Park, LLC, hereinafter referred to as "Barclay Meadows" owns a 35 acre parcel of real property, hereinafter referred to as "Barclay property," which is adjacent to the east of the School District property described above.
- C. Both the School District property and the Barclay property are currently zoned EFU and are located in Deschutes County immediately adjacent to the north but just outside of the Sisters UGB boundary and the Sisters City limits.
- D. School District (Deschutes County File No. PA-99-5/ZC-99-3) and Barclay Meadows (Deschutes County File No. PA-99-4/ZC-99-1) have filed separate land use applications with Deschutes County to bring their respective properties within the Sisters UGB and rezone them Light Industrial. Both properties have been approved for annexation to the City of Sisters as light industrial property. Once the properties are inside the UGB, annexed to the City and zoned Light Industrial, Barclay Meadows and School District intend to subdivide their respective properties for ultimate light industrial development.
- E. The intent of this Agreement is to provide for limitations on the types of industrial uses allowed on the School District property described above, to provide a conceptual plan for future subdivision and industrial development of the School District property and to provide a plan for traffic improvements to address the impacts from development of the School District property. This Agreement was developed in conjunction with a similar agreement involving the Barclay property. The two agreements are separate and distinct from one another but both are based on similar development plans for the two properties, the material in the two land use files referenced herein and on a transportation impact study prepared by David Evans and Associates analyzing the traffic impacts associated with industrial development of the two properties.

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- F. It is also the intent of this Agreement to plan for the transportation improvements and contributions that will be required under this Agreement. School District, together with its respective assigns, voluntarily agrees to the limitations and contributions described herein in order to gain the certainty and benefits that this Agreement provides. City and County will benefit in that they also will have certainty as to the development limitations, future subdivision and industrial use plans and contributions to the transportation system as described herein.
- G. The parties acknowledge that City and the Oregon Department of Transportation ("ODOT") have initiated development of a Transportation System Plan ("TSP") for City which will identify the locations of future transportation improvements such as, but not limited to, traffic signals, turn lanes, parallel arterials and collector routes, etc., set costs estimates and plan for funding of those improvements, and establish street designations and levels of service or other mobility standards for area roads and intersections, including recognizing Sisters as a Special Transportation Area ("STA"). This Agreement is not intended to supersede or impact the development of the TSP. Instead, this Agreement is intended to provide a plan for transportation improvements to address the traffic impacts from development of the two properties pursuant to the planning responsibilities set forth in the Transportation Planning Rule at OAR-660-012-0060. To the extent that the transportation facilities identified through the TSP process differ or conflict with those facilities identified herein, the TSP shall control and the monies contributed herein shall be used for the facilities identified in the TSP.
- H. Pursuant to the January 2000 Update to the Transportation Impact Study and the Addendum to January 2000 Update to the Transportation Impact Study prepared by David Evans and Associates and submitted to Deschutes County in the two land use files referenced herein, the parties agree that the streets and intersections which will be impacted by the ultimate development of the two properties include U.S. Highway 20/Locust Street, U.S. Highway 20/Pine Street, and the future intersection of U.S. Highway 20/McKinney Butte.
- I. U.S. Highway 20 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Pine Street, Locust Street and most of the future McKinney Butte collector are a part of the City road system under the jurisdiction and control of the City. Some of the conceptual alignment of the future McKinney Butte collector may lie outside the Sisters UGB, which would be under the control of the County.
- J. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where ODOT deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than ODOT, except with its written approval.
- K. By the authority granted in ORS 366.425, ODOT may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm,

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or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, ODOT shall proceed with the project on a schedule determined by ODOT. Money so deposited shall be disbursed for the purpose for which it was deposited.

- L. By the authority granted in ORS 94.504 through 94.528, City and County are authorized to enter into Development Agreements to govern the development of property within their respective jurisdictions.
- M. To the extent that any of the monies paid to City under this Agreement are used to fund improvements or a portion of improvements which are outside the jurisdiction or control of the City, including traffic improvements on Highway 20 that fall within ODOT's jurisdiction and any portion of the future McKinney Butte collector that may fall within Deschutes County's jurisdiction, City shall enter into an appropriate agreement or take the necessary actions to disburse those monies to the jurisdiction or agency responsible for installation of and/or control of the improvement as part of the City's contribution for those improvements.
- N. On behalf of City, this Agreement is to be authorized by City of Sisters Ordinance No. 316 following a hearing held on December 27, 2000. Notice of the hearing was provided to County, ODOT, nearby property owners and other interested parties consistent with applicable law.
- O. On behalf of the County, this Agreement was authorized by County Ordinance No. 2001-012. That ordinance was adopted by the Deschutes County Board of Commissioners following a hearing held on December 27, 2000. Notice of the hearing was provided to the City, ODOT, nearby property owners and other interested parties consistent with applicable law.
- P. The execution of this Agreement is in the best interest of the public health, safety and welfare and is consistent with the Deschutes County Comprehensive Plan and implementing ordinances and the Sisters Urban Area Comprehensive Plan and implementing ordinances.

### **AGREEMENT**

In consideration for the mutual promises and performance obligations of each party set out in this Agreement, the parties agree as follows:

1. **Effective Date and Term of Agreement:**

This Agreement shall be effective following adoption of the City and County ordinances approving this Agreement pursuant to ORS 94.508, and upon the effective date of final adoption of the City ordinance finalizing annexation and approving the zone change to the City Light Industrial Zone. This Agreement shall begin as set forth above and its duration shall be in accordance with the provisions of ORS 94.504(2)(a).

2. **Conditions to Parties' Obligations:**

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The parties shall not be required to perform their respective obligations set out herein unless and until the land use and development approvals listed in Section 1 above have been granted, the period for appeal of such approvals has passed with no appeal being filed, or if an appeal is filed, the appeal has been finally resolved to School District's satisfaction.

3. Permitted Uses:

School District shall be permitted, subject to Site Plan Review and, if necessary, Conditional Use Approval, to use the property described herein for the uses allowed under the current City of Sisters Zoning Ordinance, Section 15.02.150, Light Industrial Zoning, except that the following uses shall not be allowed on the property referenced herein, the legal description of which is attached hereto as Exhibit "A": boat building, fuel oil distributor, manufacture of concrete products, concrete or asphalt batch plant, and wrecking and junk yard. Other than the specific prohibitions described above, the uses allowed through this Agreement do not preclude other uses allowed through a change of zoning regulations or through additional permits or agreements. The maximum height and size of any structures shall be as set forth in the applicable zoning ordinance.

4. Minimum Setback:

Minimum setback from the north property line of the School District property shall be 50' for any building that does not exceed 20' in height and 100' for any building over 20' in height. The setbacks from all other property lines shall be as set forth in the applicable zoning ordinance.

5. Plan for Infrastructure Improvements and Conditions:

5.1 Pursuant to the January 2000 Update to Transportation Impact Study and the Addendum to January 2000 Update to Transportation Impact Study, the maximum development allowable on the subject properties would result in 15% of the available 29 acres for the School District and the available 28 acres for Barclay Meadows being reserved for infrastructure and the remaining lot coverage being 35%. This results in a total industrial park development of 375,815 square feet for School District and 362,855 for Barclay Meadows. Based on Institute of Traffic Engineers (ITE) trip generation equations for an industrial park, 569 PM peak hour trips would be generated by the two sites (290 for School District and 279 for Barclay Meadows).

5.2 Pursuant to the January 2000 Update to Transportation Impact Study, School District at worst case scenario buildout in 2015 could generate the following percentages of critical moves ("critical move" is the left-through movement on the minor street) in the p.m. peak hour at these intersections: 8.3% at the future McKinney Butte/U.S. Hwy. 20; 37.4% at Locust/U.S. Hwy. 20; and 16.4% at Pine Street/U.S. Hwy. 20. Of the total traffic entering

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the intersection from the McKinney Butte collector in 2015, the School District property would contribute 11.8%.

- 5.3 Pursuant to the January 2000 Update to Transportation Impact Study and the Addendum to January 2000 Update to Traffic Impact Study, Barclay Meadows at worst case scenario buildout in 2015 could generate the following percentages of critical moves in the p.m. peak hour at these intersections: 11.2% at future McKinney Butte/U.S. Hwy. 20; 36.0% at Locust/U.S. Hwy 20; and 15.7% at Pine Street/U.S. Hwy. 20. Of the total traffic entering the intersection from the McKinney Butte collector in 2015, the Barclay Meadows property would contribute 11.2%.
- 5.4 Subject to the contingencies provided for herein, School District agrees to restrict development on its property to uses which will not produce in excess of 210 PM peak hour trips which, when combined with a similar restriction on the Barclay property (203 PM peak hour trips) through the development agreement referenced herein for that property represents 68% of the "worst case scenario" PM peak hour trips per day which would occur if unrestricted development were allowed.
- 5.5 ODOT anticipates that traffic signals, if ultimately approved through the TSP process, at the future McKinney Butte/U.S. Hwy. 20, Pine/U.S. Hwy. 20 and Locust/U.S. Hwy. 20 will cost \$150,000 each and that the future McKinney Butte collector will cost \$700,000 to construct. If the TSP does not identify the transportation facility improvements referenced herein as a part of the TSP, the School District and Barclay Meadows monies will be put toward the transportation facility improvements, which are identified in the TSP.
- 5.6 In accordance with the timing and procedures set forth in paragraph 5.9, School District agrees to pay fees to City to be used to fund the future McKinney Butte collector, a traffic signal at each of the intersections of US Hwy. 20/Locust, U.S. Hwy. 20/Pine Street and U.S. Hwy. 20/McKinney Butte.
- 5.7 With regard to the 413 trips identified herein, School District agrees to calculate its contribution at the amounts identified in Table 1, as identified in the Addendum to January 2000 Update to Transportation Impact Study, in order to mitigate its traffic impacts.

