AGENDA

CITY OF SISTERS
SISTERS CITY COUNCIL

SISTERS CITY COUNCIL
520 E. Cascade Avenue
Sisters, OR 97759

JUNE 25, 2015

6:00 P.M. CITY COUNCIL WORKSHOP

1. Water and Sewer Infrastructure Analysis/Rates – *A. Gorayeb*
2. Other Business – *A. Gorayeb/Council*

7:00 P.M. CITY COUNCIL REGULAR MEETING

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE

II. VISITOR COMMUNICATION

III. CONSENT AGENDA

A. Minutes
   1. June 11, 2015 – Workshop
   2. June 11, 2015 – Regular Meeting

B. Bills to Approve
   1. June Accounts Payable

C. **Resolution No. 2015-10**: A RESOLUTION DECLARING THE MUNICIPAL SERVICES PROVIDED BY THE CITY OF SISTERS

D. **Resolution No. 2015-11**: A RESOLUTION EXTENDING THE CITY OF SISTERS WORKERS COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY OF SISTERS

IV. STAFF REPORTS

A. Deschutes County Sheriff's Office

V. COUNCIL BUSINESS

A. Public Hearing and Consideration of Resolution No. 2015-12: A RESOLUTION ADOPTING THE FISCAL YEAR 2015-2016 BUDGET, APPROPRIATING FUNDS, APPROVING A TAX LEVY AND DIRECTING STAFF TO FILE THE BUDGET WITH THE COUNTY CLERK – *L. Fujita-Conrads*

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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

B. **Public Hearing and Consideration of Resolution No. 2015-13:** A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUES – *L. Fujita-Conrads*

C. **Discussion and Consideration of Resolution No. 2015-14:** A RESOLUTION AMENDING THE PAY PLAN CLASSIFICATION FOR THE CITY OF SISTERS – *L. Fujita-Conrads*

D. **Public Comment and Consideration of Resolution 2015-15:** A RESOLUTION OF THE CITY OF SISTERS AMENDING THE MASTER FEE SCHEDULE –*L. Fujita-Conrads*

E. **Discussion and Consideration of a Motion** to Approve a Memorandum of Understanding (MOU) between the City of Sisters and Economic Development of Central Oregon (EDCO) for a Forgivable Loan Program and Authorize the City Manager to Execute the Memorandum of Understanding– *A. Gorayeb*

F. **Public Hearing** for an to Appeal a Planning Commission Decision Relating to Clear Pine MP 15-01 – *P. Davenport*

G. **Discussion and Consideration of a Motion** to Approve an Immediate Opportunity Fund Agreement between the State of Oregon and the City of Sisters for the East Barclay Drive Project – *A, Gorayeb*

H. **Discussion and Consideration of a Motion** to Accept Public Improvements for Adams Street Commons – *Erik Huffman, City Engineer*

I. **Discussion and Consideration of a Motion to** Approve a Conduit License Agreement with TDS Baja Broadband LLC, dba BendBroadband and Authorize the City Manager to Sign the Agreement– *A. Gorayeb*

J. **Discussion and Consideration of a Motion** to Approve an Agreement with the Oregon Department of Transportation for the Cascade East Transit Program – *L. Fujita- Conrads*

VI. CONTRACT REVIEW BOARD

A. **Discussion and Consideration of a Motion** to Approve a Contract with Bryant, Emerson & Fitch for the City Attorney Services and Authorize the City Manager to Execute the Contract – *A. Gorayeb*

B. **Discussion and Consideration of a Motion** to Approve a Contract with McKenzie Cascade Excavation in the Amount of $74,767.00 for the Barclay Waterline Improvement Project and Authorize the City Manager to Sign the Contract – *Erik Huffman, City Engineer*

VII. OTHER BUSINESS

A. Planning Commission Appointment

B. Recreational Marijuana Discussion

VIII. MAYOR/COUNCILOR BUSINESS

IX. ADJOURN

CITY OF SISTERS
Public Works Department

520 E. Cascade Ave.
P.O. Box 39
Sisters, OR 97759

(541) 323-5212
Fax: (541)549-0561
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TO: Andrew Gorayeb, City Manager
Paul Bertagna, Director of Public Works

FROM: Erik Huffman, City Engineer

DATE: June 17, 2015

SUBJECT: Water System Infrastructure Improvements

Purpose and Scope:

Determine the Municipal Water supply and demand between existing conditions and for full build out of Sisters UGB.

Determine water system infrastructure improvements that will be needed to maintain water system supply demands between now and full build out in the Sisters UGB.

Determine estimated costs and timing for water system infrastructure improvements.

Population at Full Build Out and Rate of Population Growth:

The City of Sisters 2014 population of 2,181 is projected to grow to 4,431 at full build out. A build out date of 2037 was calculated by increasing the population at a rate of 3.13 percent, consistent with the Deschutes County Coordinated Forecast.

Existing Water Supply Capabilities:

The City of Sisters currently has three active wells each having a pump. These wells supply all the water to the municipal water system. Each well is numbered, 1 through3, and its corresponding pump is numbered the same. The maximum pumping rates in gallons per minute (GPM) for these pumps are:

Well 1 Pump 1 = 750 GPM
Well 2 Pump 2 = 750 GPM
Well 3 Pump 3 = 1,560 GPM

Pump 3 is used as the primary pump during peak usage times in the summer and Pump 1 is used as the primary pump during minimal water usage times in the winter. In the emergency situation of a power outage Pumps 1 and 2 are equipped with backup generators while Pump 3 does not currently have any form of backup power.

Existing Water Storage:

The City has one reservoir tank which holds 1.6 million gallons of water. The reservoir is at an elevation higher than the City so it ensures consistent water pressure in the City. The reservoir is also

sized to provide water to the City in the event of a temporary well pump outage or in the case of extraordinary water use such as to fight a fire.

Water Demand in the City:

Total Annual Demand
In 2014, the City of Sisters pumped a total of 240 million gallons of water from its three wells. As the City's population grows from 2,181 to 4,431 (projected), the water demand is projected to grow to approximately 490 million gallons of water per year. The existing wells and pumps have the capability to provide 490 million gallons per year, however, fire flow reserves and changes in peak uses must also be factored in to demand calculations.

Maximum Daily Demand
The maximum daily water use in the year typically occurs in July or August in Sisters, and that peak daily use is more than three times the average annual daily water usage in the City. The water use on the peak day of the year is the Maximum Day Demand (MDD). The MDD is typically used as the design parameter for municipal water systems.

Fire FlowReserve
In addition to maintaining infrastructure to meet MDD, the City must also have a reserve available for fire protection. The Sisters - Camp Sherman Fire District has indicated that a reserve volume of 540,000 gallons (3 hours at 3,000 gallons per minute) of water in fire flow reserve in Sisters is sufficient to provide fire protection and to maintain the City's rating with the Insurance Services Office (ISO).

Design Parameters for Demand in the Future
Water system improvement recommendations in this memo are based on the need to meet the Maximum Day Demand while maintaining the Fire Flow Reserve. The water system should have the ability to provide the MDD plus Fire Flow (FF) through production and storage infrastructure.

Table 1: Design Parameters for Future Demand

Year	Population	Average Day Demand (gpd)	Maximum Day Demand @ Factor 3.23 (gpd)	Fire Flow (gpd)	MDD + FF (gal)
2014	2181	657,534	2,123,836	540,000	2,663,836
2015	2249	678,115	2,190,312	540,000	2,730,312
2016	2320	699,340	2,258,868	540,000	2,798,868
2017	2392	721,229	2,329,571	540,000	2,869,571
2018	2467	743,804	2,402,487	540,000	2,942,487
2019	2544	767,085	2,477,684	540,000	3,017,684
2020	2624	791,095	2,555,236	540,000	3,095,236
2021	2706	815,856	2,635,215	540,000	3,175,215
2022	2791	841,392	2,717,697	540,000	3,257,697
2023	2878	867,728	2,802,761	540,000	3,342,761
2024	2968	894,888	2,890,487	540,000	3,430,487
2025	3061	922,898	2,980,960	540,000	3,520,960
2026	3157	951,784	3,074,264	540,000	3,614,264
2027	3256	981,575	3,170,488	540,000	3,710,488
2028	3358	1,012,299	3,269,724	540,000	3,809,724
2029	3463	1,043,984	3,372,067	540,000	3,912,067
2030	3571	1,076,660	3,477,612	540,000	4,017,612
2031	3683	1,110,360	3,586,462	540,000	4,126,462
2032	3798	1,145,114	3,698,718	540,000	4,238,718

2033	3917	1,180,956	3,814,488	540,000	4,354,488
2034	4040	1,217,920	3,933,881	540,000	4,473,881
2035	4166	1,256,041	4,057,012	540,000	4,597,012
2036	4297	1,295,355	4,183,996	540,000	4,723,996
2037	4431	1,335,899	4,314,955	540,000	4,854,955

Meeting Future Demand with Water Supply Capacity:

The ability of the water system to provide MDD + FF includes contributions from wells and from storage volume. Storage volume in the City's reservoir tank is considered a very reliable source of water because it flows to the City by gravity. Pump 1 and Pump 2 are also reliable sources of water because they both have backup electrical generators in the event of power outage, however, issues such as mechanical breakage, well shaft obstructions, or well contamination could take either Pump 1 or Pump 2 off line temporarily. Pump 3 provides a higher volume of water than pumps 1 or 2, but it currently does not have a backup electrical generator and should be considered a less reliable source of water than the other pumps.

The following table shows the capacity of the City's water sources and their ability to meet the future water demand during the maximum day demand. Note that the volume of the reservoir is always assumed to be available to the City, that either pump 1 or pump 2 are assumed to be available to the City continuously for 24 hours a day, and pump 3 is not assumed to be available to the City such as in the case of a power outage (resulting in a total of 750 gallons per minute for 24 hours)

Table 2: Water Supply Needs for Future Demand based on Current Infrastructure

Year	MDD + FF (gal)	Volume of Reservoir (1.6 million gallons)	Volume Produced by Pumps 1 or 2 In 24 hours (gal)	Remaining Need for Supply to meet MDD+FF (gal)
2014	2,663,836	1,600,000	1,080,000	None
2015	**2,730,312**	**1,600,000**	**1,080,000**	**50,312**
2016	2,798,868	1,600,000	1,080,000	118,868
2017	2,869,571	1,600,000	1,080,000	189,571
2018	2,942,487	1,600,000	1,080,000	262,487
2019	3,017,684	1,600,000	1,080,000	337,684
2020	3,095,236	1,600,000	1,080,000	415,236
2021	3,175,215	1,600,000	1,080,000	495,215
2022	3,257,697	1,600,000	1,080,000	577,697
2023	3,342,761	1,600,000	1,080,000	662,761
2024	3,430,487	1,600,000	1,080,000	750,487
2025	3,520,960	1,600,000	1,080,000	840,960
2026	3,614,264	1,600,000	1,080,000	934,264
2027	3,710,488	1,600,000	1,080,000	1,030,488
2028	3,809,724	1,600,000	1,080,000	1,129,724
2029	3,912,067	1,600,000	1,080,000	1,232,067
2030	4,017,612	1,600,000	1,080,000	1,337,612
2031	4,126,462	1,600,000	1,080,000	1,446,462
2032	4,238,718	1,600,000	1,080,000	1,558,718
2033	4,354,488	1,600,000	1,080,000	1,674,488
2034	4,473,881	1,600,000	1,080,000	1,793,881
2035	4,597,012	1,600,000	1,080,000	1,917,012
2036	4,723,996	1,600,000	1,080,000	2,043,996
2037	4,854,955	1,600,000	1,080,000	2,174,955

The City's reliable water supply capacity meets and exceeds the design demand in 2015. As shown below, short term improvements are recommended to increase reliable water supply capacity.

The Advantage of Adding a Backup Generator to Pump 3

Pump 3 currently does not have a backup electrical generator, although a proposed generator for Pump 3 would significantly improve the reliability of Well 3 water supply and the overall supply capacity of the City water system.

The following table shows the capacity of the City's water sources and their ability to meet the future water demand during the maximum day demand, assuming a backup generator has been installed on Pump 3. Note that the volume of water produced is the capacity of two of the City's three wells in 24 hours., to account for the assumption that one of the wells may be off line at any given time (producing a total 1,500 gallons per minute for 24 hours)

Table 3: Water Supply Needs for Future Demand Assuming a Generator is Added to Pump 3

Year	MDD + FF (gal)	Volume of Reservoir (1.6 million gallons)	Volume Produced by either Pumps 1 and 2 or Pump 3 In 24 hours(gal)	Remaining Need for Supply to meet MDD+FF (gal)
2014	2,663,836	1,600,000	2,160,000	None
2015	2,730,312	1,600,000	2,160,000	None
2016	2,798,868	1,600,000	2,160,000	None
2017	2,869,571	1,600,000	2,160,000	None
2018	2,942,487	1,600,000	2,160,000	None
2019	3,017,684	1,600,000	2,160,000	None
2020	3,095,236	1,600,000	2,160,000	None
2021	3,175,215	1,600,000	2,160,000	None
2022	3,257,697	1,600,000	2,160,000	None
2023	3,342,761	1,600,000	2,160,000	None
2024	3,430,487	1,600,000	2,160,000	None
2025	3,520,960	1,600,000	2,160,000	None
2026	3,614,264	1,600,000	2,160,000	None
2027	3,710,488	1,600,000	2,160,000	None
2028	**3,809,724**	**1,600,000**	**2,160,000**	**49,724**
2029	3,912,067	1,600,000	2,160,000	152,067
2030	4,017,612	1,600,000	2,160,000	257,612
2031	4,126,462	1,600,000	2,160,000	366,462
2032	4,238,718	1,600,000	2,160,000	478,718
2033	4,354,488	1,600,000	2,160,000	594,488
2034	4,473,881	1,600,000	2,160,000	713,881
2035	4,597,012	1,600,000	2,160,000	837,012
2036	4,723,996	1,600,000	2,160,000	963,996
2037	4,854,955	1,600,000	2,160,000	1,094,955

With an electrical generator on Pump 3, the City will have the reliable water supply capacity to meet design demand until 2028. On or before 2028, improvements are recommended to increase reliable water supply capacity through the full build out of the UGB.

Meeting Full Build Out Capacity

The most economical way to provide additional water capacity to meet 2037 demand would be to construct a new well with a new pump and a backup generator. A new well with backup generator could increase the City's reliable capacity to a minimum of 3 of the 4 pumps at any given time (assuming that no more than 1 well is off-line at any given time). Table 4 below shows how a 4th well for the City

would affect the City's water capacity until population build out in the City. (3,060 gallons per minute for 24 hours)

Table 4: Water Supply Needs for Future Demand based on the construction of a new well with pump and backup generator

Year	MDD + FF (gal)	Volume of Reservoir (1.6 million gallons)	Volume Produced by Pumps 1, 2, and 3 in 24 hours (gal)	Remaining Need for Supply (gal)
2014	2,663,836	1,600,000	4,406,400	None
2015	2,730,312	1,600,000	4,406,400	None
2016	2,798,868	1,600,000	4,406,400	None
2017	2,869,571	1,600,000	4,406,400	None
2018	2,942,487	1,600,000	4,406,400	None
2019	3,017,684	1,600,000	4,406,400	None
2020	3,095,236	1,600,000	4,406,400	None
2021	3,175,215	1,600,000	4,406,400	None
2022	3,257,697	1,600,000	4,406,400	None
2023	3,342,761	1,600,000	4,406,400	None
2024	3,430,487	1,600,000	4,406,400	None
2025	3,520,960	1,600,000	4,406,400	None
2026	3,614,264	1,600,000	4,406,400	None
2027	3,710,488	1,600,000	4,406,400	None
2028	3,809,724	1,600,000	4,406,400	None
2029	3,912,067	1,600,000	4,406,400	None
2030	4,017,612	1,600,000	4,406,400	None
2031	4,126,462	1,600,000	4,406,400	None
2032	4,238,718	1,600,000	4,406,400	None
2033	4,354,488	1,600,000	4,406,400	None
2034	4,473,881	1,600,000	4,406,400	None
2035	4,597,012	1,600,000	4,406,400	None
2036	4,723,996	1,600,000	4,406,400	None
2037	4,854,955	1,600,000	4,406,400	None

As shown in the table above, the addition of a new well would ensure that the City will have water supply available to meet design demand at build out population.

Additional Water System Infrastructure Items Recommended Prior to Full UGB Build Out:

Variable Frequency Drives:

Variable frequency drives (VFDs) are a system for controlling the rotational speed of a motor. They are used for adjusting flow in a pump to meet actual demand. Currently, the City's well pumps operate either on or off, full power or no power. VFDs can provide electrical savings by matching the speed of the pump motor to actual demand. Perhaps more importantly, VFDs can reduce stress on pump motor parts.

The City's water supply requirements shown in tables 2, 3, and 4 make the assumption that pumps could run at full power for 24 hours. Although extended operation is possible, heavy and continuous use under high demand could lead to increased stress on pump motors and could increase the chances for mechanical issues.

VFD's are a solution to minimize stress on pump motors, reduce mechanical wear and tear, and extend the life of the pumps.

Transmission Main Between Reservoir and City:

The City's reservoir tank and the waterlines in the City are connected by a two mile long 12" diameter transmission main. The transmission main was constructed in the 1960's and is made of Transite, or asbestos concrete. The pipe is critical infrastructure for the City.

Transite pipe typically has a design life 50 to 80 years. The exact age of the pipe is unknown, however, as a critical piece of infrastructure, the replacement of the pipe is recommended as it is currently within the design life window.

To improve water supply capacity, it is recommended that the existing 12" diameter transmission main remain in place to serve as a dual pipe system for redundancy. It is also recommended that the new transmission main pipe be 20" in diameter to add supply capacity to the City's water system.

Water Right Mitigation:

The City holds 155 acres of "senior" priority date irrigation water rights on the Lazy Z Ranch. (Based on previous agreements and actions, approximately 138.2 acres of water rights can be excluded from the Three Sisters Irrigation District without further action). Based on the mitigation demand projections (a need for approximately 18 acres in the UGB Build Out), it appears that the City would have sufficient irrigation water rights to meet its mitigation demand projections.

New Well Building and Chlorination for Well #1:

The City's existing building for Well #1 is undersized and is not equipped with a dependable chlorination system.

Water System Spare Parts Including 75hp Pump Motor:

Spare equipment will ensure that the City can quickly repair any water system components that are off line. Spare parts include a backup pump motor, well components, piping, fittings and other associated water system infrastructure.

Water Distribution Improvements:

Water distribution improvements are upsizing of existing main lines or extensions of existing mainlines to provide additional capacity to the City water system. The following distribution system improvements have been included in the City's water system master plan or have been identified as necessary for the expansion of the water system to serve full UGB build out.

Table 4: Distribution Improvements

Distribution Projects	Project Description
Edge of the Pines	Replace 4" Transite with 8" PVC
Hood Ave N. Alley/Fir to Larch	Replace 2" Galvanized with 6" PVC
Oak St/Main to Adams	Replace 4" Steel with 8" PVC

Fir St/Main to Adams	Replace 4" Steel with 8" PVC
Jeff Ave S. Alley/Cedar to Locust	Abandon 4" steel & relocate services
Hood Ave S. Alley /Pine to Ash	Abandon 4" steel & relocate services
Main Ave. N. Alley/Pine to Elm	Abandon 4" steel & relocate services
Wash. Ave S. Alley/Cedar to Locust	Abandon 4" steel & relocate services
Creekside Drive Ext. to Hwy 126	12" Mainline Extension
Locust St. Ext/B. Butte to Barclay	12" Mainline Extension
Forest Service Ext/Pine to Ponderosa Lodge	12" Mainline Extension
Jefferson Ave Ext/E. Jeff to Desparado Tr.	12" Mainline Extension
Trinity Way Ext/LDS to Catholic Church	8" Mainline Extension
Brooks Camp Ext/ Hwy 242 to Pines	10" Mainline Extension

A detailed table of water system distribution projects has been prepared separate from this memo.

Estimated Costs for Proposed Water System Infrastructure Improvements:

Backup generator on well #3

100 KW Backup Generator	$125,000
Engineering and Administration (8%)	$10,000
Contingency Factor (10%)	$13,500
Estimated Total Cost	$148,500

Variable Frequency Drives for Wells 1, 2, and 3

(2) 75 HP 480V VFD	$19,170
(1) 100 HF 480 V VFD	$16,700
Installation and Programming	$16,000
Engineering and Administration (8%)	$4,150
Contingency Factor (10%)	$5,600
Estimated Total Cost	$61,620

New well with backup generator and VFD

Well Construction	$300,000
Well Building	$150,000
Backup Generator	$150,000
VFD	$25,000
Chlorination System	$100,000
Engineering and Administration (8%)	$58,000
Contingency Factor (10%)	$78,300
Estimated Total Cost	$861,300

Water Right Mitigation

Engineering and Administration (8%)	$10,000
Contingency Factor (10%)	$1,000
Estimated Total Cost	$11,000

Reconstruction of Transmission Main between Reservoir and City

7,000 feet of 20" HDPE Pipe	$770,000

Engineering and Administration (8%)	$61,600
Contingency Factor (10%)	$83,160
Estimated Total Cost	$914,760

New Well Building and Chlorination for Well #1

New Well Building	$150,000
Chlorination System	$100,000
Engineering and Administration (8%)	$20,000
Contingency Factor (10%)	$27,000
Estimated Total Cost	$297,000

Water System Spare Parts including 75hp pump motor

75hp pump motor	$20,000
Additional Necessary Spare Parts	$50,000
Estimated Total Cost	$70,000

Distribution Improvements to the Water System

Estimated Distribution Improvements	$1,414,320
Estimated Total Cost	$1,414,320

Description, Cost, and Timing of Proposed Water System Infrastructure Improvements:

See the attached table indicating project descriptions, costs, and timing for proposed water system infrastructure improvements in this memo.

City of Sisters
Proposed Water System Infrastructure Improvements
Timing and Cost Summary

	Project Description	Timing	Project Cost	Project Funding Source
1	Backup Generator on Well #3	Within 24 Months	$148,500	Operating Fund
2	Variable Frequency Drives for Wells 1, 2, and 3	Within 24 Months	$61,620	Operating Fund
3	6" Water Behind Barclay Square	Within 24 Months	$41,000	54% SDC, 46% Operating
4	8" Water, Oak Street, Main to Adams	Within 24 Months	$40,800	54% SDC, 46% Operating
5	8" Water, Fir Street, Main to Adams	Within 24 Months	$40,800	54% SDC, 46% Operating
6	8" Water, Edge O the Pines	Within 24 Months	$571,200	54% SDC, 46% Operating
7	Water System Spare Parts including 75 hp Pump	2017	$70,000	Operating Fund
8	New Well Building and Chlorination for Well #1	2020	$297,000	Operating Fund
9	Construct New Transmission Main from Reservo	2025	$914,760	SDC 100%
10	New Well #4 with Backup Generator	2028	$861,300	SDC 100%
11	8" Water in Alley, Fir to Larch	Beyond 2019	$75,600	54% SDC, 46% Operating
12	Jeff Ave S. Alley/Cedar to Locust	Beyond 2019	$25,200	Operating Fund
13	Hood Ave S. Alley /Pine to Ash	Beyond 2019	$36,000	Operating Fund
14	Main Ave. N. Alley/Pine to Elm	Beyond 2019	$72,000	Operating Fund
15	Wash. Ave S. Alley/Cedar to Locust	Beyond 2019	$28,800	Operating Fund
16	Creekside Drive Ext. to Hwy 126	Beyond 2019	$37,200	SDC 100%
17	Locust St. Ext/B. Butte to Barclay	Beyond 2019	$36,000	SDC 100%
18	Forest Service Ext/Pine to Ponderosa Lodge	Beyond 2019	$168,000	SDC 100%
19	Jefferson Ave Ext/E. Jeff to Desparado Tr.	Beyond 2019	$180,000	SDC 100%
20	Trinity Way Ext/LDS to Catholic Church	Beyond 2019	$42,240	SDC 100%
21	Brooks Camp Ext/ Hwy 242 to Pines	Beyond 2019	$60,480	SDC 100%
Total			**$3,808,500**	

Projected Funding for Projects

Project Description	Project Cost	Project Funding Source	Operating Funded	SDC Funded
Backup Generator on Well #3	$ 148,500	Operating Fund	$ 148,500	$ -
Variable Frequency Drives for Wells 1, 2, and 3	$ 61,620	Operating Fund	$ 61,620	$ -
6" Water Behind Barclay Square	$ 41,000	54% SDC, 46% Operating	$ 18,860	$ 22,140
8" Water, Oak Street, Main to Adams	$ 40,800	54% SDC, 46% Operating	$ 18,768	$ 22,032
8" Water, Fir Street, Main to Adams	$ 40,800	54% SDC, 46% Operating	$ 18,768	$ 22,032
8" Water, Edge O the Pines	$ 571,200	54% SDC, 46% Operating	$ 262,752	$ 308,448
ystem Spare Parts including 75 hp Pump Motor	$ 70,000	Operating Fund	$ 70,000	$ -
New Well Building and Chlorination for Well #1	$ 297,000	Operating Fund	$ 297,000	$ -
onstruct New Transmission Main from Reservoir	$ 914,760	SDC 100%	$ -	$ 914,760
New Well #4 with Backup Generator	$ 861,300	SDC 100%	$ -	$ 861,300
8" Water in Alley, Fir to Larch	$ 75,600	54% SDC, 46% Operating	$ 34,776	$ 40,824
Jeff Ave S. Alley/Cedar to Locust	$ 25,200	Operating Fund	$ 25,200	$ -
Hood Ave S. Alley /Pine to Ash	$ 36,000	Operating Fund	$ 36,000	$ -
Main Ave. N. Alley/Pine to Elm	$ 72,000	Operating Fund	$ 72,000	$ -
Wash. Ave S. Alley/Cedar to Locust	$ 28,800	Operating Fund	$ 28,800	$ -
Creekside Drive Ext. to Hwy 126	$ 37,200	SDC 100%	$ -	$ 37,200
Locust St. Ext/B. Butte to Barclay	$ 36,000	SDC 100%	$ -	$ 36,000
Forest Service Ext/Pine to Ponderosa Lodge	$ 168,000	SDC 100%	$ -	$ 168,000
Jefferson Ave Ext/E. Jeff to Desparado Tr.	$ 180,000	SDC 100%	$ -	$ 180,000
Trinity Way Ext/LDS to Catholic Church	$ 42,240	SDC 100%	$ -	$ 42,240
Brooks Camp Ext/ Hwy 242 to Pines	$ 60,480	SDC 100%	$ -	$ 60,480
Totals	**$ 3,808,500**		**$ 1,093,044**	**$ 2,715,456**

Proposed Construction Schedule and Funding

Operating Fund	Operating Funded	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
Backup Generator on Well #3	$ 148,500	$ -	$ 154,499	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Variable Frequency Drives for Wells 1, 2, and 3	$ 61,620	$ 61,620	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
6" Water Behind Barclay Square	$ 18,860	$ 18,860	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8" Water, Oak Street, Main to Adams	$ 18,768	$ -	$ 19,526	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8" Water, Fir Street, Main to Adams	$ 18,768	$ -	$ 19,526	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8" Water, Edge O the Pines	$ 262,752	$ -	$ -	$ 278,835	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
ater System Spare Parts including 75 hp Pump Motor	$ 70,000	$ 70,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
New Well Building and Chlorination for Well #1	$ 297,000	$ -	$ -	$ -	$ -	$ -	$ -	$ 341,160	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Construct New Transmission Main from Reservoir	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
New Well #4 with Backup Generator	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8" Water in Alley, Fir to Larch	$ 34,776	$ -	$ -	$ -	$ -	$ 38,396	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Jeff Ave S. Alley/Cedar to Locust	$ 25,200	$ -	$ -	$ -	$ -	$ 27,823	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Hood Ave S. Alley /Pine to Ash	$ 36,000	$ -	$ -	$ -	$ -	$ -	$ 40,542	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Main Ave. N. Alley/Pine to Elm	$ 72,000	$ -	$ -	$ -	$ -	$ -	$ 81,084	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Wash. Ave S. Alley/Cedar to Locust	$ 28,800	$ -	$ -	$ -	$ -	$ -	$ 32,433	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Creekside Drive Ext. to Hwy 126	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Locust St. Ext/B. Butte to Barclay	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Forest Service Ext/Pine to Ponderosa Lodge	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Jefferson Ave Ext/E. Jeff to Desparado Tr.	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Trinity Way Ext/LDS to Catholic Church	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Brooks Camp Ext/ Hwy 242 to Pines	$ -	$ 60,480	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total	$ 1,093,044	$ 210,960	$ 193,552	$ 278,835	$ -	$ 66,218	$ 154,059	$ 341,160	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Operating Fund Net Revenue		$ 137,000	$ 140,000	$ 144,000	$ 154,000	$ 168,000	$ 171,360	$ 174,787	$ 178,283	$ 181,849	$ 185,486	$ 189,195	$ 192,979	$ 196,839	$ 200,776	$ 204,791	$ 208,887	$ 213,065	$ 217,326	$ 221,672	$ 226,106	$ 230,628	$ 235,241
Operating Fund Net Balance Available for Expenses		$ 294,267	$ 220,307	$ 166,755	$ 31,921	$ 185,921	$ 287,702	$ 305,003	$ 138,631	$ 316,914	$ 498,762	$ 684,248	$ 873,443	$ 1,066,422	$ 1,263,261	$ 1,464,037	$ 1,668,828	$ 1,877,715	$ 2,090,779	$ 2,308,105	$ 2,529,778	$ 2,755,884	$ 2,986,512
Net After Expenses		$ 220,307	$ 166,755	$ 31,921	$ 185,921	$ 287,702	$ 305,003	$ 138,631	$ 316,914	$ 498,762	$ 684,248	$ 873,443	$ 1,066,422	$ 1,263,261	$ 1,464,037	$ 1,668,828	$ 1,877,715	$ 2,090,779	$ 2,308,105	$ 2,529,778	$ 2,755,884	$ 2,986,512	$ 3,221,752