TABLE 1

SCHOOL DISTRICT	Total Cost	% Share	\$ Cost
Locust Street Signal	\$ 150,000	33.9%	\$ 50,850
McKinney Butte Signal	\$ 150,000	6.3%	\$ 9,450
McKinney Butte Collector	\$ 700,000	9.1%	\$ 63,700

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Pine Street Signal	\$ 150,000		\$ 19,950
Subtotal			\$143,950
10% Contingency Fund			\$ 14,395
TOTAL			\$158,345
Cost Per PM Peak Hour Trip			\$ 754
<b>BARCLAY MEADOWS</b>	<b>Total Cost</b>	<b>% Share</b>	<b>\$ Cost</b>
Locust Street Signal	\$ 150,000	32.9%	\$ 49,350
McKinney Butte Signal	\$ 150,000	6.3%	\$ 9,450
McKinney Butte Collector	\$ 700,000	8.7%	\$ 60,900
Pine Street Signal	\$ 150,000	12.5%	\$ 18,750
Subtotal			\$138,450
10% Contingency Fund			\$ 13,845
TOTAL			\$152,295
Cost Per PM Peak Hour Trip			\$ 754

The 10% Contingency Fund referenced in the Table above is intended to provide protection to the agencies and jurisdictions in the event the cost of the improvements identified in the TSP for the intersections referenced herein exceeds the costs estimated herein. In the event the cost of such improvements does not exceed the costs estimated herein, School District and Barclay Meadows shall be given transportation SDC credits up to the amount of the 10% contingency paid by each, as set forth above. Such SDC credits shall be assignable and transferable.

- 5.8 It is intended that the School District property will be subdivided or partitioned and ultimately developed through a site plan review and possibly a conditional use process. The exaction payments referenced herein shall be paid to the City upon subdivision or partition approval or, if the property is not subdivided or partitioned, upon site plan approval, whichever occurs first. The parties agree that the exaction payments set forth herein are not personal obligations but instead apply to run with the land for the property described in Exhibit "A." The School District's exaction referenced in Table 1 will be due and payable by the owner of the property described in Exhibit "A" upon the sooner of subdivision/partition approval or site plan approval for the property, regardless of the development status of the Barclay Meadows property.

- 5.9 The parties agree that the improvements planned for in this Agreement mitigate all foreseeable impacts that the proposed developments will have on the Sisters area transportation system as long as the land uses are consistent with the development limitations as set forth herein. Once development of either of the subject properties reaches a level that generates the maximum trips allowed for that property as set forth in paragraph 5.4, the owners of the remaining undeveloped lots will be required to address the transportation impacts of their respective developments in accordance with the law in effect at the time.
- 5.10 This Agreement contemplates that School District and Barclay Meadows will contribute a total of 18% of the estimated cost of the future McKinney Butte collector. In the event public or private grant funds become available to fund the McKinney Butte collector in an amount in excess of 82% of the cost of the collector as identified in the adopted TSP, then School District and Barclay Meadows shall be given a credit against transportation SDC's equal to the total dollar amount by which such grants or other funds exceeds 82% of the cost of the collector. Such SDC credits shall be pro-rated with 9% to School District and 9% to Barclay Meadows and shall be assignable and transferable.
- 5.11 In the event the provisions of OAR 660-012-0055(3) and (4) are found to apply to the developments referenced herein, School District agrees to comply with the relevant sections of the rule, including the provisions at OAR 660-012-0045(3), (4)(a) - (f) and 5(d).

6. Form of Payment and Accounting:

- 6.1 In accordance with the timing and procedures set forth herein, School District or its assigns, shall make all payments in the form of cash or check.
- 6.2 City shall accept and deposit School District's funds into a designated fund. Receipt of the funds shall be acknowledged in writing by the recipient and credited towards the overall contribution of School District.

7. Continuing Effect of Agreement:

In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of any party under the Agreement. If the substantial rights of any party are prejudiced by giving effect to the remainder of the Agreement, then the parties shall negotiate in good faith to revise the Agreement to give effect to its original intent. If the parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then any party may request that an arbitrator give an equitable effect to the remainder of the Agreement, and the Agreement shall thereafter be amended pursuant to the order of the arbitrator.

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If, because of a change in policy, law or circumstance, the Agreement fails of its essential purpose (vesting of allowed uses, limitations on uses and development conditions, planning for transportation facility improvements), then the parties shall be placed into their original position to the extent practical. As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations. It is the intent of this Agreement to vest development rights and conditions, including but not limited to the permitted uses, infrastructure improvements and fees and charges as set forth herein, notwithstanding any change in local ordinance or policy. To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide bases, and is not inconsistent with the vested development rights and conditions, the local rule, ordinance, regulation or policy shall be applicable.

8. Assignability of Agreement:

This Agreement shall be fully assignable, in whole or in part, by any party and shall bind and inure to the benefit of the parties and their respective assigns and successors. If any lot of the School District property is sold, the rights and interests of School District under this Agreement shall inure to benefit of the purchaser. The transfer of any property subject to this Agreement shall relieve School District of all further obligations under this Agreement as those obligations pertain to or are proportionally allocable to the property transferred.

9. Land Use/Annexation:

9.1 Consistent with the above provisions, the parties agree to cooperate to secure the necessary permits and approvals for the annexation, subdivision of and ultimate light industrial development of the properties referenced herein. The following approvals are the anticipated future approvals necessary for the development described herein:

9.1.1 Plan amendment, goal exception and zone change as pending before Deschutes County in File Nos. PA-99-4/ZC-99-1 (Barclay Meadows) and PA-99-5/ZC-99-3 (School District);

9.1.2 Annexation to City of Sisters and zone change approval to City Light Industrial Zoning;

9.1.3 Subdivision approval pursuant to the terms, restrictions and requirements set forth in the City of Sisters Code; and

9.1.4 Development permit approval pursuant to the terms, restrictions and requirements set forth in the City of Sisters Code.

10. Default; Remedy:

10.1 Default/Cure. The following shall constitute defaults on the part of a party:

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10.1.1 A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice specifying the breach; provided that if the non-breaching party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party; or

10.1.2 Any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party.

10.2 Remedies. Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

11. Amendment or Termination of Agreement:

11.1 This Agreement may be amended or terminated by the mutual consent of the parties or their assigns or successors in interest. Any amendment which relates to the permitted uses, development limitations or monetary contributions shall require a public hearing before the parties may execute an amendment. Any other amendment shall not require a public hearing.

11.2 Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

11.3 In the event of termination, City shall return all funds collected under this Agreement to the person who paid the funds and adjust any SDC credits accordingly.

12. Miscellaneous Provisions:

12.1 Notice. A notice or communication under this Agreement by any Party shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, and

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12.1.1 In the case of a notice or communication to County, addressed as follows:

117 NW Lafayette Ave  
Bend, OR 97701

ATTN: LEGAL COUNSEL

In the case of a notice or communication to the School District, addressed as follows:

220 S. Pine Street  
Sisters, OR

97759  
ATTN: SUPERINTENDENT

In the case of a notice or communication to City, addressed as follows:

150 N. Fir Street  
Sisters, OR  
97759

ATTN: LEGAL COUNSEL

or addressed in such a way in respect to a Party as that Party may, from time to time, designate in writing dispatched as provided in this section.