SDC Fund	SDC Funded	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
Backup Generator on Well #3	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Variable Frequency Drives for Wells 1, 2, and 3	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
6" Water Behind Barclay Square	$ 22,140	$ 22,140	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8" Water, Oak Street, Main to Adams	$ 22,032	$ -	$ 22,922	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8" Water, Fir Street, Main to Adams	$ 22,032	$ -	$ 22,922	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8" Water, Edge O the Pines	$ 308,448	$ -	$ -	$ 327,327	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
ater System Spare Parts including 75 hp Pump Motor	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
New Well Building and Chlorination for Well #1	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Construct New Transmission Main from Reservoir	$ 914,760	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,093,223	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
New Well #4 with Backup Generator	$ 861,300	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,092,337	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8" Water in Alley, Fir to Larch	$ 40,824	$ -	$ -	$ -	$ -	$ 45,073	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Jeff Ave S. Alley/Cedar to Locust	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Hood Ave S. Alley /Pine to Ash	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Main Ave. N. Alley/Pine to Elm	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Wash. Ave S. Alley/Cedar to Locust	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Creekside Drive Ext. to Hwy 126	$ 37,200	$ -	$ -	$ -	$ 40,266	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Locust St. Ext/B. Butte to Barclay	$ 36,000	$ -	$ -	$ 38,203	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Forest Service Ext/Pine to Ponderosa Lodge	$ 168,000	$ -	$ -	$ -	$ -	$ 185,486	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Jefferson Ave Ext/E. Jeff to Desperado Tr.	$ 180,000	$ -	$ -	$ -	$ -	$ 198,735	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Trinity Way Ext/LDS to Catholic Church	$ 42,240	$ -	$ -	$ -	$ 45,722	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Brooks Camp Ext/ Hwy 242 to Pines	$ 60,480	$ -	$ -	$ -	$ 65,465	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total	$ 2,715,456	$ 22,140	$ 45,844	$ 365,531	$ 151,454	$ 429,293	$ -	$ -	$ -	$ -	$ 1,093,223	$ -	$ -	$ 1,092,337	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
SDC Fund Revenue After Expenses		$ 159,500	$ 162,690	$ 165,944	$ 169,263	$ 172,648	$ 176,101	$ 179,623	$ 90,000	$ 91,800	$ 93,636	$ 95,509	$ 97,419	$ 99,367	$ 101,355	$ 103,382	$ 105,449	$ 107,558	$ 109,709	$ 111,904	$ 114,142	$ 116,425	$ 118,753
SDC Fund Net Balance Available for Expenses		$ 1,266,791	$ 1,404,151	$ 1,520,997	$ 1,321,410	$ 1,339,218	$ 1,082,573	$ 1,258,674	$ 1,438,297	$ 1,528,297	$ 1,620,097	$ 620,510	$ 716,019	$ 813,438	$ (179,532)	$ (78,177)	$ 25,205	$ 130,654	$ 238,212	$ 347,922	$ 459,826	$ 573,967	$ 690,392
Net After Expenses		$ 1,404,151	$ 1,520,997	$ 1,321,410	$ 1,339,218	$ 1,082,573	$ 1,258,674	$ 1,438,297	$ 1,528,297	$ 1,620,097	$ 620,510	$ 716,019	$ 813,438	$ (179,532)	$ (78,177)	$ 25,205	$ 130,654	$ 238,212	$ 347,922	$ 459,826	$ 573,967	$ 690,392	$ 809,145

Notes: Operating Fund Net Revenue is Net of Replacement Reserve but before CIP
All CIP Projects are on this list
Revenues are grown at 2% per year after 2020
Each expense item has been grown by 2% per year for inflation
A significant reduction in SDC revenue is assumed to occur in 2023
Aiport Water Project is outside of this analysis (grant funded)

CITY OF SISTERS
Public Works Department

520 E. Cascade Ave.
P.O. Box 39
Sisters, OR 97759

(541) 323-5212
Fax: (541)549-0561
www.sisters.or.us

TO: Andrew Gorayeb, City Manager
Paul Bertagna, Director of Public Works

FROM: Erik Huffman, City Engineer

DATE: June 21, 2015

SUBJECT: Sewer System Infrastructure Improvements Memo

Purpose and Scope:

Determine the quantity and application rates of wastewater effluent produced presently and at full build out within the Sisters UGB.

Determine the effluent reuse options to meet full build out capacity needs for the Sisters UGB.

Determine the estimated time frames and costs for effluent reuse improvements.

Determine the estimated time frames and costs for other sewer infrastructure improvements anticipated for the full build out of the Sisters UGB.

Population at Build Out and Rate of Population Growth:

The City of Sisters 2014 Population of 2,181 is projected to grow to 4,431 at full build out. A build out date of 2037 was calculated by increasing the population at a rate of 3.13 percent, consistent with the Deschutes County Coordinated Forecast.

Existing Effluent Reuse Capacity and Demand:

The City of Sisters currently utilizes 88.5 acres of forest land and 11.8 acres of dike land for effluent irrigation. Effluent irrigation is applied between April 1 and October 1 only. The City has a permitted reuse maximum volume of 178 acre feet of effluent (accounting for evaporation loss) per year per its WPCF permit from Oregon DEQ.

The City currently has a demand for 158 acre feet of effluent per year. It is anticipated that the City will meet current DEQ permit limits by 2018.

Effluent Reuse Needs for Sisters at Full Build Out:

Using the effluent applied in 2011 (181 acre feet) and calculating a population in Sisters in 2011 of 1,988, an estimated 0.091 acre feet of effluent is produced per capita per year.

Projecting to a full build out population of 4,278, the volume of effluent produced will be 389 acre feet per year.

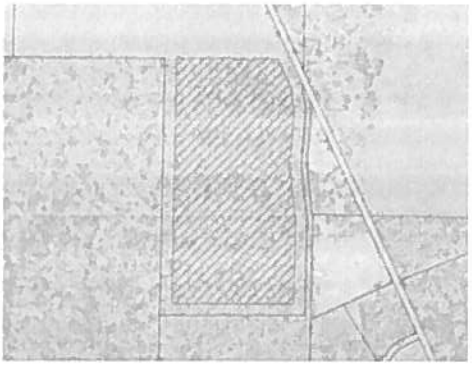
The City of Sisters will need to develop an expansion of the effluent irrigation area to dispose of an additional (389 acre feet - 178 acre feet) = 211 acre feet of effluent per year to provide effluent reuse capacity at full build out.

Expansion of the Effluent Reuse Disposal Area:

The Lazy Z Ranch property provides multiple possibilities for effluent reuse expansion. Both forest irrigation and crop irrigation opportunities are available.

Forest Irrigation Effluent Expansion: A 49 acre forested area (after accounting for all setbacks) is available for effluent irrigation at the far southeast corner of the Lazy Z ranch property. It is anticipated that this area would have a permitted application rate of 14.3 inches per year and could be connected to the existing pipeline which terminates approximately 900 feet from the site. This area could provide for the disposal of 77 acre feet of effluent per year.

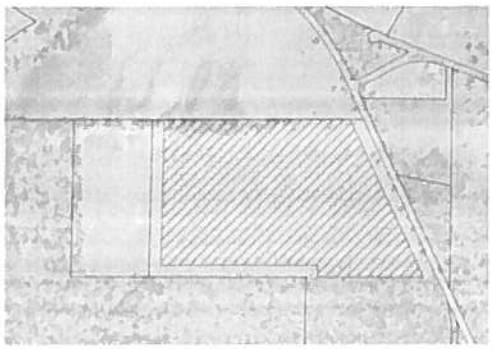
This expansion would increase the City's effluent disposal capacity from 178 acre feet per year to 255 acre feet per year. Assuming constant sewer influent growth rates, this expansion would provide effluent disposal capacity until 2031.



Forest Irrigation Area with an effluent disposal potential of 77 acre feet per year

Crop Irrigation Effluent Expansion: A 52 acre crop land area (after accounting for all setbacks) is available for effluent irrigation in the southeast portion of the Lazy Z Ranch property. It is anticipated that this area would have a permitted application rate of 28.79 inches per year (the same as the existing dike irrigation area) and could be connected to the existing pipeline which terminates in the center of the site. This area could provide for the disposal of 166 acre feet of effluent per year. The disadvantage of this area is that it would have to be a managed crop with maintenance costs. Per the 2013 Wastewater Reuse and Conservation Project Planning Study, this area would be best managed as a hay crop or an ornamental tree crop.

This expansion would increase the City's effluent disposal capacity from 178 acre feet per year to 344 acre feet per year, which would account for all effluent reuse demand until full UGB build out.



Crop irrigation with an effluent disposal potential of approximately 166acre feet per year

It is recommended that Forest irrigation improvements are constructed prior to 2018 to maintain compliance with DEQ effluent permit limits. It is recommended that Crop Irrigation improvements are implemented prior to 2031 to again maintain compliance with DEQ effluent permit limits.

Costs for Effluent Reuse Expansion Improvements:

Conceptual plans have not yet been prepared, but for budgetary purposes, the approximate costs for effluent expansion improvements are as follows:

Forest Irrigation Effluent Expansion	
Construction Cost	$485,000
Engineering and Administration (16%)	$76,000
Contingency Factor (10%)	$56,100
Estimated Total Cost	$617,100

Crop Irrigation Effluent Expansion	
Cost (provided by Water Reuse Study)	$786,857
Estimated Total Cost	$786,857

Costs for Other Sewer System Infrastructure Improvements:

Treatment Facility Software and Security System Upgrades
This infrastructure is shown in the capital facilities plan as a short term priority. The proposed software improvements will improve monitoring of activities at the treatment plant. Security system upgrades include additional software and on-site cameras to provide additional monitoring of the treatment plant site. It is recommended that these improvements be implemented by 2018.

Treatment Facility Software and Security Upgrades	
Software and Security Upgrades	$72,000
Contingency Factor (10%)	$7,200
Estimated Total Cost	$79,200

Locust Street Interceptor
The Locust Street Interceptor is a proposed new sewer main which divert sewer flows from sewer main lines which will be reaching their design flow capacity. It is recommended that the Locust Street Interceptor be constructed by 2020.

Locust Street Interceptor	
Sewer Main Construction	$420,000

Engineering and Administration (10%)	$42,000
Contingency Factor (10%)	$46,200
Estimated Total Cost	$508,200

Aeration Improvements

The Capital Facilities Plan recommends replacement of the existing aerators at the treatment plant to provide more aeration which will improve the capacity and efficiency of the treatment process in the lagoons. The aeration improvements are recommended to be implemented by 2021, which is when the treatment plant will have been in operation for 20 years.

Replacement of Aeration Equipment in Effluent Ponds

Replacement of Existing Aerators	$185,000
Engineering and Administration (8%)	$14,800
Contingency Factor (10%)	$19,980
Estimated Total Cost	$219,780

Biosolids Removal

Biosolids Removal includes the removal of "sludge" or the remaining material in the treatment ponds after treatment. These biosolids accumulate in the ponds and reduce the capacity of the treatment ponds over time. The removal of biosolids requires the creation of a biosolids management plan to determine the disposal methods and locations of the material. It is recommended that the biosolids management plan be prepared in 2019 and that biosolids removal begin in 2021, which is 20 years from the construction of the treatment facility.

Biosolids Removal and Disposal

Biosolids Management Plan	$24,000
Biosolids Removal	$240,000
Contingency Factor (10%)	$26,400
Estimated Total Cost	$290,400

Pump Station #1 New Pumps

The existing pumps at Pump Station #1 are anticipated to reach capacity between 2022 and 2025. It is recommended that the existing pumps be replaced by larger pumps between the 2022 to 2025 time period.

Pump Station #1 New Pumps

Pump Replacement	$106,000
Contingency Factor (10%)	$10,600
Estimated Total Cost	$116,600

West Side Pump Station and Force Main

The West Side Pump Station and Force Main is primarily tied to the development of the USFS property between Pine Street and Hwy 20. This force main provides an alternate route for sewer flows directly to the treatment plant, by-passing Pump Station #1. The timing of this infrastructure improvement would be based on the sale and development of the USFS property.

West Side Pump Station and Force Main

West Side Pump Station	$925,000
West Side Force Main	$321,000
Engineering and Administration	$124,600
Contingency Factor (10%)	$137,060
Estimated Total Cost	$1,507,660

City of Sisters
Proposed Sewer System Infrastructure Improvements
Timing and Cost Summary

	Project Description	Timing	Project Cost	Project Funding Source
1	Forest Irrigation Effluent Expansion	Within 24 Months	$617,100	SDC 100%
2	Treatment Facility Software and Security Upgrades	Within 24 Months	$79,200	Operating Fund
3	Locust Street Interceptor	2020	$508,200	54% SDC, 46% Operating
4	Aeration Improvements at Treatment Plant	2021	$219,780	Operating Fund
5	Biosolids Removal at Treatment Plant	2021	$290,400	Operating Fund
6	Pump Station #1 New Pumps	2022-2025	$116,600	54% SDC, 46% Operating
7	Crop Irrigation Effluent Expansion	2031	$786,857	SDC 100%
8	West Side Pump Station and Force Main	USFS Development	$1,507,660	SDC 50% and Developer 50%
Total			**$4,125,797**	

Projected Funding for Projects

Project Description	Project Cost	Project Funding Source	Operating Funded	SDC Funded
Forest Irrigation Effluent Expansion	$ 617,100	SDC 100%	$ -	$ 617,100
atment Facility Software and Security Upgrades	$ 79,200	Operating Fund	$ 79,200	$ -
Locust Street Interceptor	$ 508,200	54% SDC, 46% Operating	$ 233,772	$ 274,428
Aeration Improvements at Treatment Plant	$ 219,780	Operating Fund	$ 219,780	$ -
Biosolids Removal at Treatment Plant	$ 290,400	Operating Fund	$ 290,400	$ -
Pump Station #1 New Pumps	$ 116,600	54% SDC, 46% Operating	$ 53,636	$ 62,964
Crop Irrigation Effluent Expansion	$ 786,857	SDC 100%	$ -	$ 786,857
West Side Pump Station and Force Main	$ 1,507,660	SDC 50% and Developer 50%	$ -	$ 753,830
Totals	**$ 4,125,797**		**$ 876,788**	**$ 2,495,179**

Proposed Construction Schedule and Funding

Operating Fund	Operating Funded	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
Forest Irrigation Effluent Expansion	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Treatment Facility Software and Security Upgrades	$ 79,200	$ -	$ 82,400	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Locust Street Interceptor	$ 233,772	$ -	$ -	$ -	$ -	$ 258,103	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Aeration Improvements at Treatment Plant	$ 219,780	$ -	$ -	$ -	$ -	$ -	$ 247,508	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Biosolids Removal at Treatment Plant	$ 290,400	$ -	$ -	$ -	$ -	$ -	$ 327,038	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pump Station #1 New Pumps	$ 53,636	$ -	$ -	$ -	$ -	$ 59,218	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Crop Irrigation Effluent Expansion	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
West Side Pump Station and Force Main	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total	$ 876,788	$ -	$ 82,400	$ -	$ -	$ 317,322	$ 574,546	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Operating Fund Net Revenue		$ 76,513	$ 80,000	$ 84,000	$ 88,000	$ 89,760	$ 91,555	$ 93,386	$ 95,254	$ 97,159	$ 99,102	$ 101,084	$ 103,106	$ 105,168	$ 107,272	$ 109,417	$ 111,605	$ 113,837	$ 116,114	$ 118,436	$ 120,805	$ 123,221	$ 125,686
Operating Fund Net Balance Available for Expenses		$ 127,136	$ 203,649	$ 201,249	$ 285,249	$ 373,249	$ 145,688	$ (337,303)	$ (243,916)	$ (148,662)	$ (51,503)	$ 47,599	$ 148,683	$ 251,789	$ 356,958	$ 464,229	$ 573,646	$ 685,251	$ 799,089	$ 915,203	$ 1,033,639	$ 1,154,444	$ 1,277,666
Net After Expenses		$ 203,649	$ 201,249	$ 285,249	$ 373,249	$ 145,688	$ (337,303)	$ (243,916)	$ (148,662)	$ (51,503)	$ 47,599	$ 148,683	$ 251,789	$ 356,958	$ 464,229	$ 573,646	$ 685,251	$ 799,089	$ 915,203	$ 1,033,639	$ 1,154,444	$ 1,277,666	$ 1,403,351

SDC Fund	SDC Funded	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
Forest Irrigation Effluent Expansion	$ 617,100	$ -	$ 642,031	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Treatment Facility Software and Security Upgrades	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Locust Street Interceptor	$ 274,428	$ -	$ -	$ -	$ -	$ 302,991	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Aeration Improvements at Treatment Plant	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Biosolids Removal at Treatment Plant	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pump Station #1 New Pumps	$ 62,964	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 73,772	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Crop Irrigation Effluent Expansion	$ 786,857	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,080,186	$ -	$ -	$ -	$ -	$ -	$ -
West Side Pump Station and Force Main	$ 753,830	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 918,915	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total	$ 2,495,179	$ -	$ 642,031	$ -	$ -	$ 302,991	$ -	$ -	$ 73,772	$ -	$ 918,915	$ -	$ -	$ -	$ -	$ -	$ 1,080,186	$ -	$ -	$ -	$ -	$ -	$ -
SDC Fund Revenue After Expenses		$ 101,150	$ 120,000	$ 135,000	$ 140,000	$ 142,800	$ 145,656	$ 148,569	$ 75,000	$ 76,500	$ 78,030	$ 79,591	$ 81,182	$ 82,806	$ 84,462	$ 86,151	$ 87,874	$ 89,632	$ 91,425	$ 93,253	$ 95,118	$ 97,020	$ 98,961
SDC Fund Net Balance Available for Expenses		$ 575,035	$ 676,185	$ 154,154	$ 289,154	$ 429,154	$ 268,963	$ 414,619	$ 563,189	$ 564,416	$ 640,916	$ (199,968)	$ (120,378)	$ (39,195)	$ 43,611	$ 128,073	$ 214,224	$ (778,087)	$ (688,455)	$ (597,031)	$ (503,778)	$ (408,660)	$ (311,639)
Net After Expenses		$ 676,185	$ 154,154	$ 289,154	$ 429,154	$ 268,963	$ 414,619	$ 563,189	$ 564,416	$ 640,916	$ (199,968)	$ (120,378)	$ (39,195)	$ 43,611	$ 128,073	$ 214,224	$ (778,087)	$ (688,455)	$ (597,031)	$ (503,778)	$ (408,660)	$ (311,639)	$ (212,678)

Notes: Operating Fund Net Revenue is Net of Replacement Reserve but before CIP
All CIP Projects are on this list
Revenues are grown at 2% per year after 2020
Each expense item has been grown by 2% per year for inflation
A significant reduction in SDC revenue is assumed to occur in 2023
Aiport Sewer Project is outside of this analysis (grant funded)

WORKSHOP MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
JUNE 11, 2015

MEMBERS PRESENT:

Bill Hall	Council President
David Asson	Councilor
Nancy Connolly	Councilor

ABSENT:

Chris Frye	Mayor
Wendy Holzman	Councilor

STAFF PRESENT:

Paul Bertagna	PW Director
Patrick Davenport	CDD Director
Lynne Fujita-Conrads	Finance Office
Kathy Nelson	City Recorder

ABSENT:

Andrew Gorayeb	City Manager

GUESTS:

Sharlene Weed	Executive Director Sisters Habitat for Humanity

The meeting was called to order by Council President Hall at 6:00 p.m.

1. Kiosk Program Discussion

Director Davenport provided a recap of the process for developing informational kiosks that had taken place. He requested the Council provide direction on how they would like to proceed and ask them to authorize reconvening some members of the Sign Committee to participate in the next steps. He stated he felt three to five members plus staff would suffice and explained the committee members would assist staff in determining where the kiosks should be placed, who would be listed on them and whether there would be a cost involved to participate. He noted the idea of kiosks was in the Parks Master Plan and directed the Council to the map attached to the staff report indicating potential kiosk sites.

Council President Hall stated it was vital for the kiosk to not impede the line of sight for drivers as had been the case with some of the temporary signage in place during the Cascade Avenue improvement project. **Councilor Connolly** voiced concern that maintaining the kiosks and keeping the information up to date would take a lot of staff time, when staff already had more than could reasonably get done.

Councilor Asson asked what the cost of the kiosks would be and **Director Davenport** replied the rough estimate was about $1500 each. **Councilor Connolly** noted there were seven potential sites identified on the map and suggested the city should start with just two and evaluate how the program worked before installing any others. She also suggested requesting the Chamber of Commerce provide the maintenance and upkeep as it was more in line with the Chamber's purview than the City's. **Director Davenport** stated he would discuss that possibility with Chamber Executive Director Judy Trego. He stated he would also check in with Dennis Schmiddling and Marcus Peck, both members of the Sign Committee, as they had experience with signage programs.

The **Council** asked why the program was being considered and **Director Davenport** replied businesses off of Cascade Avenue were interested in them and the City was interested in getting rid of all A-frame sandwich boards. The **Council** responded they were not particularly supportive of the program, especially if the expectation was for the City to implement and maintain it. **Director Davenport** replied he would do some research on the Council's concerns and report back with additional information.

2. Affordable Housing Task Force Update

Director Davenport reported he and Manager Gorayeb met with Sisters Habitat for Humanity Executive Director Sharlene Weed and Housing Works Executive Director Tom Kemper earlier in the week in follow-up to Mr. Kemper's presentation at the last workshop about the affordable housing situation in Deschutes County and more specifically in Sisters. He stated they had identified three separate tracks to be pursued which included options related to planning, fees and financing.

Director Davenport stated options the in the planning records spectrum included amendments to the Development Code and creating a detailed housing needs analysis. He reported there was a way for the City to assist with affordable housing without having to amend the City Charter by providing grants to pay fees for individuals and groups meeting affordable housing criteria. **Councilor Connolly** asked how the City could insure that type of grant was fair and consistent and **Director Davenport** replied by establishing detailed criteria and a definitions of who could qualify for those types of grants. **Councilor Asson** asked where that finding for the grants would come from and **Finance Officer Fujita-Conrads** replied the funding would come from the Strategic Reserves, which currently held about $1.1 million.

Sisters Habitat for Humanity Executive Director Sharlene Weed noted deferring system development charges (SDC's) would also assist in building affordable housing. She stated developing a pool of funds through increased transient room tax or charging a transfer fee on real estate transactions could provide some of the revenue to offset fees.

Director Davenport stated Mr. Kemper had a great deal of knowledge and experience on the financing aspect of affordable housing and how to maximize those funds that are available. He stated besides the Ms. Weed, Mr. Kemper, Manager Gorayeb and himself, staff was recommending two citizens be part of the task force the Council had requested to be set up. He stated they would work on identifying options for the three tracks

Council President Hall asked how the task force would mesh with the Housing Plan the City already has and why the City would not use it as a starting point. He stated it listed a multitude of strategies and could just be updated with any additional information discovered. **Ms. Weed** stated she had been on the City Council when the Housing Plan was originally created and the intent had been to create a standing task force to flesh out the various ideas. **Council President Hall** stated it would not make sense to go through the process to come up with strategies all over again.

Director Davenport replied that some of the strategies from the Housing Plan had been completed and **Council President Hall** requested Director Davenport go through and indicate which strategies had been implemented. He stressed the task force would need to develop a process to evaluate the ideas in order to make certain all were being assessed with the same criteria. He stated the City wanted to insure it received the maximum benefit from its investment.

Councilor Asson remarked that if the City did not have the money to support the program it wouldn't be able to do anything. He stated he agreed the Housing Plan had some good strategies but remarked it did not have enough information on financing. He stated the City needed a contractor on board it could negotiate with in order to get a commitment for an affordable housing project to suit the City needs.

Ms. Weed reported she felt there was a willingness on the part of Housing Works to build an affordable apartment complex and besides City funds, the City could look to charitable foundations for grants. She commented there were other financing assistance avenues besides just the City.

Director Davenport stated he would summarize the strategies in the Housing Plan and compare it with the information Council President Hall had collected. **Ms. Weed** stated the City also needed to set criteria for different price points depending on median income for various groups.

Council President Hall requested staff prepare a list of the pros and cons for a Charter amendment to change the wording related to waivers of SDC's for affordable housing be brought to the next workshop.

3. Other Business

A. SCD Charter Amendment

City Recorder Nelson stated in order to have any measure on the November ballot it would need to have a resolution adopted by the Council prior to August 14 and all paperwork would need to be to the County Clerk by September 3rd.

B. Transient Room Tax Update

City Recorder Nelson informed the Council they had the ability to amend the transient room tax percentage without going to a vote of the people. She explained the only reason Deschutes County and the City of Bend had done so was because of the high number of vacation rental homes both have. The Council stated they would discuss the option further when all the Council members were in attendance.

C. Recreational Marijuana Facilities

City Recorder Nelson informed the Council she and Manager Gorayeb had spoken with the City Attorney on the matter and provided a recap of the conversation. She reported the Council could not stop individuals from growing marijuana once it becomes legal to do so on July 1st but they

could put limitations on the manner and place where individuals grew marijuana such as requiring it be grown inside a greenhouse or behind a fenced area. She stated City Attorney Bryant had advised regulations were probably unnecessary as most individuals would not choose to grow their marijuana out in the open. She stated that with regard to retail and commercial growing City Attorney Bryant advised that once the legislation surrounding marijuana was finalized at the state level, the Council might be able to put a ballot measure as to whether the City should allow commercial dispensaries to a vote of the people. She stated unless the Council amended its current business license requirement that business must comply with federal law, the facilities would still be unable to get a business license.

D. Miscellaneous

Director Davenport reported the City did not receive the grant for the restrooms at Clemens Park. He stated the City Parks Advisory Board (CPAB) had discussed and supported the option of installing a porta-potty on an interim basis until financing for a restroom could be found. **Director Bertagna** reported an Americans with Disability Act (ADA) compliant port-potty that would be cleaned twice a week could be installed for $125 a month and that no lease was required. He stated screening around the porta potty would cost somewhere in the range of $300 to $400. The **Council** directed staff to move forward with the installation of the porta potty for a three to four month trial basis.

Finance Officer Fujita-Conrads asked the Council if they had any questions surrounding a letter they had received from a vendor alleging bias in his business dealing with the City. The **Council** had no questions and requested the City Manager respond to the individual.

The meeting was adjourned at 7:02 p.m.

Respectfully submitted,

Kathy Nelson

Kathy Nelson, City Recorder

Chris Frye, Mayor

REGULAR MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
JUNE 11, 2015

MEMBERS PRESENT:

Bill Hall	Council President
David Asson	Councilor
Nancy Connolly	Councilor

ABSENT:

Chris Frye	Mayor
Wendy Holzman	Councilor

STAFF PRESENT:

Steve Bryant	City Attorney
Paul Bertagna	PW Director
Patrick Davenport	CD Director
Lynne Fujita-Conrads	Finance Officer
Kathy Nelson	City Recorder

ABSENT:

Andrew Gorayeb	City Manager

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE

The meeting was called to order by Council President Hall at 7: 08 p.m.