- 12.2 **Enforcement.** Both City and County shall have the power to enforce this Agreement until such time as the property described in Exhibit "A" is annexed to City and all applicable appeal deadlines associated with the annexation have expired. After annexation is complete and all applicable appeal deadlines have expired, the subject property will be outside of County jurisdictional boundaries and City will be the sole regulatory body authorized to administer, monitor compliance and enforce this Agreement.
- 12.3 **Compliance Review.** The City shall monitor compliance on a continual basis as School District submits subdivision and/or development applications.
- 12.4 **Construction of Improvements.** Construction of any approved structures may begin at anytime after the effective date of this Agreement and final approval of the structure. Such construction shall be completed within the time period specified in the construction approval document.
- 12.5 **Headings.** Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

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- 12.6 Counterparts. This Agreement may be executed in one or more original counterparts, each of which shall be deemed to be an original for all purposes but all of which shall constitute one and the same Agreement.
- 12.7 Waivers. No waiver made by any Party with respect to the performance, or manner or time thereof, of any obligation of the other parties or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.
- 12.8 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.
- 12.9 Time of the Essence. Time is of the essence of this Agreement.
- 12.10 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.
- 12.11 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next days which is not a Saturday, Sunday, or such a holiday.
- 12.12 Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 12.13 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

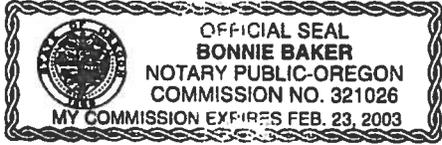
2001-21131-12

- 12.14 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Deschutes County, or the United States District Court for the District of Oregon.
- 12.15 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given "sole discretion" or being allowed to make a decision in its "sole judgment."
- 12.16 Condition of City/County Obligations. All City/County obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by the City/County as part of the local budget process. Nothing in this Agreement implies an obligation on the City/County to appropriate any such monies.
- 12.17 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties agree to cooperate in defending such action.
- 12.18 Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the City of Sisters or Deschutes County, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within reasonable control of the party to be excused.
- 12.19 No Third-Party Beneficiaries. School District, City and County and their successors and assigns are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 12.20 Other Necessary Acts. All parties shall execute and deliver to the other parties all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to



2001-21131-14

The foregoing was acknowledged before me by Tom DeWolf  
as Chair, Bocc for the Deschutes County, this 31<sup>st</sup> day of  
January, 2001.



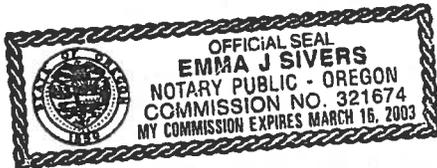
Bonnie Baker  
Notary Public for Oregon

**Sisters School District**

By William R. Reed  
Title CHAIRMAN OF SCHOOL BOARD  
Date 4-20-01

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

The foregoing was acknowledged before me by William R. Reed  
as Chairman of the Board for the Sisters School District, this 20<sup>th</sup> day of  
April, 2001.



Emma J. Sivers  
Notary Public for Oregon

2001-21131-15

A parcel of land located in the Northwest one-quarter (NW1/4) of Section 4, Township 15 South, Range 10 East, of the Willamette Meridian, Deschutes County, Oregon described as follows:

Beginning at the West one-quarter corner of said Section 4; thence North  $00^{\circ}03'45''$  West 991.18 feet to the Southwest corner of TRAPPER POINT, 1ST ADDITION; thence North  $89^{\circ}56'56''$  East 1,319.31 feet to the Southeast corner of TRAPPER POINT, 1ST ADDITION; thence South  $00^{\circ}04'50''$  East 998.04 feet to the South line of the Northwest Quarter of said Section 4; thence South  $89^{\circ}48'24''$  West 1,026.40 feet; thence South  $89^{\circ}50'12''$  West 293.72 feet to the point of beginning.

**SUBJECT TO:**

1. Easement including the terms and conditions thereof, granted to Central Electric Cooperative, Inc. by instrument recorded June 19, 1963 in Book 135, page 368, Deed Records.
- 2. The existence of roads, railroads, irrigation ditches, corrals, telephone, telegraph and power facilities, and the rights of third parties therein.
3. Easement, including the terms and conditions thereof, granted to Central Electric Cooperative, Inc. by instrument recorded July 6, 1967 in Book 154, page 49, Deed Records.

EXHIBIT A

**F. Duane Lee, P. E., CWRE, Retired**

**15665 Trapper Point Road**

**P. O. Box 1657**

**EXHIBIT F**

**Sisters, OR 97759-1657**

September 21, 2015

Patrick T. Davenport  
Community Development Director  
City of Sisters  
520 E. Cascade Avenue  
Sisters, Oregon 97759

Refer: Ongoing Issues 3 Sisters Partners vs Trapper Point Property Owners

Dear Mr. Davenport:

My wife and I have met with you two times these past couple of weeks to discuss the proposed city Council meeting on October 15 at which time the city Council intends to address the issue of the development agreement that was established on property to our south. In previous actions by the city, the condition established by Deschutes County in 1991 continues to be on the city's records. It is my understanding that the city may attempt to clarify some of its previous actions since 1991 by correcting an apparent oversight. The issues established in 1991 by Deschutes County dealt with concerns of the hearing officer regarding the proposal by the city to annex said property and to rezone the property from exclusive farm use to light industrial. At that time, my wife and I owned the property in the Trapper Point development referred to as Lot 6, Block 2. The address of the property is 15665 Trapper Point Rd.

In action's concerning these matter before the land use Board of Appeals, the Alliance for Responsible Land Use In Deschutes County brought suit in which my wife and I were listed as intervenors. Concerning our property, the hearings officer in this matter suggested including restrictions to the level of development, planning for future traffic improvements, prohibiting heavier industry uses and providing increased setbacks for the northern property line. Based on the evidence in the record the board of commissioners was satisfied. It is our opinion and that of the other adjoining property owners abutting the northern boundary of the proposed development that Mr. Hall has failed to address adequately appropriate buffers, setbacks, and restrictions as to the heights of proposed building improvements. These issues remain unresolved. We believe that it is appropriate for the city Council to continue to set these issues aside and allow further time for the affected property owners and the developer to reach an acceptable conclusion to these matters. Mr. Hall continues to change the plans for this area and continues to submit

options that are unacceptable. Another example is his refusal to provide fencing to address our concerns for additional buffering between our rural residential character and his proposed high to medium density residential character. We have horses, a pond as a part of our pasture irrigation system, electric fences, etc. Are we and the other property owners to bear the expense of over 1320 feet of new fence along our common boundary to the benefit of his development?

The developer is currently under construction with Phase 1 of this proposed new revised project. We understand that the city Council has approved the new project in concept. However, it is not too late to continue to deal with some of the details relating to improvements along our common boundary. The affected property owners include F. Duane and Marian M. Lee, Jeff and Gayle Reynolds, and Linda Sandvall. In recent conversations with the Reynolds and Linda Sandvall, they agree with my wife and I that the issues regarding buffers, setbacks, and height restrictions remain unresolved. The proposed development for Phase 3 and Phase 4 along our southern boundaries will not be constructed anytime soon, probably several years. We suggest that the city instruct its Development Director to work with the affected property owners and the developer over a set period of time to solve these issues once and for all. A reasonable period of time would be six months.

My wife and I are planning and have planned for a two week vacation to Arizona starting September 23. We will return on or about October 7. I would also like to involve my attorney, Mr. Ken Brinich. He will not be available until sometime after October 10. If he must address these issues, it will take a fair amount of time for Mr. Brinich to familiarize himself and offer his advice. During the most recent actions by the city Council on June 25 I was not able to address issues or involve an attorney because of serious unrelated conflicts. I plead with the Council to allow my attorney and I and the other affected property owners sufficient time to address Council concerns before they consider any final action that would jeopardize our input on this revised project.

Respectfully submitted,

*F. Duane Lee*      *Marian M. Lee*

F. Duane Lee and Marian M. Lee,  
Trapper Point Property Owners

Cc:  
Ken Brinich, Attorney  
Jeff and Gayle Reynolds  
Linda Sandvall

October 15, 2015

**Via Hand Delivery and Email: pdavenport@ci.sisters.or.us**

City of Sisters Planning Commission  
c/o Patrick Davenport, AICP  
PO Box 39  
Sisters, OR 97759

**RE: Comments on MOD #15-06**

---

Dear Planning Commission Members:

Please accept this letter as additional comments on land use application MOD 15-06. Please include this letter as part of the official record for this application. I live at 15665 Trapper Point Road in Sisters, which is directly north of the proposed development. Specifically, my property borders seven of the proposed lots to be constructed in Phase III of the 3 Sisters Partners' Clear Pine project, and I will therefore be directly impacted by the proposed modifications.

**1. Request for Continuance of Planning Commission Review**

I hereby request that the Planning Commission refrain from making a decision as to whether to recommend or deny the application today. Instead, I request that the hearing be continued until the next Planning Commission meeting. I make my request for several reasons. First, due to health and personal issues, I have had substantial difficulty in obtaining legal counsel with whom to consult on this application. Only in the past twenty-four hours have I been able to obtain legal counsel and my new counsel has only had a brief opportunity to review the issues presented by this application. Although this letter reflects some of the issues we have identified, I would greatly appreciate a continuance so that my counsel can fully analyze the issues and we can present adequate testimony on the record regarding this application.

The modifications sought are not as simple as the applicant purports. The applicant is proposing to change setbacks and building height limitations that have been in effect for over ten years and which have been incorporated into each of the previous planning decisions related to this property. The legal and equitable implications of making the change requested by the applicant are substantial and

the Planning Commission should have the opportunity to receive evidence from all interested parties. A continuance would ensure such an opportunity is provided.