II. VISITOR COMMUNICATION - None

III. CONSENT AGENDA

A. Minutes

1. May 26, 2015 – Budget Committee
2. May 27, 2015 – Budget Committee
3. May 28, 2015 – Workshop
4. May 28, 2015 – Regular Meeting
5. June 04, 2015 – Special Meeting
6. June 04, 2015 Workshop

B. Bills to Approve

1. June Accounts Payable

***Councilor Asson** moved to approve the consent agenda that included the additional page of accounts payable. **Councilor Connolly** seconded the motion. The motion carried unanimously.*

IV. STAFF REPORTS

A. June Staff/Council Work Plan

Councilor Connolly requested a status update on the business owner surveys. **Director Davenport** reported the City had received approximately 100 surveys so far. **Finance Officer Fujita-Conrads** added the City had mailed out approximately 400 surveys and planned to follow up with those businesses that did not submit a survey.

Councilor Connolly asked if the Deschutes County work crews would be performing additional weed abatement and fuel reduction work in the city. **Director Bertagna** replied they would and there were funds allocated in the 2015/16 budget for that work to be done.

B. New Business License Report for May 2015 – list included

V. COUNCIL BUSINESS

A. Discussion and Consideration of Ordinance No. 460: AN ORDINANCE AMENDING SISTERS MUNICIPAL CODE TITLE 10 CHAPTER 10.28 BICYCLES, SECTION 10.28.030 SIDEWALKS

Director Davenport explained the ordinance would amend the Municipal Code to allow children under the age of 14, and adults that were accompanying them, to ride bicycles on sidewalks outside of the downtown core.

Councilor Asson *moved for the first and second reading, by title only of Ordinance No. 460.* ***Councilor Connolly*** *seconded the motion. The motion carried unanimously.*

City Attorney Bryant read Ordinance No. 460, by title only, twice.

Councilor Connolly *moved to adopt Ordinance No. 460 amending the Sisters Municipal Code Title 10 Chapter 10.28 bicycles, Section 10.28.030 sidewalks.* ***Councilor Asson*** *seconded the motion. The motion carried unanimously.*

B. Public Hearing and Consideration of Ordinance No. 461: AN ORDINANCE OF THE CITY OF SISTERS CONCERNING THE VACATION OF A PUBLIC UTILITY EASEMENT FOR THE NEW SISTERS HOTEL

This item was pulled.

C. Discussion and Consideration of a Motion to Approve Public Improvements for Highland Village Subdivision

Director Bertagna explained that as final step in the construction of public improvements the Council accepts the improvements indicating the City will perpetually operate and maintain the infrastructure. He stated the street trees and sidewalks had been bonded for and would go in as the project was built.

Councilor Asson *moved to approve public improvements for Highland Village subdivision.* ***Councilor Connolly*** *seconded the motion. The motion carried unanimously.*

D. Discussion and Consideration of a Motion to Modify U.S. Bank Authorized Account Signers by adding the name of William Hall and removing the name of McKibben Womack

Finance Officer Fujita-Conrads explained the motion was to formally add Council President William Hall as a signer to the US Bank accounts and to remove former Councilor McKibben Womack as a signer.

Councilor Asson *moved to modify US Bank authorized account signers by adding the name of William Hall and removing the name of McKibben Womack.* ***Councilor Connolly*** *seconded the motion. The motion carried unanimously.*

E **Discussion and Consideration of a Motion** to Approve a Ground Lease Agreement with High Country Enterprises LLC and Authorize the City Manager to Execute the Agreement

Director Bertagna reported the lease extension agreement with High County Enterprises was for property located by the treatment plant and was for a term of three years. He stated although the monthly amount had been reduced to $1000 a month, High Country Disposal had agreed to pick up garbage in the downtown core as part of the agreement.

Councilor Asson *moved to approve a ground lease agreement with High County Enterprises LLC and authorize the City Manager to execute the agreement.* ***Councilor Connolly*** *seconded the motion. The motion carried unanimously.*

VI. CONTRACT REVIEW BOARD

Council President Hall opened the Contract Review Board.

A. **Discussion and Consideration of a Motion** to Accept a Recommendation for City Engineering Services and Authorize the City Manager to Negotiate the Contract

Director Bertagna stated the City issued a request for proposal (RFP) for city engineering services and received two proposals. He reported the review committee, using the criteria from the RFP, unanimously chose to recommend BECON Engineering. He stated the City had been using Eric Huffman and his company BECON Engineering for three years and were very satisfied with the work and response time.

Councilor Asson *moved to accept a recommendation for City Engineering services and authorize the City Manager to negotiate the contract and authorize the City Manager to execute the contract.* ***Councilor Connolly*** *seconded the motion. The motion carried unanimously.*

Council President Hall closed the Contract Review Board.

VII. OTHER BUSINESS

Councilor Connolly requested an update on the fix to the Cascade Avenue lamp posts to make them dark skies compliant. Director Bertagna replied the necessary materials had been delivered earlier in the day and the work would be performed next Tuesday and Wednesday evening.

Councilor Connolly asked for an update on the traffic study by Creekside RV Park. **Director Bertagna** replied the study was underway and data had been collected from 3:00 p.m. to 6:00 p.m. on Friday, June 5th.

Director Bertagna reported there were two diseased trees in the City right of way and one on an easement the City had on school district property. He stated removal of them had been recommended by the City Forester. He stated the Urban Forestry Board had also recommended the trees be removed as soon as possible in order to keep nearby trees from becoming infested. He stated the school district also had some trees on their property the City Forester had evaluated and recommended be removed. He stated he had relayed that information to the school district in the hope the City and school district could solicit one bid for the removal of all the diseased trees and take advantage of the economy of scale to save money. He stated the wood from the trees would be transported out of the City.

IX. ADJOURN –7:30 p.m.

Respectfully submitted,

Kathy Nelson

Kathy Nelson, City Recorder

Chris Frye Mayor

PACKET: 02332 6/25/15 KK
VENDOR SET: 01 CITY OF SISTERS
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

--------ID-------- POST DATE	BANK CODE	---------DESCRIPTION---------	GROSS DISCOUNT	P.O. # G/L ACCOUNT	------ACCOUNT NAME------	DISTRIBUTION
01-0630 AHC						
I-1361		PD1401 HOOD/ASH	2,916.50			
6/10/2015	AP-US	DUE: 6/10/2015 DISC: 6/10/2015		1099: N		
		PD1401 HOOD/ASH		13 5-00-906	CAPITAL OUTLAY	2,916.50
I-1363		PD1401 HOOD/ASH	2,365.50			
6/10/2015	AP-US	DUE: 6/10/2015 DISC: 6/10/2015		1099: N		
		PD1401 HOOD/ASH		13 5-00-906	CAPITAL OUTLAY	2,365.50
		=== VENDOR TOTALS ===	5,282.00			
01-0175 ALERT SAFETY SUPPLY						
I-12072		DETOUR SIGNS	32.00			
6/15/2015	AP-US	DUE: 6/15/2015 DISC: 6/15/2015		1099: N		
		DETOUR SIGNS		01 5-05-731	SPECIAL EVENTS	32.00
		=== VENDOR TOTALS ===	32.00			
01-0616 ASIFLEX						
I-05312015		ADMIN FEES MAY 2015	11.25			
6/08/2015	AP-US	DUE: 6/08/2015 DISC: 6/08/2015		1099: N		
		ADMIN FEES MAY 2015		01 5-02-727	PERMITS & FEES	11.25
		=== VENDOR TOTALS ===	11.25			
01-0314 BEND MEMORIAL CLINIC						
I-06112015		IMMUNIZATIONS-JOHNSON	64.00			
6/11/2015	AP-US	DUE: 6/11/2015 DISC: 6/11/2015		1099: Y		
		IMMUNIZATIONS-JOHNSON		01 5-03-771	MEDICAL TESTING & SERVIC	12.85
		IMMUNIZATIONS-JOHNSON		01 5-05-771	MEDICAL TESTING & SERVIC	12.85
		IMMUNIZATIONS-JOHNSON		03 5-00-771	MEDICAL TESTING & SERVIC	38.30
		=== VENDOR TOTALS ===	64.00			
01-0047 C & K MARKET INC.						
I-1631982		PC MEETING	40.42			
6/18/2015	AP-US	DUE: 7/25/2015 DISC: 7/25/2015		1099: N		
		PC MEETING		01 5-07-757	PLANNING COMMISSION	40.42
I-1647017		PC MEETING	67.98			
6/18/2015	AP-US	DUE: 7/25/2015 DISC: 7/25/2015		1099: N		
		PC MEETING		01 5-07-757	PLANNING COMMISSION	67.98
		=== VENDOR TOTALS ===	108.40			

PACKET: 02332 6/25/15 KK
VENDOR SET: 01 CITY OF SISTERS
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

--------ID-------- POST DATE	BANK CODE	---------DESCRIPTION---------	GROSS DISCOUNT	P.O. # G/L ACCOUNT	------ACCOUNT NAME------	DISTRIBUTION
01-0014 CENTRAL ELECTRIC COOP						
I-5016080107-0615		CITY STREET LIGHTS	344.24			
6/10/2015	AP-US	DUE: 6/10/2015 DISC: 6/10/2015		1099: N		
		CITY STREET LIGHTS		03 5-00-743	ELECTRICITY	344.24
		=== VENDOR TOTALS ===	344.24			
01-1 MISC VENDOR						
I-06192015		COPPOLA,GABE: CG REFUND	150.00			
6/22/2015	AP-US	DUE: 6/22/2015 DISC: 6/22/2015		1099: N		
		COPPOLA,GABE: CG REFUND		01 4-00-312	PARK USERS FEE	138.89
		COPPOLA,GABE: CG REFUND		01 4-00-303	TRANSIENT ROOM TAX	11.11
		=== VENDOR TOTALS ===	150.00			
01-0025 DEPARTMENT OF ENVIRONMENTAL QU						
I-06192015		WASTE WATER RENEWAL-BENTZ	160.00			
6/19/2015	AP-US	DUE: 6/19/2015 DISC: 6/19/2015		1099: N		
		WASTE WATER RENEWAL-BENTZ		05 5-00-740	EDUCATION	160.00
		=== VENDOR TOTALS ===	160.00			
01-0582 DESCHUTES COUNTY						
I-06122015		PERMIT SERVICES MAY 2015	17,783.93			
6/18/2015	AP-US	DUE: 6/18/2015 DISC: 6/18/2015		1099: N		
		ELEC PERMIT SERVICES MAY 2015		01 5-07-301	ELECTRICAL INSPECTION	2,149.54
		BLDG PERMIT SERVICES MAY 2015		01 5-07-300	BUILDING INSPECTIONS	15,634.39
I-06162015		GIS SERVICES	260.00			
6/16/2015	AP-US	DUE: 6/16/2015 DISC: 6/16/2015		1099: N		
		GIS SERVICES		01 5-07-726	CONTRACTED SERVICES	260.00
		=== VENDOR TOTALS ===	18,043.93			
01-0909 FASTENAL						
I-ORBEN95726		OIL PADS-RECYCLE CENTER	77.19			
6/01/2015	AP-US	DUE: 6/01/2015 DISC: 6/01/2015		1099: N		
		OIL PADS-RECYCLE CENTER		01 5-03-784	MAINTENANCE RECYCLE CENT	77.19
I-ORBEN95727		GLOVES	45.67			
6/01/2015	AP-US	DUE: 6/01/2015 DISC: 6/01/2015		1099: N		
		GLOVES		05 5-00-795	SUPPLIES	8.69
		GLOVES		02 5-00-795	SUPPLIES	9.60
		GLOVES		03 5-00-795	SUPPLIES	12.30
		GLOVES		01 5-05-795	SUPPLIES	9.14
		GLOVES		01 5-03-795	SUPPLIES	5.94
		=== VENDOR TOTALS ===	122.86			

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PACKET: 02332 6/25/15 KK
VENDOR SET: 01 CITY OF SISTERS
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

--------ID-------- POST DATE	BANK CODE	---------DESCRIPTION---------	GROSS DISCOUNT	P.O. # G/L ACCOUNT	------ACCOUNT NAME------	DISTRIBUTION
01-0028 FERGUSON ENTERPRISES, INC.						
I-0463971		METER GASKETS/BOLTS	10.87			
6/10/2015	AP-US	DUE: 6/10/2015 DISC: 6/10/2015		1099: N		
		METER GASKETS/BOLTS		02 5-00-788	METERS & PARTS	10.87
		=== VENDOR TOTALS ===	10.87			
01-0565 GSI WATER SOLUTIONS, INC.						
I-0283.004-60		LAZY Z WATER RIGHTS	541.50			
6/10/2015	AP-US	DUE: 6/10/2015 DISC: 6/10/2015		1099: N		
		LAZY Z WATER RIGHTS		02 5-00-726	CONTRACTED SERVICES	541.50
		=== VENDOR TOTALS ===	541.50			
01-0029 H. D. FOWLER COMPANY						
I-I3934047		CAMPGROUND BACKFLOW	30.00			
6/01/2015	AP-US	DUE: 7/10/2015 DISC: 7/10/2015		1099: N		
		CAMPGROUND BACKFLOW		01 5-05-786	PARK MAINTENANCE	30.00
		=== VENDOR TOTALS ===	30.00			
01-0799 LANE FOREST PRODUCTS						
I-15669-01		MULCH	1,651.15			
6/13/2015	AP-US	DUE: 6/13/2015 DISC: 6/13/2015		1099: N		
		MULCH		03 5-00-795	SUPPLIES	825.57
		MULCH		01 5-05-795	SUPPLIES	825.58
		=== VENDOR TOTALS ===	1,651.15			
01-0725 MCAFFEE						
I-97830855		ARCHIVE SERVICE AGREEMENT	1,426.20			
6/22/2015	AP-US	DUE: 6/22/2015 DISC: 6/22/2015		1099: N		
		ARCHIVE SERVICE AGREEMENT		01 5-01-710	COMPUTER SOFTWARE MAINT	1,426.20
		=== VENDOR TOTALS ===	1,426.20			
01-0883 MELVIN'S FIR STREET MARKET						
I-369456		CC WORKSHOP	14.16			
6/11/2015	AP-US	DUE: 6/11/2015 DISC: 6/11/2015		1099: N		
		CC WORKSHOP		01 5-01-700	MAYOR & COUNCIL	14.16
		=== VENDOR TOTALS ===	14.16			