**2. The Development Agreement may still be in effect.**

The setbacks and height limits that the applicant requests be modified, which border my property and will directly impact my property and the viewshed, were contained in the binding terms of the recorded Development Agreement entered into between the developer's predecessor in interest, the City of Sisters and Deschutes County, Development Agreement p 4. The Development Agreement provides as follows:

12. Enforcement. Both City and County shall have the power to enforce this Agreement until such time as the property described in Exhibit A is annexed to the City and all applicable appeal deadlines associated with the annexation have expired. After annexation is complete and all applicable appeal deadlines have expired, the subject property will be outside of County jurisdictional boundaries and **City will be the sole regulatory body authorized to administer, monitor compliance and enforce this agreement.**

Development Agreement, p 10 (emphasis added). Since the property was annexed into the UGB, the City has had sole enforcement authority of the Development Agreement. Under ORS 94.504(8)(a), a Development Agreement with a City may remain in effect for 15 years. The Development Agreement remains in effect and the developers and City are bound by the setbacks and height limitations therein.

**3. The setbacks and height limitations in the Development Agreement have been incorporated into subsequent land use decisions and are therefore binding and cannot be modified.**

Although, as discussed above, my legal counsel and I have not yet had a chance to analyze fully the impact of all of land use decisions relating to the property since the Development Agreement was signed, my understanding is that each of those approvals incorporate the setbacks in the Development Agreement. Such decisions and the applicable conditions of approval are binding on the applicant and cannot now be modified.

**4. The proposed changes to the setbacks and height limitations will violate applicable land use polices and criteria.**

Although setbacks and height limits are governed by specific criteria, such as the minimum standards set forth in Sisters Development Code 2.2.300, setbacks and

height limits also factor into whether a proposed development meets other applicable policies and criteria. For example, under Statewide Planning Goal 5, Policy 5.4 states that “the City shall promote a harmonious relationship between residential, commercial and industrial development.” Reducing setbacks to minimums and allowing increases in height directly adjacent to land that has a rural residential character will preclude harmony between the two neighborhoods of different character.

Further under Policy 5.4, Task 3 states “the City shall identify and protect natural riparian, and scenic resource within the UGB.” Although the property slated for development may not have scenic resources, my property has a significant scenic resources, which is the view of the Three Sisters Mountains. Such resource will be lost if the setbacks and height limitations are modified as proposed.

The City’s Goal 10 Policy 10.4 provides that all residential developments “shall be designed to be safe and aesthetically pleasing, recognizing and respecting the character of the area in which they are located.” The proposed modifications to longstanding setbacks and height restrictions will result in a failure to recognized and respect the character of the area in which they are located, including the rural residential area in which my property is located.

## **5. Conclusion**

In conclusion, as discussed above, I request that the Planning Commission’s review be continued until the next Planning Commission meeting and that the record remain open in the interim for additional submissions. In the alternative, for all of the above reasons, the Planning Commission should recommend denial of the application.

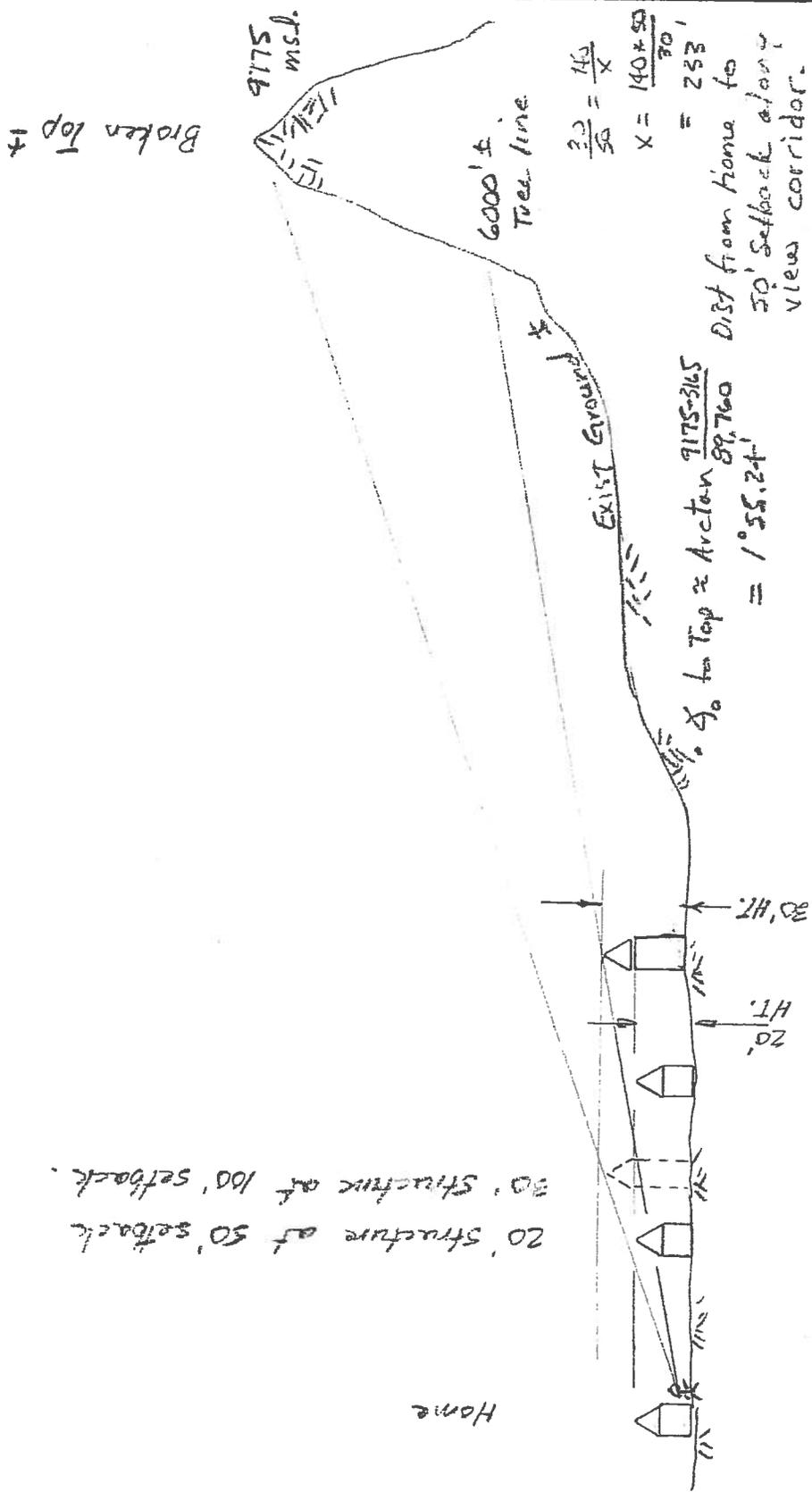
Thank you for your consideration.

Sincerely,



F. Duane Lee  
(541) 549-0905





$$\frac{30}{50} = \frac{140}{X}$$

$$X = \frac{140 \times 50}{30} = 233'$$

Dist from Home to 50' Setback along view corridor.

$\Delta_0$  to Top  $\approx$  ArcTan  $\frac{9175-3165}{89,760}$   
 $= 1^\circ 55.24'$

- Broken Top to Trapper Pt  $\approx 17$  mi (89,760') • Angle from T.P. to Tree Line
- Elev of Trapper Pt = 3165 msl.  $\Delta_1 = \text{ArcTan} \frac{(6000-3165)}{89,760}$   
 $= 1^\circ 48.54'$
- Elev of Broken Top = 9175 msl. • Angle to 20 high structure  $\Delta_2 = \text{ArcTan} \frac{20-5}{233}$   
 $= 3^\circ 40'$
- Elev of Tam McArthur Rim  $\approx 7732$
- Elev of Tree Line  $\approx 6000'$
- Dist. Req'd of 30' HT to not obstruct Tree line  $= 30 \div \tan 1^\circ 48.54' = 950'$

Graphical Drawing of View Impacts.

October 29, 2015

Mr. Patrick T. Davenport  
Community Development Director  
C/O Sisters City Hall  
520 E. Cascade Ave.  
Sisters, OR 97759

Dear Mr. Davenport:

This letter is being sent to you to give you our comments on  
File # MOD 15-06.

First of all, we firmly believe the developer should be required to put up a six foot cedar fence around the entire development. It would be great to see uniform fencing throughout the entire development.

Secondly, we are apposed to the proposed setbacks and height restrictions. To the best of our knowledge, there are already appropriate setbacks and height restrictions in place for this particular development.

Thirdly, we are apposed to having a paved alley way on our property line.

Finally, we would like the developer to take whatever steps are necessary to save all six trees that are located on the development property that are within 12 feet of our property line. All these trees are taller than 20 feet tall.

Sincerely,

Jeff and Gayle Reynolds  
15645 Trapper Point Road  
Sisters, OR 97759

EXHIBIT I

LOCATED IN THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 4, TOWNSHIP 15 SOUTH, RANGE 10 EAST, WILLAMETTE MERIDIAN, CITY OF SISTERS, DESCHUTES COUNTY, OREGON, SEPTEMBER 2015

CLEARPINE, PHASE 1  
A REPLAT OF LOTS 9 THROUGH 19 & TRACT A,  
THREE SISTERS BUSINESS PARK - PHASE I

DESCHUTES COUNTY OFFICE, RECORDS  
DIRECT BUREAU/SHIP, COUNTY CLERK  
2015-12-11 11:29:50 AM  
\$98.00  
D-PLAT 04-1, 81-1, 81-1, 81-1  
0907.00 011.00 021.00 010.00 00.00

**DECLARATION:**  
I, SCOTT C. BOLDUC, REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF OREGON, DO HEREBY CERTIFY THAT I HAVE CONDUCTED A SURVEY OF THE MONUMENTS, THE LAND SHOWN ON THIS PLAT, AND THE PUBLIC UTILITIES SHOWN THEREON, AND THAT THE SURVEY WAS MADE IN ACCORDANCE WITH THE NORMAL STANDARD OF CARE OF A PROFESSIONAL LAND SURVEYOR IN THE STATE OF OREGON. SAID LAND BEING LOCATED IN THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 4, TOWNSHIP 15 SOUTH, RANGE 10 EAST, WILLAMETTE MERIDIAN, CITY OF SISTERS, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
LOTS 9 THROUGH 19 AND TRACT A, THREE SISTERS BUSINESS PARK - PHASE I, RECORDED JUNE 26, 2008 IN PLAT CABINET G, PAGE 1179, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.  
CORNERS 20.02 ACRES, MORE OR LESS.  
THE INITIAL POINT FOR THIS SURVEY IS A MAGNETIC NAIL WITH BRASS WASHER STAMPED "LS CROSS", MARKING THE SOUTHWEST CORNER OF LOT 9, THREE SISTERS BUSINESS PARK, PHASE I.  
**NARRATIVE:**  
THE PURPOSE OF THIS SURVEY IS TO REPLAT A PORTION OF THREE SISTERS BUSINESS PARK, PHASE I INTO PRIVATE LOTS, TRACTS, PUBLIC RIGHTS-OF-WAY, EASEMENTS, EASEMENTS, PUBLIC UTILITY EASEMENTS (P.U.E.) AND PUBLIC EGRESS ACCESS EASEMENTS.  
RECORDED MONUMENTS SHOWN ON THE PLAT OF THREE SISTERS BUSINESS PARK - PHASE I (PT) WERE HELD, ADDITIONAL RECORDED MONUMENTS ALONG THE WEST LINE OF BUSINESS PARK - PHASE I (PT) AND THIS BEING COINCIDENT WITH THE EAST LINE OF THE WESTERN TERMINUS OF THE RIGHT-OF-WAY FOR HEADING DRIVE. NO UNUSUAL CIRCUMSTANCES WERE ENCOUNTERED DURING THE COURSE OF THIS SURVEY.  
MARGES OF REFERENCE - SOUTH 89°57' EAST BETWEEN FOUND MONUMENTS ALONG THE CENTERLINE OF WASHINGTON DRIVE AS SHOWN HEREON, BASED ON GPS DERIVED CENTRAL OREGON COORDINATE SYSTEM (COGCS) VALUES.  
**REFERENCES:**  
(R1) PLAT OF THREE SISTERS BUSINESS PARK - PHASE I, BY FRED A. AST, JR. AND ASSOCIATES, RECORDED JUNE 29, 2008 IN PLAT CABINET G, PAGE 1179, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.  
(R2) PLAT OF SUN RANCH - PHASE I, BY FRED A. AST, JR. AND ASSOCIATES, RECORDED JANUARY 23, 2008 IN PLAT CABINET G, PAGE 1010, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.  
(R3) COUNTY SURVEY NO. 13481, BY FRED A. AST, JR. AND ASSOCIATES, RECORDED JULY 7, 1993 IN THE DESCHUTES COUNTY SURVEYOR'S OFFICE.  
(R4) COUNTY SURVEY NO. 11542, BY FRED A. AST, JR. AND ASSOCIATES, RECORDED JULY 7, 1993 IN THE DESCHUTES COUNTY SURVEYOR'S OFFICE.  
(R5) PLAT OF TRAMPER POINT-FIRST EASMENT, BY SUN COUNTY ENGINEERING & SURVEYING, INC., RECORDED OCTOBER 12, 1981 IN PLAT CABINET C, PAGE 44, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.  
(R6) COUNTY SURVEY NO. 00495 BY GEORGE COLVIN, RECORDED MAY 26, 1988 IN THE DESCHUTES COUNTY SURVEYOR'S OFFICE.  
(R7) COUNTY SURVEY NO. 00494 BY DAVID EVANS AND ASSOCIATES, INC., RECORDED SEPTEMBER 2, 1988 IN THE DESCHUTES COUNTY SURVEYOR'S OFFICE.  
THIS PLAT NO. 00495 BY SUN COUNTY ENGINEERING & SURVEYING, INC., RECORDED OCTOBER 26, 1989 IN THE DESCHUTES COUNTY SURVEYOR'S OFFICE.

October 16, 2015  
DATE

**ACKNOWLEDGMENTS:**  
STATE OF OREGON )  
COUNTY OF DESCHUTES )  
ON THIS 16th DAY OF OCTOBER, 2015, BEFORE ME PERSONALLY APPEARED PETER WALL, MEMBER OF THE SUN COUNTY PLANNING COMMISSION, AND I, AN OREGON LIMITED LIABILITY CORPORATION, ACKNOWLEDGED SAID INSTRUMENT TO BE THE VOLUNTARY ACT AND DEED.  
*Peter Wall*  
PETER WALL, MEMBER  
SUN COUNTY PLANNING COMMISSION  
SUN COUNTY PLANNING COMMISSION

**APPROVALS:**  
THE PLAT OF "CLEARPINE, PHASE 1", HAS BEEN EXAMINED AND APPROVED.  
DESCHUTES COUNTY COMMISSIONER  
*Alan Unger* 10-16-15  
DESCHUTES COUNTY SURVEYOR  
*Mike Perry* 10-7-2015  
MAYOR, CITY OF SISTERS  
*John* 10-15-15  
CITY OF SISTERS PLANNING DIRECTOR  
*Patricia* 10-14-15  
CITY OF SISTERS PUBLIC WORKS DIRECTOR  
*John* 10-15-15  
CITY OF SISTERS ADMINISTRATOR  
*John* 10-15-15

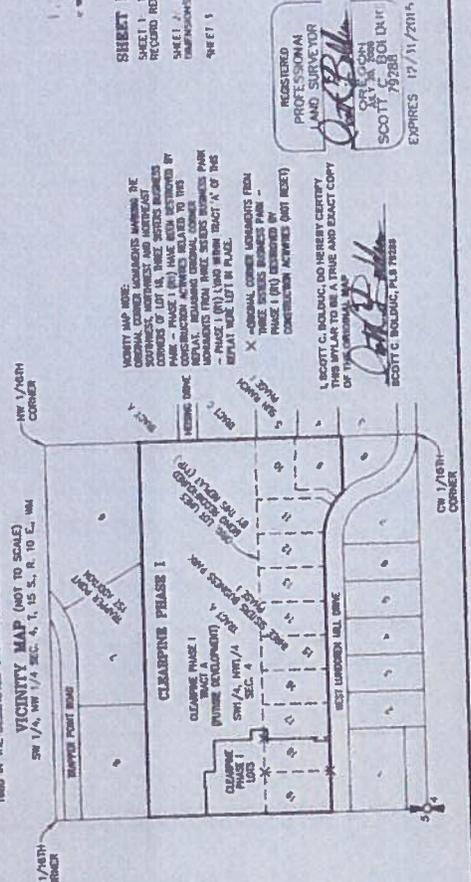
**ASSESSORS CERTIFICATE:**  
I HEREBY CERTIFY THAT ALL AD VALOREM TAXES, SPECIAL ASSESSMENT FEES AND OTHER CHARGES AS REQUIRED BY ORS 82.060 TO BE PLACED ON THIS PLAT, HAVE BEEN PAID TO THE CITY OF SISTERS, DESCHUTES COUNTY, OREGON.  
*Susan*  
DESCHUTES COUNTY ASSESSOR  
I HEREBY CERTIFY THAT ALL TAXES HAVE BEEN PAID AS OF THIS DATE.  
*Margie*  
DESCHUTES COUNTY TAX COLLECTOR

**BASEMENTS AND ENCUMBRANCES**

- 1. THIS PROPERTY IS SUBJECT TO REGULATIONS, INCLUDING ZONING, AND CHARTERS FOR THE THREE SISTERS INNOVATION DISTRICT.
- 2. THIS PROJECT IS SUBJECT TO THE TERMS AND CONDITIONS, AS SET FORTH IN THAT PLAT.
- 3. THIS PROJECT IS SUBJECT TO THAT RIGHT OF WAY EASEMENT, INCLUDING DOCUMENT NO. 0001 OF DEED RECORDS, PAGE 438.
- 4. THIS PROJECT IS SUBJECT TO THAT RIGHT OF WAY EASEMENT, INCLUDING DOCUMENT NO. 0001 OF DEED RECORDS, PAGE 438.
- 5. POWER LINE EASEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 6. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 7. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
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- 9. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 10. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 11. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 12. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 13. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 14. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 15. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 16. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 17. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 18. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 19. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.
- 20. LICENSE AGREEMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, RECORDED JULY 9, 1987 RECORDS DOCUMENT NO. 13481, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON.