PACKET: 02332 6/25/15 KK
VENDOR SET: 01 CITY OF SISTERS
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

--------ID-------- POST DATE	BANK CODE	---------DESCRIPTION---------	GROSS DISCOUNT	P.O. # G/L ACCOUNT	------ACCOUNT NAME------	DISTRIBUTION
01-0515 OFFICEMAX						
I-730679		STAPLES	13.81			
6/05/2015	AP-US	DUE: 6/05/2015 DISC: 6/05/2015		1099: N		
		STAPLES		01 5-01-714	OFFICE SUPPLIES	2.07
		STAPLES		01 5-02-714	OFFICE SUPPLIES	2.20
		STAPLES		01 5-03-795	SUPPLIES	0.28
		STAPLES		01 5-05-714	OFFICE SUPPLIES	1.25
		STAPLES		01 5-07-714	OFFICE SUPPLIES	3.45
		STAPLES		02 5-00-714	OFFICE SUPPLIES	1.93
		STAPLES		03 5-00-714	OFFICE SUPPLIES	1.10
		STAPLES		05 5-00-714	OFFICE SUPPLIES	1.53
I-730728		FILE JACKETS	19.65			
6/05/2015	AP-US	DUE: 6/05/2015 DISC: 6/05/2015		1099: N		
		FILE JACKETS		01 5-01-714	OFFICE SUPPLIES	2.95
		FILE JACKETS		01 5-02-714	OFFICE SUPPLIES	3.13
		FILE JACKETS		01 5-03-795	SUPPLIES	0.39
		FILE JACKETS		01 5-05-714	OFFICE SUPPLIES	1.77
		FILE JACKETS		01 5-07-714	OFFICE SUPPLIES	4.91
		FILE JACKETS		02 5-00-714	OFFICE SUPPLIES	2.75
		FILE JACKETS		03 5-00-714	OFFICE SUPPLIES	1.57
		FILE JACKETS		05 5-00-714	OFFICE SUPPLIES	2.18
I-824047		BINDER CLIPS, POST-ITS,STENOS	72.16			
6/17/2015	AP-US	DUE: 6/17/2015 DISC: 6/17/2015		1099: N		
		BINDER CLIPS, POST-ITS,STENOS		01 5-01-714	OFFICE SUPPLIES	10.84
		BINDER CLIPS, POST-ITS,STENOS		01 5-02-714	OFFICE SUPPLIES	11.51
		BINDER CLIPS, POST-ITS,STENOS		01 5-03-795	SUPPLIES	1.44
		BINDER CLIPS, POST-ITS,STENOS		01 5-05-714	OFFICE SUPPLIES	6.51
		BINDER CLIPS, POST-ITS,STENOS		01 5-07-714	OFFICE SUPPLIES	18.02
		BINDER CLIPS, POST-ITS,STENOS		02 5-00-714	OFFICE SUPPLIES	10.10
		BINDER CLIPS, POST-ITS,STENOS		03 5-00-714	OFFICE SUPPLIES	5.77
		BINDER CLIPS, POST-ITS,STENOS		05 5-00-714	OFFICE SUPPLIES	7.97
I-824047-1		11X17 COPY PAPER	28.66			
6/17/2015	AP-US	DUE: 6/17/2015 DISC: 6/17/2015		1099: N		
		11X17 COPY PAPER		01 5-01-721	COPIER/PRINTER	8.88
		11X17 COPY PAPER		01 5-02-721	COPIER/PRINTER	5.15
		11X17 COPY PAPER		01 5-05-721	COPIER/PRINTER	0.57
		11X17 COPY PAPER		01 5-07-721	COPIER/PRINTER	8.88
		11X17 COPY PAPER		02 5-00-721	COPIER/PRINTER	2.30
		11X17 COPY PAPER		03 5-00-721	COPIER/PRINTER	0.57
		11X17 COPY PAPER		05 5-00-721	COPIER/PRINTER	2.31
I-841372		HEAVY DUTY STAPLER	65.80			
6/17/2015	AP-US	DUE: 6/17/2015 DISC: 6/17/2015		1099: N		
		HEAVY DUTY STAPLER		01 5-01-714	OFFICE SUPPLIES	9.89
		HEAVY DUTY STAPLER		01 5-02-714	OFFICE SUPPLIES	10.50
		HEAVY DUTY STAPLER		01 5-03-795	SUPPLIES	1.32
		HEAVY DUTY STAPLER		01 5-05-714	OFFICE SUPPLIES	5.94
		HEAVY DUTY STAPLER		01 5-07-714	OFFICE SUPPLIES	16.43

PACKET: 02332 6/25/15 KK
VENDOR SET: 01 CITY OF SISTERS
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

--------ID-------- POST DATE	BANK CODE	---------DESCRIPTION---------	GROSS DISCOUNT	P.O. # G/L ACCOUNT	------ACCOUNT NAME------	DISTRIBUTION
01-0515 OFFICEMAX		(** CONTINUED **)				
		HEAVY DUTY STAPLER		02 5-00-714	OFFICE SUPPLIES	9.21
		HEAVY DUTY STAPLER		03 5-00-714	OFFICE SUPPLIES	5.26
		HEAVY DUTY STAPLER		05 5-00-714	OFFICE SUPPLIES	7.25
		=== VENDOR TOTALS ===	200.08			
01-0628 PITNEY BOWES, INC.						
I-2093732-JN15		POSTAGE MACHINE LEASE	206.34			
6/08/2015	AP-US	DUE: 6/08/2015 DISC: 6/08/2015		1099: N		
		POSTAGE MACHINE LEASE		01 5-01-715	POSTAGE	6.19
		POSTAGE MACHINE LEASE		01 5-02-715	POSTAGE	76.35
		POSTAGE MACHINE LEASE		01 5-07-715	POSTAGE	47.46
		POSTAGE MACHINE LEASE		02 5-00-715	POSTAGE	37.14
		POSTAGE MACHINE LEASE		03 5-00-715	POSTAGE	2.06
		POSTAGE MACHINE LEASE		05 5-00-715	POSTAGE	37.14
		=== VENDOR TOTALS ===	206.34			
01-0144 RESERVE ACCOUNT						
I-06182015		RESERVE ACCOUNT POSTAGE	200.00			
6/18/2015	AP-US	DUE: 6/18/2015 DISC: 6/18/2015		1099: N		
		RESERVE ACCOUNT POSTAGE		01 5-01-715	POSTAGE	6.00
		RESERVE ACCOUNT POSTAGE		01 5-02-715	POSTAGE	74.00
		RESERVE ACCOUNT POSTAGE		01 5-07-715	POSTAGE	46.00
		RESERVE ACCOUNT POSTAGE		02 5-00-715	POSTAGE	36.00
		RESERVE ACCOUNT POSTAGE		03 5-00-715	POSTAGE	2.00
		RESERVE ACCOUNT POSTAGE		05 5-00-715	POSTAGE	36.00
		=== VENDOR TOTALS ===	200.00			
01-0219 QUILL CORPORATION						
I-4895601		TONER	99.99			
6/08/2015	AP-US	DUE: 6/08/2015 DISC: 6/08/2015		1099: N		
		TONER		01 5-01-721	COPIER/PRINTER	30.98
		TONER		01 5-02-721	COPIER/PRINTER	17.98
		TONER		01 5-05-721	COPIER/PRINTER	2.01
		TONER		01 5-07-721	COPIER/PRINTER	30.98
		TONER		02 5-00-721	COPIER/PRINTER	8.02
		TONER		03 5-00-721	COPIER/PRINTER	2.01
		TONER		05 5-00-721	COPIER/PRINTER	8.01
		=== VENDOR TOTALS ===	99.99			

PACKET: 02332 6/25/15 KK
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DUE TO/FROM ACCOUNTS SUPPRESSED

--------ID-------- POST DATE	BANK CODE	---------DESCRIPTION---------	GROSS DISCOUNT	P.O. # G/L ACCOUNT	------ACCOUNT NAME------	DISTRIBUTION
01-0083 SISTERS RENTAL						
I-0013320-00		WEEDEATER HEAD/GAS	94.85			
6/05/2015	AP-US	DUE: 6/05/2015 DISC: 6/05/2015		1099: N		
		WEEDEATER HEAD/GAS		05 5-00-746	SMALL TOOLS & EQUIPMENT	18.04
		WEEDEATER HEAD/GAS		02 5-00-746	SMALL TOOLS & EQUIPMENT	19.94
		WEEDEATER HEAD/GAS		03 5-00-746	SMALL TOOLS & EQUIPMENT	25.54
		WEEDEATER HEAD/GAS		01 5-05-746	SMALL TOOLS & EQUIPMENT	18.99
		WEEDEATER HEAD/GAS		01 5-03-746	SMALL TOOLS & EQUIPMENT	12.34
I-0013346-00		CAPS	18.92			
6/19/2015	AP-US	DUE: 6/19/2015 DISC: 6/19/2015		1099: N		
		CAPS		03 5-00-795	SUPPLIES	18.92
I-0013360-00		WEEDEATER STRING	54.24			
6/09/2015	AP-US	DUE: 6/09/2015 DISC: 6/09/2015		1099: N		
		WEEDEATER STRING		05 5-00-746	SMALL TOOLS & EQUIPMENT	10.32
		WEEDEATER STRING		02 5-00-746	SMALL TOOLS & EQUIPMENT	11.40
		WEEDEATER STRING		03 5-00-746	SMALL TOOLS & EQUIPMENT	14.61
		WEEDEATER STRING		01 5-05-746	SMALL TOOLS & EQUIPMENT	10.86
		WEEDEATER STRING		01 5-03-746	SMALL TOOLS & EQUIPMENT	7.05
I-0013373-00		WEEDEATER HEAD	49.90			
6/10/2015	AP-US	DUE: 6/10/2015 DISC: 6/10/2015		1099: N		
		WEEDEATER HEAD		05 5-00-746	SMALL TOOLS & EQUIPMENT	9.49
		WEEDEATER HEAD		02 5-00-746	SMALL TOOLS & EQUIPMENT	10.49
		WEEDEATER HEAD		03 5-00-746	SMALL TOOLS & EQUIPMENT	13.44
		WEEDEATER HEAD		01 5-05-746	SMALL TOOLS & EQUIPMENT	9.99
		WEEDEATER HEAD		01 5-03-746	SMALL TOOLS & EQUIPMENT	6.49
I-0032196		LOG SPLITTER RENTAL	80.50			
6/04/2015	AP-US	DUE: 6/04/2015 DISC: 6/04/2015		1099: N		
		LOG SPLITTER RENTAL		01 5-05-786	PARK MAINTENANCE	80.50
		=== VENDOR TOTALS ===	298.41			
01-0838 SPINDRIFT FORESTRY CONSULTING						
I-SIS015001		SITE VISITS TREE HEALTH	376.50			
6/15/2015	AP-US	DUE: 6/15/2015 DISC: 6/15/2015		1099: Y		
		SITE VISITS TREE HEALTH		03 5-00-761	STREET TREES	376.50
		=== VENDOR TOTALS ===	376.50			

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PACKET: 02332 6/25/15 KK
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DUE TO/FROM ACCOUNTS SUPPRESSED

--------ID-------- POST DATE	BANK CODE	---------DESCRIPTION---------	GROSS DISCOUNT	P.O. # G/L ACCOUNT	------ACCOUNT NAME------	DISTRIBUTION
01-0416 THREE SISTERS IRRIGATION DISTR						
I-15-223		2015 CAPITAL CHARGE	1,008.00			
6/01/2015	AP-US	DUE: 6/01/2015 DISC: 6/01/2015		1099: N		
		2015 CAPITAL CHARGE		05 5-00-727	PERMITS & FEES	1,008.00
I-15-409		2015 CAPITAL CHARGE	1,008.00			
6/01/2015	AP-US	DUE: 6/01/2015 DISC: 6/01/2015		1099: N		
		2015 CAPITAL CHARGE		05 5-00-727	PERMITS & FEES	1,008.00
		=== VENDOR TOTALS ===	2,016.00			
01-0497 TYRHOLM BIG R INC.						
I-199645		WATER SPRAYER/PUMP	114.98			
6/15/2015	AP-US	DUE: 6/15/2015 DISC: 6/15/2015		1099: N		
		WATER SPRAYER/PUMP		05 5-00-746	SMALL TOOLS & EQUIPMENT	21.87
		WATER SPRAYER/PUMP		02 5-00-746	SMALL TOOLS & EQUIPMENT	24.17
		WATER SPRAYER/PUMP		03 5-00-746	SMALL TOOLS & EQUIPMENT	30.96
		WATER SPRAYER/PUMP		01 5-05-746	SMALL TOOLS & EQUIPMENT	23.02
		WATER SPRAYER/PUMP		01 5-03-746	SMALL TOOLS & EQUIPMENT	14.96
I-199651		65 GALLON STORAGE TANK	170.99			
6/15/2015	AP-US	DUE: 6/15/2015 DISC: 6/15/2015		1099: N		
		65 GALLON STORAGE TANK		05 5-00-746	SMALL TOOLS & EQUIPMENT	32.52
		65 GALLON STORAGE TANK		02 5-00-746	SMALL TOOLS & EQUIPMENT	35.94
		65 GALLON STORAGE TANK		03 5-00-746	SMALL TOOLS & EQUIPMENT	46.05
		65 GALLON STORAGE TANK		01 5-05-746	SMALL TOOLS & EQUIPMENT	34.23
		65 GALLON STORAGE TANK		01 5-03-746	SMALL TOOLS & EQUIPMENT	22.25
		=== VENDOR TOTALS ===	285.97			
01-0070 UMPQUA RESEARCH COMPANY						
I-B051706		COLIFORM	28.00			
6/06/2015	AP-US	DUE: 7/06/2015 DISC: 7/06/2015		1099: Y		
		COLIFORM		02 5-00-775	LABORATORY FEES	28.00
I-B051784		COLIFORM	28.00			
6/08/2015	AP-US	DUE: 7/08/2015 DISC: 7/08/2015		1099: Y		
		COLIFORM		02 5-00-775	LABORATORY FEES	28.00
		=== VENDOR TOTALS ===	56.00			