CHUTE COUNTY SURVEYOR  
REPLATS BY: *John*

**SHEET INDEX:**  
SHEET 1: DECLARATION, APPROVALS, NOTES, RECORDED REFERENCES, VICINITY MAP & NARRATIVE  
SHEET 2: VERTICAL BRACKET, TRACT X DIMENSIONS AND TRACT X EASEMENT DIMENSIONS  
SHEET 3: LOT AND EASEMENT DIMENSIONS



DEVTECH ENGINEERING INC.  
Site Planning - Civil Engineering  
Land Surveying  
3005 NW HENNINGWAY WAY, STE 107  
BEND, OREGON 97709  
Phone: 503.338.3828

REGISTERED PROFESSIONAL AND SURVEYOR  
*Scott C. Bolduc*  
SCOTT C. BOLDUC  
17/11/2015  
EXPIRES 12/31/2015







**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF SISTERS  
STATE OF OREGON  
PLANNING COMMISSION RESOLUTION PC 2015-15**

**THE CITY OF SISTERS PLANNING COMMISSION DOES HEREBY FIND AND RESOLVE  
THAT:**

**WHEREAS**, the applicant, 3 Sisters Partners, LLC, requests approval of an Modification to a previously approved subdivision plat (SUB #15-01) on a 20.02 acre property for a 5 - Phase, 77 lot residential redevelopment; and,

**WHEREAS**, this proposed modification assists in providing needed residential dwellings and is not detrimental to the general welfare, health or safety of the City of Sisters; and,

**WHEREAS**, Oregon Revised Statutes Chapter 92 establishes a process through which land located in urban areas that is properly zoned can be divided through a subdivision process if findings can be made that the land division will not adversely impact the infrastructure of the jurisdiction, and,

**WHEREAS**, after due notice, a public hearing on the proposed application (MOD #15-06) was held by the Sisters Planning Commission on November 19, 2015 at which time findings were reviewed, witnesses were heard, and evidence and written testimony was received.

**WHEREAS**, the Planning Commission approved the request with the conditions as written the staff report's Conditions of Approval;

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY OF SISTERS PLANNING COMMISSION FINDS THAT:**

1. All required notices have been sent in the time and in the manner required by state law and city code; and,
2. The findings of fact in this matter are located in the staff report attached and by this reference incorporated herein as Exhibit A and Other Attachments.

**NOW THEREFORE, BE IT FURTHER RESOLVED THAT BASED ON THE FINDINGS, THE PLANNING COMMISSION HEREBY APPROVES THE MODIFICATION (FILE NO. MOD #15-06) SUBJECT TO THE FOLLOWING EXHIBITS:**

- A- Staff report with Conditions of Approval**
- B- Application and applicant's request**
- C- Approved Tentative subdivision plats illustrating two versions**
- D- Proposed tentative subdivision plat (Option 1)**
- E- Original Development Agreement dated April 21, 2001**
- F- Letter from Duane Lee dated 09/21/15**
- G- Letter and attachments from Duane Lee dated October 15, 2015**
- H- Letter from Jeff and Gayle Reynolds dated October 29, 2015**
- I- Recorded plats for Phase 1**
- J- Draft Resolution 2015-15**

**CITY OF SISTERS**  
**Planning Commission Resolution**

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(FILE: MOD #15-06; CONSIDERATION BY THE PLANNING COMMISSION, NOVEMBER 19, 2015)

**THE FOREGOING RESOLUTION IS HEREBY ADOPTED THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2015.**

Members of the Commission: Dean, Detweiler, Gentry, Nagel, Seymour, Tewalt, Wright,

AYES:	( )
NOES:	( )
ABSENT:	( )
ABSTAIN:	( )

Signed: \_\_\_\_\_ David Gentry, Chairman

EXHIBIT K

November 19, 2015

**Via Hand Delivery and Email: pdavenport@ci.sisters.or.us**

City of Sisters Planning Commission  
c/o Patrick Davenport, AICP  
PO Box 39  
Sisters, OR 97759

**RE: Comments on MOD #15-06**

---

Dear Mr. Davenport:

This letter provides additional comments on behalf of my client, Duane Lee, regarding MOD 15-06. Please include this letter in the official record for this matter.

I have reviewed the land use history of this property going back to 1999 before it was annexed into the City of Sisters. The setbacks at issue in this modification application were originally included in the 2001 Development Agreement for this property. From that point forward the setbacks and height restrictions were discussed and included in each of the subsequent land use decisions impacting and binding the property.<sup>1</sup>

In 2006, when the applicant applied to have the northern portion of the property (Tract A) rezoned, he requested the height restrictions and setbacks in the original Development Agreement be reduced. Although neighbors opposed any reduction, the City Council considered the applicant's proposal. Ultimately the Council's approval of the Comprehensive Plan Text Amendment (C06-04), the Development Code Text Amendment (CP06-03), and the Comprehensive Plan Map and Land Use District Map Amendments (Z06-02), which re-zoned Tract A from Light Industrial to Residential, was conditioned on the developer's representations in his

---

<sup>1</sup> The setbacks have been acknowledged and included in the following binding land use decisions related to the subject property: PA-99-5/ZC-99-3, CP 06-03/C06-04/Z06-02, FP 06-05, CU07-03/MP 07-02/SUB 07-04, CP 14-01/Z14-01 and Ordinances 448 and 449, MP 15-01/SUB15-01. Each of these decisions includes discussion regarding the need, intent and commitment to maintain large setbacks along the north property line bordering Trapper Point.

*Michael W. Peterkin* ♦ *Megan K. Burgess* ♦ *Meriel L. Darzen*

application that he would apply a 50 foot setback and a 25 foot height restriction within the first 100' adjacent to the Trapper Point properties.<sup>2</sup>

When the City approved those applications and signed ordinances allowing Tract A to be re-zoned from LI to R, it relied on the applicant's representation that he would adhere to those revised setbacks, which were included in his application. In conjunction with its approval of the zone change, the City Council approved an ordinance (Ordinance 370) that amended the original Development Agreement to include the applicant's revised setbacks, which were a reduction from what was then required by the original Development Agreement. It appears however, that after the City Council granted the zone change, the applicant refused to sign the Amendment to the Development Agreement reducing the setbacks, even though the applicant proposed and apparently drafted it and it was incorporated in the City's decision and Ordinance 370.

Much has transpired since the 2007 decision and the applicant's refusal to sign the Amendment to the Development Agreement. The applicant has obtained yet another zone change, rezoning even more of the property to residential, and has obtained a Master Plan approval for up to 77 residential lots and a multi-family residential property. As discussed above and below, each of these subsequent decisions has acknowledged the original setbacks in the Development Agreement and the overall importance of having adequate setbacks and height restrictions along the border with the Trapper Point properties.

The applicant is now asking for a much greater reduction in the setbacks and height restrictions from either the Development Agreement or the restrictions imposed by the 2007 decision.

In fact, the City cannot modify the setbacks via the current application (modification of Master Plan approval). A zone change, such as the one that was approved in 2007, is a quasi-judicial and legislative decision. It cannot be changed via a modification of the current Master Plan. The applicant and the City are bound either by the setbacks proposed in the 2006 application for the zone change, or by the setbacks in the original Development Agreement. The fact that the original Development Agreement may have expired has no bearing because in 2007 the City made its decision to approve the zone change based on the representation that the developer would either adhere to the requirements in the Development Agreement or those in the Amendment to the Development agreement.

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<sup>2</sup> See C06-04/CP0603/Z06-02 Findings and Decision p. 56 – “The City Council found that the 25 foot height maximum within the 50 to 100 foot setback from the northerly property line was reasonable and provided an orderly transition from urban to rural. In response an Amendment to the Development Agreement (Exhibit A of Ordinance 370).

At this point if the City modifies the setbacks and height restrictions, they will be modifying them in violation of conditions imposed by the plan amendment/zone change, which is not permitted. See *Broetje-McLaughlin v. Clackamas County*, 22 OR LUBA 198 (1991) (conditions imposed in previous plan amendment/zone change are applicable to subsequent development of property and city must adopt findings and decision consistent with such conditions).<sup>3</sup>

As a Trapper Point resident who will be directly impacted by the proposed development, Mr. Lee has a right to rely on the previous decisions that have recognized the need for substantial setbacks and height restrictions that protect the scenic resources, provide adequate buffering between what will be a very dense residential neighborhood and a rural landscape, and that are consistent with Comprehensive Plan and the approval criteria for a Master Plan and Conditional Use Permit for this type of development.<sup>4</sup> Changing the setbacks and height restrictions this late in the game will cause a great inequity for the residents of Trapper Point.

Sincerely,



Meriel L. Darzen

Cc: client

---

<sup>3</sup> In fact the City is likely precluded from redeciding the issue of setbacks altogether because the issue was proposed, considered and approved in the previous decision. See e.g. *VanSpreybroeck v. Tillamook County*, 56 OR LUBA 184 (2008) (“To give preclusive effect to an earlier unappealed land use decision and thus bar raising issues in a subsequent decision on a related, but separate permit proceeding, the issue must concern particular development that was proposed, considered and approved in the earlier unappealed decision.”)

<sup>4</sup> Mr. Lee raised several Goals and Policies that are relevant to the consideration of the setbacks and height restrictions in his October 15, 2015 letter which should be part of the file for this application. In addition, the City must consider the criteria in Section 4.2.500 and 4.2.700 of the development code, which include the provision of adequate setbacks.



3 Sisters Partners, LLC  
1195 NW Redfield Circle  
Bend, OR 97703

December 11, 2015

Duane & Marian Lee  
PO Box 1657  
Sisters, OR 97759

RECEIVED  
DEC 17 2015  
CITY OF SISTERS

Dear Duane/Marian:

The Sisters Planning Commission granted a continuation of the November 19 hearing to give us additional time to work out an arrangement with respect to modification of building setbacks at ClearPine. The next hearing date is scheduled January 7, 2016. The request for continuance was granted primarily for your benefit, but I have not heard from you since the last hearing date.

My proposed solution to the PC at the November 19 hearing was as follows:

- Approve a 20' no-build setback along our common property line. The reduced setback allows us to efficiently "front load" the driveways to the south side of new homes, and eliminate the need for a public alley.
- Limit the maximum building height to 22' on up to four lots that might limit your mountain views (example- #33 - #36). This is a very favorable concession to you.
- Require rear yard fencing along the common property line, as new home applications are approved (this assumes no alley is present).

If this compromise is acceptable to you, please notify Patrick Davenport, Director of Planning in writing, and let him know we are in agreement. If not acceptable, please feel free to communicate with me on any outstanding issues.

Our current Masterplan allows us to place an alley directly on our common property line, in order to serve approximately 21 homes in the northernmost section of ClearPine. As the situation stands now, and unless a reduced setback is approved by the Sisters PC, we will build the alley as described, helping to efficiently serve new homes burdened by a 50' no-build area. Further, rear yard fencing is not a requirement of future homeowners, so if this is important to you, it will remain your responsibility to construct and pay for it.



If the Planning Commission does approve a reduced setback, you will have the opportunity to appeal their decision. If your appeal is successful, the current setbacks, alley & optional fences will remain as described above.

Thank you,

Peter Hall

CC: Meriel Darzen, Peterkin and Associates  
Patrick Davenport, City of Sisters

# AGENDA ITEM SUMMARY



# CITY OF SISTERS PLANNING COMMISSION

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**Meeting Date:** January 7, 2016

**Staff:** Patrick Davenport

**Type:** Workshop

**Dept:** CDD

**Subject:** Future Development Code Amendments: Temporary Uses

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**Action Requested:** Discuss options for potential Development Code revisions pertaining to Temporary Uses; forward recommendations to City Council

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**Summary:** Staff has been requested to work with the Planning Commission on developing recommendations for amending the Development Code requirements pertaining to Temporary Uses. Temporary uses are defined in the City's Development Code as short-term, seasonal, or intermittent uses. A temporary use is one established for a fixed period of time with the intent to discontinue such use upon the expiration of such time. Such uses do not involve the construction or alteration of any permanent structure.

Staff's review of the applicable sections in the Development Code reveals some insufficient clarity on the City's ability to appropriately regulate the time, place and manner of temporary uses.

The following issues under consideration are intended to correlate only with Temporary Uses and not intended to amend the permitting process transient merchants go through when they get approval for City-wide events, including but not limited to the Rodeo and Quilt Show.

Issues for consideration:

- Does the Commission want to continue to allow temporary uses in the City?
  - Only in specific zoning districts?
- Is the 180 day maximum period too long, of sufficient length, or is it insufficiently defined?
- Should a developed and/or vacant site be required to submit a formal site plan or modification application?
- Site Plan Review (SPR) section in the Development Code
  - The SPR section should further specify how temporary uses are regulated.
- Compliance with Western Frontier Architectural Design Theme
- Other recommendations

The Planning Commission's recommendations will be forwarded to City Council to be discussed in a future workshop. Once City Council provides input on Planning Commission recommendations, staff will return this issue to the Planning Commission for a formal public hearing if directed.

Attachments: Existing Development Code for Section 2.15.1900 Special Provisions, Temporary Uses and Chapter 4.2 Site Plan Review

## Existing Development Code for Temporary Uses:

### 2.15.1900 Temporary Uses

#### A. Purpose

Approval may be granted for structures or uses which are temporary in nature provided such uses are consistent with the intent of the underlying zoning district and comply with all provisions of this Code.

#### B. Application and Fee

The applicant shall pay the required fee as established by the City Council. The applicant is responsible for submitting a complete application which addresses all review criteria. Temporary use permits, except reviews for Temporary Sales Office, Model Home or Construction Building and Trailers, and seasonal sales as defined herein, shall be subject to a TYPE II review process.

#### C. Permit Approval

##### 1. Approval Criteria

A temporary use permit (TUP) may be authorized by the Community Development Director or his/her designee provided that the applicant demonstrates that the proposed use:

- a. Meets all applicable City and County health and sanitation requirements.
- b. Meets all applicable Building Code requirements and zoning setbacks and will obtain permits for any proposed construction, electrical service or plumbing required to serve the temporary use.
- c. Is not being located in the public right-of-way or impeding the safety or movement of pedestrians.
- d. Is located in such a manner that they will not impede the normal use of driveways or circulation aisles, nor be located in a manner that encourages customers to stop in the street, driveway or circulation aisle to obtain vendor service.
- e. Is restricted to the immediate confines of the temporary stand or structure, or area approved as part of the permit.

##### 2. Time Limits

Time Limits. Unless otherwise noted, the temporary use shall cease and any approved structure removed upon expiration of the temporary use permit, unless renewed by the Community Development Director or his/her designee. In no case shall a temporary use permit be issued for a period exceeding 180 days in any 365 day period.

##### 3. Additional Conditions

In issuing a temporary use permit, the Community Development Director or his/her designee may impose reasonable conditions as necessary to preserve the basic purpose and intent of the underlying zoning district. These conditions may include, but are not limited to the following: increased yard dimensions; fencing, screening or landscaping to protect adjacent or nearby property; limiting the number, size, location or lighting of signs; restricting certain activities to specific times of day; refuse containers; and providing sanitary lavatory facilities or have a written agreement for use of lavatory facilities by operators and patrons within 200 feet of the vehicle's location.

#### **4. Revocation**

Any departure from approved plans not authorized by the Community Development Director or his/her designee shall be cause for revocation of applicable building and occupancy permits. Furthermore if, in the City's determination, a condition or conditions of TUP approval are not or cannot be satisfied, the TUP approval, or building and occupancy permits, shall be revoked.

**D. Signs.** All signs shall comply with Chapter 3.4.

**E. Seasonal sales.** The applicant shall pay the required fee as established by the City Council. The applicant is responsible for submitting a complete application which addresses all review criteria. Seasonal sales shall be subject to a Type I review procedure unless otherwise noted herein. The following standards shall apply to seasonal sales which are limited to:

##### **1. Fireworks Sales**

Fireworks sales shall be consistent with the Municipal Code.

##### **2. Christmas Tree Sales**

- a. The annual season for Christmas tree sales shall commence no sooner than the day after Thanksgiving and shall continue no longer than December 27.
- b. A business license shall be required pursuant to the Municipal Code.

##### **3. Pumpkin Patch Sales**

- A. The annual season for pumpkin sales shall commence no sooner than September 25 and continue no longer than November 5.
- B. A business license shall be required pursuant to the Municipal Code.

**4. Signs.** All signs for seasonal sales shall comply with Chapter 3.4 and shall be removed no later than the day after the holiday.

**5. Non-profit fundraiser sales.** Temporary non-profit seasonal sales are permitted up to 30 consecutive days per calendar year and are not subject to City review. However, temporary non-profit seasonal sales that operate for more than 30 consecutive days per calendar year shall pay the required fee and shall undergo the Type I review process established in Chapter 4.1. Verification of the non-profit status shall be required prior to waiving the City review.

## Chapter 4.2 - Site Plan Review

### Sections:

#### 4.2.100 Purpose

#### 4.2.200 Applicability

#### 4.2.300 Application Procedure

#### 4.2.400 Submittal Requirements

#### 4.2.500 Approval Criteria

#### 4.2.600 Modifications

#### 4.2.700 Approval Period, Expiration and Extension

#### 4.2.800 Bonding and Assurances

### 4.2.100 Purpose

The purpose of Site Plan Review is to ensure that structures, parking areas, walks, refuse containers, landscaping and street improvements are properly related to their sites and to surrounding sites and structures; to protect natural features; and to encourage originality in site design and development in a manner which will enhance the physical appearance and attractiveness of the community.