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--------ID-------- POST DATE	BANK CODE	---------DESCRIPTION---------	GROSS DISCOUNT	P.O. # G/L ACCOUNT	------ACCOUNT NAME------	DISTRIBUTION
01-1 MISC VENDOR						
I-06152015		WALKER,FRANCES:CG REFUND	150.00			
6/22/2015	AP-US	DUE: 6/22/2015 DISC: 6/22/2015		1099: N		
		WALKER,FRANCES:CG REFUND		01 4-00-312	PARK USERS FEE	138.89
		WALKER,FRANCES:CG REFUND		01 4-00-303	TRANSIENT ROOM TAX	11.11
		=== VENDOR TOTALS ===	150.00			
01-0941 WILCO						
I-243220		TRACTOR HITCH	42.97			
6/03/2015	AP-US	DUE: 6/03/2015 DISC: 6/03/2015		1099: Y		
		TRACTOR HITCH		05 5-00-746	SMALL TOOLS & EQUIPMENT	8.17
		TRACTOR HITCH		02 5-00-746	SMALL TOOLS & EQUIPMENT	9.03
		TRACTOR HITCH		03 5-00-746	SMALL TOOLS & EQUIPMENT	11.57
		TRACTOR HITCH		01 5-05-746	SMALL TOOLS & EQUIPMENT	8.60
		TRACTOR HITCH		01 5-03-746	SMALL TOOLS & EQUIPMENT	5.60
		=== VENDOR TOTALS ===	42.97			
01-0891 WINSUPPLY						
I-221319-00		IRRIGATION VALVE	51.56			
6/05/2015	AP-US	DUE: 6/05/2015 DISC: 6/05/2015		1099: N		
		IRRIGATION VALVE		01 5-05-786	PARK MAINTENANCE	51.56
		=== VENDOR TOTALS ===	51.56			
01-0815 ZUMAR INDUSTRIES, INC.						
I-0176550		STOP SIGNS	386.28			
6/08/2015	AP-US	DUE: 7/08/2015 DISC: 7/08/2015		1099: N		
		STOP SIGNS		03 5-00-762	STREET SIGNS	386.28
		=== VENDOR TOTALS ===	386.28			
		=== PACKET TOTALS ===	32,362.66			

RESOLUTION NO. 2015-10

A RESOLUTION DECLARING THE MUNICIPAL SERVICES PROVIDED BY THE CITY OF SISTERS

WHEREAS, ORS 221.760 provides as follows:

Section 1. The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820 and 471.805 shall, in the case of a city located within a county having more than 100,000 inhabitants according to the most recent federal decennial census, disburse such funds only if the city provides four or more of the following service:

(1) Police protection
(2) Fire protection
(3) Street construction, maintenance and lighting
(4) Sanitary sewer
(5) Storm sewers
(6) Planning, zoning and subdivision control
(7) One or more utility services; and

WHEREAS, city officials recognize the desirability of assisting the state officer responsible for determining the eligibility of cities to receive such funds in accordance with ORS 221.760, now therefore,

BE IT RESOLVED, that the City of Sisters hereby certifies that it provides the following four or more municipal services enumerated in Section 1, ORS 221.760

_X__ Police protection
____ Fire protection
_X__ Street construction, maintenance and lighting
_X__ Sanitary sewer
_X__ Storm sewers
_X__ Planning, zoning and subdivision control
_X__ One or more utility services

Adopted by the City Council and signed by the Mayor this 25th day of June, 2015.

_____
Chris Frye, Mayor

ATTEST:

_____
Kathy Nelson, City Recorder

RESOLUTION NO. 2015-11

A RESOLUTION EXTENDING THE CITY OF SISTERS' WORKERS' COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY OF SISTERS

WHEREAS, the City of Sisters elects the following:

Pursuant to ORS 656.031, workers' compensation coverage will be provided to the classes of volunteer workers listed on the attached Volunteer Election Form, attachment A.

1. An aggregate assumed annual wage of $2,500 will be used per volunteer board, committee, commission and/or council for the performance of administrative duties; and

2. Non-public safety volunteers will track hours and Oregon minimum wage will serve as assumed wage for both premium and benefit calculations; and

3. Unanticipated volunteer projects or exposure not addressed herein will be added onto Sisters' coverage agreement (1) by endorsement, (2) with advance notice to our insurance agent, and (3) allowing two weeks for processing. It is hereby acknowledged that coverage of this type cannot be backdated.

NOW, THERFORE, BE IT RESOLVED by the City Council of Sisters to provide for workers' compensation insurance coverage as indicated above. This resolution will be updated annually.

ADOPTED by the City Council of Sisters and APPROVED by the Mayor this 25th day of June 2015.

_____

Chris Frye, Mayor

Attest:

_____

Kathy Nelson, City Recorder

Attachment A

Code 8742V Public official on unpaid boards, commissions, and council (City Council, Planning, or Budget Committee, etc.)	Estimated Assumed Payroll ($2,500 each)
City Council	2,500
Planning Commission	2,500
Budget Committee	2,500
Parks Advisory Board	2,500
Urban Forestry Board	2,500
Community Assets Committee	2,500
Total	15,000

SISTERS PATROL HOURS

	WEEK 1	WEEK 2	WEEK 3	WEEK 4	WEEK 5	TOTAL PATROL	VACATION	SICK	TRAINING	SRO	TOTAL
JAN	120	122	115.5	111	46	514.5	46.5	0	0	64	625
FEB	119.5	109.5	116	139.5	0	484.5	26.5	27	0	61.5	599.5
MAR	122	122	126.5	132	58.5	561	40	60	0	95	756
APR	117	118.5	139	114.5	34	523	58.5	24	0	151	756.5
MAY	111	115.25	107	104	41.5	478.75	72.75	17.5	5.5	140.5	715
JUN											0
JUL											0
AUG											0
SEP											0
OCT											0
NOV											0
DEC						0					0
YEAR TO DATE						2561.75	244.25	128.5	5.5	512	3452

PATROL ACTVITY STATISTICS

ACTIVITY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	YEAR
city traffic warnings	63	55	44	26	31								219
city traffic citations	14	3	12	3	2								34
city ordinace warnings	3	1	2	2	12								20
city ordinace citations	0	4	0	0	0								4
city parking warnings	5	2	7	0	0								14
city parking citations	4	0	9	0	0								13
county traffic warnings	23	21	36	18	26								124
county traffic cite	5	2	7	0	0								14
county ordinance warnings	7	1	1	4	1								14
county ordinance citations	0	0	0	0	0								0
city misd arrests	2	0	4	5	4								15
city felony arrests	2	3	0	0	0								5
county misd arrests	4	0	2	0	0								6
county felony arrest	0	0	0	4	0								4
school zone elementary warnings	0	7	2	4	2								15
school zone elementary citations	0	2	0	0	0								2
school zone middle /high warnings	2	5	1	3	6								17
school zone middle /high citations	2	0	0	0	0								2

security checks	250	233	336	239	341								1399
open doors	3	2	0	0	0								5

SISTERS CASE LOG REPORT

CASE#	DATE	LOCATION	OFFENSE	EXT
2015-00117700	05/02/2015 16:07	POMMEL	Agency Assist: Deputy assisted medics with medical call involving a young child who fell from a window.	
2015-00118140	05/03/2015 6:02	N LARCH ST	Police Officer Hold*: Adult female taken to hospital on Police Officer Hold.	1
2015-00118398	05/03/2015 13:48	W HWY 20	MVA*: Adult female cited for Following to Close after rear-ending another vehicle at an intersection.	
2015-00120190	05/05/2015 10:58	N LARCH ST	Prescription Drug Disposal: Citizen turned in medications for disposal.	
2015-00121427	05/06/2015 14:09	COLD SPRINGS CG	Sex Crime*: Adult male cited for Indecent Exposure.	1
2015-00122088	05/07/2015 8:55	HIGHWAY 20 / N LOCUST	MVA: Minor rear end crash.	
2015-00122810	05/07/2015 21:43	W BLACK CRATER AVE	Child Abuse: Deputy assisted DHS with a residence check after a report of child abuse.	1
2015-00123999	05/09/2015 1:14	N LARCH ST	Assault*: Adult male arrested for assaulting another adult male.	1
2015-00125895	05/11/2015 13:38	BLUEGRASS LOOP	Information/Misc Report: Deputy assisted a family with subject they were concerned might be suicidal.	
2015-00127255	05/12/2015 19:43	E HWY 20	Information/Misc Report: Deputy assisted DHS with a family visit.	
2015-00127768	05/13/2015 11:28	MARTINGALE	Theft by Deception: Elderly female reported she was a victim of an internet scam.	
2015-00129244	05/14/2015 18:58	N TAMARACK ST	Animal Complaint: Two dogs were released to the Humane Society after multiple complaints of the dogs attacking people in the neighborhood.	
2015-00129751	05/15/2015 10:32	E MAIN AVE	Criminal Mischief: Business owner reported damage done to the front door of his business.	
2015-00130460	05/15/2015 21:06	E MAIN AVE / N ELM ST	Information/Misc Report: Report of suspicious persons taking pictures of young girls. Investigation continuing.	
2015-00131451	05/17/2015 8:40	E CASCADE AVE	Criminal Mischief: Business owner reported damage done to the front door of his business.	
2015-00132316	05/18/2015 10:08	N FIR ST	Criminal Mischief: Employee reported graffiti found in a city park.	
2015-00132729	05/18/2015 15:18	PINE RIDGE RD	Agency Assist: Deputy assisted DHS with a home visit on a child abuse investigation.	
2015-00132997	05/18/2015 20:04	SADDLE HORN	Dog Bite: Report of a dog bite to a small child. Dog quarantined.	
2015-00133122	05/18/2015 23:18	W CASCADE AVE / N OAK ST	DUII*: Adult male arrested for Driving Under the Influence of Intoxicants.	
2015-00136063	05/21/2015 16:25	E CASCADE AVE	Hit & Run: Citizen reported property damage to her vehicle while parked on the street. Investigation continuing.	
2015-00139600	05/25/2015 10:33	E CASCADE AVE	Civil Complaint: Citizen complained about a food truck's operation inside the city limits.	

SISTERS CASE LOG REPORT

CASE#	DATE	LOCATION	OFFENSE	EXT
2015-00139743	05/25/2015 13:13	PINE ST / NATIONAL FOREST LN	Hit & Run: Citizen reported property damage to his vehicle while parked on alongside the roadway.	
2015-00139840	05/25/2015 14:27	CARLTON ST	Theft: Citizen reported theft of mail.	
2015-00143450	05/28/2015 16:39	N PINE ST / W BARCLAY DR	Found Property: Citizen reported finding a lawn tractor on USFS land. Tractor impounded. Owner not yet found.	
2015-00144058	05/29/2015 10:16	W HWY 20	Found Property: Business owner reported finding a gun left behind by a guest. Returned to owner.	
*** DENOTES CASE INCLUDED LAW ENFORCEMENT ACTION**				
ADDITIONAL PERSONNEL NEEDED FROM OTHER DISTRICTS:				4

AGENDA ITEM SUMMARY

CITY OF SISTERS
SISTERS CITY COUNCIL

Meeting Date: June 25, 2015 **Staff:** Lynne Fujita-Conrads

Type: Regular Meeting **Dept:** Finance

Subject: FY 2015-16 Budget Adoption & Levying Taxes

Action Requested: Conduct a public hearing and consider the approval of Resolution No. 2015-12: A RESOLUTION ADOPTING THE FISCAL YEAR 2015-2016 BUDGET, APPROPRIATING FUNDS, APPROVING A TAX LEVY AND DIRECTING STAFF TO FILE THE BUDGET WITH THE COUNTY CLERK.

Background:

On May 26 and May 27, 2015 the Sisters Budget Committee held meetings to review the City's fiscal year 2015-2016 budget. The Budget Committee approved the City Manager's proposed budget with the following changes:

- General Fund

Decrease Public Outreach	$(10,000)
Increase Legal Fees	10,000
Increase Personnel Services-Janitor	5,000
Decrease Contracted Services	(5,000)
Increase Chamber payments to 50% of TRT	22,500
Decrease Reserves	(22,500)

The resolution includes adopting the City of Sisters tax rate for FY 2015-16. As approved by the Budget Committee, the elected rate is $2.6417 per $1,000 of assessed value.

Financial Impact:

Authorize appropriations of $11,588,610 for fiscal year 2015-2016.

Attachment(s):
Attachment A – Resolution No. 2015-12

Concurrence: CM: _____ FIN: _____ PW: _____ CDD: PD

ATTACHMENT A

RESOLUTION 2015-12

A RESOLUTION ADOPTING THE FISCAL YEAR 2015-2016 BUDGET, APPROPRIATING FUNDS, APPROVING A TAX LEVY AND DIRECTING STAFF TO FILE THE BUDGET WITH THE COUNTY CLERK.

ADOPTING THE BUDGET

BE IT RESOLVED that the City Council of the City of Sisters hereby adopts the budget for fiscal year 2015-2016 in the total amount of $11,588,610*. This budget is now on file at 520 E. Cascade Ave., in Sisters, Oregon.

MAKING APPROPRIATIONS

BE IT RESOLVED that the amounts shown below are hereby appropriated for the fiscal year beginning July 1, 2015 for the following purposes:

General Fund	
Council-Manager	$ 287,170
Finance & Administration	203,429
Maintenance	102,730
Parks	294,298
Police	543,930
Community Development	439,764
Support Services	381,632
Capital Outlay	6,800
Operating Contingency	358,825
Transfers	25,100
Total	**$2,643,678**

Water Fund	
Personnel Services	$ 210,022
Materials & Services	211,820
Capital Outlay	18,860
Transfers	9,490
Operating Contingency	70,307
Total	**$ 520,499**

Street Fund	
Personnel Services	$ 249,732
Materials & Services	207,950
Capital Outlay	548,152
Transfers	7,810
Operating Contingency	76,280
Total	**$1,089,924**

ATTACHMENT A

Sewer Fund	
Personnel Services	$ 166,977
Materials & Services	227,980
Capital Outlay	134,226
Debt Service	374,070
Transfers	13,400
Operating Contingency	65,826
Total	**$ 982,479**
Street SDC Fund	
Materials & Services	$ 50,000
Capital Outlay	266,980
Total	**$ 316,980**
Sewer SDC Fund	
Debt Service	$ 80,850
Total	**$ 80,850**
Water SDC Fund	
Capital Outlay	$ 47,140
Total	**$ 47,140**
Park SDC Fund	
Capital Outlay	$ 90,000
Total	**$ 90,000**
City Hall Debt Service Fund	
Debt Service	$ 55,800
Total	**$ 55,800**
Total Appropriations, All Funds	**$5,827,350**
Total Unapproriated Reserve amounts, All Funds	**5,761,260**
TOTAL ADOPTED BUDGET	**$11,588,610***

*(*amounts with asterisks must match)*

IMPOSING THE TAX

BE IT RESOLVED that the following ad valorem property taxes are hereby imposed upon the assessed value of all taxable property within City limits for tax year 2015-2016:

At the rate of $2.6417 per $1,000 of assessed value for permanent rate tax.