### 4.2.200 Applicability

- A. Any new development, structure, building, or substantial alteration of an existing structure or use shall require Site Plan Review in accordance with Chapter 4.1 and 4.2 . For the purposes of this Chapter, the term "substantial alteration" shall mean any development activity as defined by this Code that generally requires a building permit and may exhibit one or more of the following characteristics:
1. The activity structurally alters the exterior of a structure, building or property.
  2. The activity involves changes in the use of a structure, building, or property from residential to commercial or industrial.
  3. The activity involves non-conforming uses as defined in Chapter 5.2
- B. Exemptions from site plan review are as follows:
1. Exterior elevation alterations that do not increase the square footage of the existing structures' interior.
  2. Interior work which does not alter the exterior of the structure or affect parking standards by increasing floor area.
  3. Regular building maintenance including the repair or maintenance of structural members (e.g., roof, siding, paint, awnings, etc.), parking resurfacing.
  4. All residential development, except multi-family and group residential.
  5. Manufactured homes on individual lots;
  6. Child Care Home;

7. Home occupation; or
8. Residential accessory structures and accessory dwelling units.
9. Other Accessory structures 200 square feet or less
10. Landscaping, fences and similar developments/structures

#### **4.2.300 Application Procedure**

- A. Application Review. Site Plan Review shall be conducted as a Type II procedure using the procedures in Chapter 4.1, and using the approval criteria contained in Section 4.2.500.
- B. The Community Development Director shall have discretion to forward any site plan submitted for administrative approval to the Planning Commission for review.

#### **4.2.400 Submittal Requirements**

In addition to the submission requirements required in Chapter 4.1, the Community Development Director or designee shall require all of the following existing and proposed information as deemed applicable for Site Plan Review;

- A. The scale, north arrow, date of preparation, name and address of project designer, street address and tax lot number;
- B. Lot or site dimensions.
- C. All existing and proposed buildings and structures: location, square footage and height.
- D. Elevations, floor plans with dimensions, building materials, color, and details of all mechanical equipment screening.
- E. Setbacks and space between buildings.
- F. Walls and fences: location, height and materials.
- G. Off-street vehicular and bicycle parking and off-street loading: location, number of spaces and dimensions of vehicular and bicycle parking and loading areas, internal circulation pattern.
- H. Access - pedestrian, bicycle, vehicular, service: points of ingress and egress, internal circulation. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
- I. Signs: location, size, height and type of illumination.
- J. Lighting in compliance with the Dark Skies Ordinance: location and general nature.
- K. Name all adjacent streets, roads or alleys, showing right-of-way and dedication widths, reservation width, easements, utilities and all types of improvements existing or proposed.

- L. Landscaping: location, type, and method of irrigation
- M. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements, as applicable
- N. Refuse enclosures: location, type and material.
- O. Location of mail boxes, if known
- P. Location and descriptions of any major topographic, natural or man-made features on the site such as rock outcrops, water features, existing vegetation, trees, graded areas, etc.
- Q. Preliminary grading plan. A preliminary grading plan prepared by a registered engineer shall be required for developments which would result in the grading (cut or fill) of 1,000 cubic yards or greater. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water detention and treatment plans may also be required.
- R. Topographic contour lines at intervals determined by the City
- S. Such other data pertaining to site development as may be required by the Community Development Department to make the required findings.
- T. Emergency vehicle turning movements and wheel tracking.

**4.2.500 Approval Criteria**

Prior to issuance of building permits, the Community Development Director or designee shall approve, approve with conditions or disapprove the proposed site plan. In approving the plan, the Community Development Director or designee shall find that all provisions of the Development Code are met. The following criteria shall be considered:

- A. Conformance with applicable Design Standards in Chapter 3.
- B. Adequacy of public and private facilities.
- C. Traffic safety, internal circulation and parking, including pedestrian and bicycle safety;
- D. Provision for adequate noise and/or visual buffering from non-compatible uses.
- E. Conformance with applicable public works, building and fire code standards=
- F. Conformance with development requirements of the underlying zone.

**4.2.600 Modifications**

- A. Following site plan approval, an applicant may make modifications to the plan consistent with the following procedures. The Community Development Director or designee will determine whether the proposed modification is a minor or a major modification.

1. Minor modifications are those which are in substantial compliance with the layout, uses and conditions of the original plan review. Minor adjustments are those that entail minor changes in dimensions or siting of structures and location of public amenities, but do not entail changes to the intensity or character of the use or changes to the required development standards. The Community Development Director or designee may approve a minor modification upon finding that the modification is substantially consistent with the approved plan review, is consistent with the provisions of this code and the conditions of approval, and do not have substantially greater impacts on surrounding properties than the original plan.

Other modifications are major modifications. See Chapter 4.1

#### **4.2.700 Approval Period, Expiration and Extension**

- A. Approval Period - General. Site Plan Review approvals shall be effective for a period of two (2) years from the date of approval for a single-phased development, and up to two (2) additional years for all subsequent phases. In no case however shall any approval exceed 4 years for single phase development, including extensions, and 6 years for multi phased development, including extensions, from the original approval date. The approval shall lapse if:
  1. A building permit has not been issued within the time period stated herein; or
  2. Construction on the site is in violation of the approved plan.
- B. Single-Phased Project Extension.
  1. The Community Development Director or designee may, upon written request by the applicant prior to the expiration date, grant a single one-year extension per project; provided that:
    - a. No changes are made on the original approved site plan;
    - b. The applicant can show intent of initiating construction on the site within the extension period;
    - c. There have been no changes to the applicable Code provisions on which the approval was based. If there have been changes to the applicable Code provisions and the expired plan does not comply with those changes, then the extension shall not be granted; in this case, a new site plan review shall be required;

- d. The applicant demonstrates that failure to obtain building permits and substantially begin construction within two years of site plan approval was beyond the applicant's control.
2. Additional Extension by Original Decision-Making Body. The original decision-making body may or may not, upon written request by the applicant prior to the expiration date granted by the Community Development Director, grant a single additional one-year extension at their discretion. In no case however shall extensions combined with original approval durations exceed four years for single phased development from the original approval date.
- C. Phased Development. Phasing of development may be approved with the Site Plan Review application, subject to the following standards and procedures:
1. Approval Procedures and Durations.
    - a. A phasing plan shall be submitted with the Site Plan Review application.
    - b. The Community Development Director or designee shall approve a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than 2 years from the original date of approval for the first phase, and 2 additional years from the original date of approval for all subsequent phases without reapplying for site plan review.
    - c. Approval of a phased site plan review proposal requires satisfaction of all of the following criteria:
      - i. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;
      - ii. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required public improvements, in accordance with Section 4.2.4. A temporary public facility is any facility not constructed to the applicable City or district standard, subject to review by the Public Works Director or designee;
      - iii. The phased development shall not result in requiring the City or other property owners to construct public facilities that were required as part of the approved development proposal; and
      - iv. An application for phasing may be approved after Site Plan Review approval as a modification to the approved plan, in accordance with the procedures for minor modifications (Chapter 4.6).
  2. Extensions.

- a. The Community Development Director or designee may, upon written request by the applicant prior to the expiration date, grant a single one-year extension per project provided that:
    - i. No changes are made on the original approved site plan;
    - ii. The applicant can show intent of initiating construction on the site within the extension period;
    - iii. There have been no changes to the applicable Code provisions on which the approval was based. If there have been changes to the applicable Code provisions and the expired plan does not comply with those changes, then the extension shall not be granted; in this case, a new site plan review shall be required;
    - iv. The applicant demonstrates that failure to obtain building permits and substantially begin construction within two years of site plan approval was beyond the applicant's control.
  - b. Additional Extension by Original Decision-Making Body. Upon written request by the applicant prior to the expiration date of the extension granted by the Community Development Director, the original decision-making body may or may not, grant a single additional one-year extension at their discretion. In no case however shall extensions combined with original approval durations exceed four years for single phased development, and six years from the original approval date for subsequent phases within a multiple-phased development.
3. Additional Approval Time Extension. Notwithstanding Sections A, B and C, above, all City Site Plan Review approvals, including approvals for which the City has granted an extension of time, that were due to expire on or after December 31, 2014, are hereby automatically and exceptionally extended to June 30, 2015. Site Plan Review approvals that were approved after January 1, 2015 shall comply with Sections A, B, and C, above. Approvals that have been automatically extended by this regulation may apply for an additional extension of time in accordance with Sections B and C, above.

**4.2.800 Bonding and Assurances**

- A. Performance Bonds for Public Improvements. On all projects where public improvements are required, the City shall require a bond in an amount not greater than 120% or other adequate assurances as a condition of site development approval in order to guarantee the public improvements;
- B. Release of Performance Bonds. The bond or assurance shall be released when the Community Development Director, Public Works Director or designee finds the completed project conforms to the site development approval, including all conditions of approval.

- C. Completion of Landscape Installation. Landscaping shall be installed prior to issuance of occupancy permits, unless security equal to the cost of the landscaping as determined by the Community Development Director, designee or a qualified landscape architect is filed with the City Recorder assuring such installation within six months after occupancy. If the installation of the landscaping is not completed within the six-month period, the security may be used by the City to complete the installation.
  
- D. Business License Filing. The applicant shall ensure that all business occupants of the completed project, whether permanent or temporary, shall apply for and receive a City business license prior to initiating business.