CATEGORIZING THE TAX

ATTACHMENT A

BE IT RESOLVED that the taxes imposed are hereby categorized for purposes of Article XI section 11b as:

Subject to the General Government Limitation
Permanent Rate Tax $2.6417 per $1,000

FILING THE BUDGET

BE IT RESOLVED that the City Council of the City of Sisters hereby directs staff to file the fiscal year 2015-2016 budget with the Deschutes County Clerk.

The above resolution statements were approved and declared adopted on this 25th day of June 2015.

Chris Frye, Mayor

William Hall, Council President

David Asson, Councilor

Nancy Connolly, Councilor

Wendy Holzman, Councilor

ATTEST:

Kathy Nelson, City Recorder

RESOLUTION NO. 2015-13

A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUES

The City of Sisters resolves as follows:

Section 1. Pursuant to ORS 221.770, the City of Sisters hereby elects to receive state revenues for fiscal year 2015-16.

Adopted by the Common Council and approved by the Mayor this 25th day of June 2015.

_____

Chris Frye, Mayor

ATTEST:

_____

Kathy Nelson, City Recorder

I certify that a public hearing before the Budget Committee was held on May 26, 2015 and a public hearing before the City Council was held on June 25, 2015 giving citizens an opportunity to comment on use of State Revenue Sharing.

_____

Kathy Nelson, City Recorder

AGENDA ITEM SUMMARY

CITY OF SISTERS
SISTERS CITY COUNCIL

Meeting Date: June 25, 2015 **Staff:** Lynne Fujita-Conrads

Type: Regular Meeting **Dept:** Finance

Subject: Pay Plan Classification

Action Requested: Discussion and Consideration of Resolution No. 2015-14: A RESOLUTION AMENDING THE PAY PLAN CLASSIFICATION FOR THE CITY OF SISTERS.

Summary:

The City's Pay Plan Classification has been updated to reflect the following changes:

- A 1.7% cost of living adjustment.
- The Finance Officer position has been replaced with Finance & Admin Director.

Financial Impact:

These changes are reflected in the FY 2015-16 budget.

Attachment(s):
Attachment A – Resolution No. 2015-14

Concurrence: CM: _____ FIN: _____ PW: _____ CDD: PD

ATTACHMENT A

RESOLUTION NO. 2015-14

A RESOLUTION AMENDING THE PAY PLAN CLASSIFICATION FOR THE CITY OF SISTERS

WHEREAS, the City of Sisters elects the following:

SECTION ONE: All conflicting policies and resolutions are hereby repealed.

SECTION TWO: The following schedule sets forth the increment Pay Plan steps for classified positions of the City of Sisters employees.

		STEPS														
	Grade	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
CITY MANAGER	33	34.93	35.98	37.06	38.17	39.31	40.49	41.71	42.96	44.25	45.58	46.95	48.36	49.81	51.30	52.84
PUBLIC WORKS DIR	30	29.60	30.48	31.41	32.35	33.32	34.31	35.34	36.41	37.50	38.62	39.78	40.97	42.20	43.47	44.77
CDD DIRECTOR	30	29.60	30.48	31.41	32.35	33.32	34.31	35.34	36.41	37.50	38.62	39.78	40.97	42.20	43.47	44.77
FIN & ADM DIR	30	29.60	30.48	31.41	32.35	33.32	34.31	35.34	36.41	37.50	38.62	39.78	40.97	42.20	43.47	44.77
ASSOCIATE PLNR	24	21.18	21.82	22.47	23.14	23.84	24.55	25.29	26.05	26.83	27.63	28.46	29.32	30.20	31.10	32.03
PLANNING TECH II	21	18.12	18.66	19.22	19.80	20.39	21.01	21.64	22.29	22.95	23.64	24.35	25.08	25.83	26.61	27.41
PW OPS COORD	20	17.32	17.84	18.38	18.92	19.50	20.08	20.68	21.31	21.94	22.60	23.28	23.98	24.70	25.44	26.20
CITY RECORDER	18	15.86	16.32	16.82	17.32	17.84	18.37	18.92	19.50	20.08	20.68	21.30	21.94	22.60	23.28	23.98
UT TECH II	18	15.86	16.32	16.82	17.32	17.84	18.37	18.92	19.50	20.08	20.68	21.30	21.94	22.60	23.28	23.98
DATA ANALYST	17	15.17	15.63	16.10	16.58	17.08	17.59	18.12	18.66	19.23	19.80	20.40	21.01	21.64	22.29	22.96
ACTG TECH	17	15.17	15.63	16.10	16.58	17.08	17.59	18.12	18.66	19.23	19.80	20.40	21.01	21.64	22.29	22.96
ADMIN ASST	16	14.53	14.97	15.42	15.88	16.35	16.84	17.35	17.87	18.40	18.96	19.53	20.11	20.71	21.34	21.98
UT TECH I	15	13.92	14.34	14.77	15.22	15.67	16.14	16.63	17.12	17.63	18.17	18.71	19.27	19.85	20.45	21.06
UT ASSISTANT	12	12.28	12.65	13.02	13.42	13.82	14.23	14.65	15.10	15.55	16.02	16.50	16.99	17.50	18.03	18.57

SECTION THREE: This schedule will be effective as of July 1, 2015.

ADOPTED by the City Council of Sisters and APPROVED by the Mayor this 25th day of June, 2015.

_____

Chris Frye, Mayor

Attest:

_____

Kathy Nelson, City Recorder

AGENDA ITEM SUMMARY

CITY OF SISTERS
SISTERS CITY COUNCIL

Meeting Date: June 25, 2015 **Staff:** Lynne Fujita-Conrads

Type: Regular Meeting **Dept:** Finance

Subject: Master Fee Schedule

Action Requested: Public Comment and Consideration of Resolution No. 2015-15: A RESOLUTION OF THE CITY OF SISTERS AMENDING THE MASTER FEE SCHEDULE.

Summary Points:

Customer requested installation of a three inch water meter. This amendment to the Master Fee Schedule will add fees for three and four inch water meters.

Financial Impact:
No impact – these are pass through fees.

Attachment(s):
Attachment A – Resolution No. 2015-15

Concurrence: ____ CM ____ FIN ____ CDD ____ PW

ATTACHMENT A

RESOLUTION NO. 2015-15

A RESOLUTION OF THE CITY OF SISTERS ADOPTING CHANGES TO THE MASTER FEE SCHEDULE

WHEREAS, the City Council of the City of Sisters, may impose fees that recover the actual costs of providing the services and will do so by resolution modifying the City's Master Fee Schedule; and

WHEREAS, the City of Sisters Master Fee Schedule consolidates all the city fees to assist the City staff and public in quickly locating the appropriate fee for service; and

WHEREAS, on June 25, 2015, the City Council took public comment on the amendments to the Master Fee Schedule and took such comment into consideration.

NOW, THEREFORE, BE IT RESOLVED the City Council of Sisters hereby adopts the amendments to the City's Master Fee Schedule as provided in Exhibit A to this resolution effective June 25, 2015.

ADOPTED by the City Council and **SIGNED** by the Mayor this 25th day of June 2015.

_____

Chris Frye, Mayor

ATTEST:

_____

Kathy Nelson, City Recorder

Exhibit A

ITEM NO.	DESCRIPTION	CURRENT FEE ($)	AMENDED FEE ($)	UNIT AND/OR COMMENT
	WATER			
	Backflow Testing			
WTR 1	Commercial	19.85		
WTR 2	Repair and retesting	18.50		
WTR 3	Residential	12.85		
WTR 4	Repair and retesting	9.95		
WTR 5	Bulk water (per 1,000 gallons)	3.30		
WTR 6	Outside City limits			*Pays 1 1/2 times water* sewer and garbage rates
	Standby water service for fire service			
WTR 7	4" and smaller	10.00		/per service
WTR 8	6" supply	15.00		/per service
WTR 9	8" supply	20.00		/per service
	Water Rate			
WTR 10	5/8" and 3/4" meter for 1,000 cu.ft.	20.59		base rate
WTR 11	1" and 1 1/2" meters for 1,000 cu.ft.	23.09		base rate
WTR 12	2" meter for 1,000 cu.ft.	25.58		base rate
WTR 13	3", 4", 6", 8" meters for 1,000 cu.ft.	62.40		base rate
WTR 14	Per 100 cu.ft. over 1,000 cu.ft.	1.00		
	Water Meter			
WTR 15	***4 inch meter***	-	***3,200.00***	
WTR 16	***3 inch meter***	-	***1,829.00***	
WTR ~~15~~ ***17***	2 inch meter	1,521.00		
WTR ~~16~~ ***18***	1 1/2 inch meter	1,213.00		
WTR ~~17~~ ***19***	1 inch meter	600.00		
WTR ~~18~~ ***20***	5/8 - 3/4 inch meter	404.00		
	Miscellaneous			
	Turn on or turn off for repairs or other*			
WTR ~~19~~ ***21***	During regular business hours	25.00		/per trip
WTR ~~20~~ ***22***	After business hours, weekend, holidays	40.00		/per trip
	Turn on or turn off for delinquency			
WTR ~~21~~ ***23***	During regular business hours	30.00		/per trip
WTR ~~22~~ ***24***	After business hours, weekend, holidays	60.00		/per trip
WTR ~~23~~ ***25***	Utility Processing fee	20.00		
WTR ~~24~~ ***26***	Utility Transfer fee	20.00		
WTR ~~25~~ ***27***	Water Tap Fee	500.00		
WTR ~~26~~ ***28***	Utility Penalty Fee for deliquent accounts			
	Assessed on the 25th of the month	10.00		/per month
	Assessed after the 25th of the month	1.00		/day
	Collection Agency Fee	23%		of outstanding balance

*Leak investigation, repair, home inspection and seasonal

MEMORANDUM OF UNDERSTANDING
BETWEEN CITY OF SISTERS and
ECONOMIC DEVELOPMENT FOR CENTRAL OREGON

WHEREAS, City of Sisters supports Economic Development for Central Oregon (EDCO) in its job-creation and economic development efforts via an annual appropriation in the City of Sisters budget; and

WHEREAS, EDCO focuses its efforts on job-creation activities with businesses of all sizes; and

WHEREAS, these job-creation efforts may include, but are not limited to, assistance with business relocation from outside of City of Sisters to City of Sisters or the expansion of an existing business within City of Sisters; and

WHEREAS, the City of Sisters City Council will determine an amount to appropriate in the City's Budget for the Sisters' Forgivable Loan Program; and

WHEREAS, The City of Sisters envisions that EDCO shall use this fund for the purposes described therein;

NOW, THEREFORE, EDCO AND CITY OF SISTERS AGREE AS FOLLOWS:

1. EDCO shall, in the course of its normal business recruitment and retention activities, make eligible businesses aware of the availability of loans and grants from City of Sisters' Forgivable Loan Fund.

2. EDCO shall create a Due Diligence Committee to review applications, materials, financial information and provide recommendations to Sisters City Council for the making of Forgivable Loans under the following conditions:

a. The Due Diligence Committee shall be comprised of at least three (3) members;

b. At least one (1) member of the Due Diligence Committee will have extensive experience in Finance, Banking and Accounting. The other two (2) members shall have appropriate, actual business experience, which EDCO shall fully vet;

3. Loan and/or grant funds shall be disbursed directly by City of Sisters to recipient businesses upon receipt of an executed grant/loan agreement. Such agreements shall be in a form prepared by EDCO as shown in Attachment A and approved by the City.

4. In determining whether to recommend that a business be offered a loan or a grant, EDCO shall consider the following:

a. The long-term ability of a business to repay a loan or comply with clawback provisions of a grant;

b. The likelihood that the award of a grant or loan will result in the creation of new, long-term jobs in City of Sisters;

c. The marketplace viability of the business in question and the likelihood

the business would create, relocate and/or expand without the loan or grant.

5. All loans and grants shall be tied, via written agreement, to specific job-creation targets. Grant agreements shall contain a clawback provision requiring full or partial repayment of the grant if job-creation targets are not met. All eligible jobs shall be compensated at a minimum of the Average Wage Rate for Deschutes County, Oregon.

6. In general, unless otherwise approved by Council, loans and grants shall not exceed an aggregate value of $50,000 to any single recipient.

7. All loans and grants are subject to the prior approval of the Sisters City Council, which approval is at their sole and absolute discretion. The Sisters City Council shall have final approval rights to approve a grant or loan. EDCO shall have no liability to the City of Sisters or any third party in connection with the Forgivable Loan Program.

8. This Memorandum of Understanding shall be effective upon signature by all parties. It shall terminate if the Sisters City Council, in its sole discretion, fails to appropriate monies in the Forgivable Loan Program for the purposes described herein. This Memorandum may also be terminated by either party upon 30 days written notice to the other party.

9. Except for the gross negligence of EDCO, the City shall defend, indemnify and hold EDCO, its officers, agents, employees, and members from all claims, suits, and causes of action, including attorney's fees, of any nature whatsoever relating to claims resulting from or arising out of EDCO's provision of information to the public, businesses, or any other entity regarding the availability of loans and grants from City of Sisters' Forgivable Loan Fund, EDCO's creation, member evaluation, member selection, and operation of the Due Diligence Committee, and EDCO's evaluation of businesses and recommendations to the City for award of a loan or grant.

FOR CITY OF SISTERS:

_____ Date:_____

By: Andrew Gorayeb, City Manager

FOR ECONOMIC DEVELOPMENT FOR CENTRAL OREGON:

_____ Date: _____

Roger Lee, Executive Director

AGENDA ITEM SUMMARY

CITY OF SISTERS
SISTERS CITY COUNCIL

Meeting Date: June 25, 2015 **Staff:** Patrick Davenport

Type: Meeting **Dept:** CDD

Subject: Clear Pine Subdivision (MP #15-01, SUB #15-01) - City Council Call Up Review

Action Requested: Review Planning Commission's decision of approval of subject application and affirm or modify the decision.

Summary

Per Sisters Development Code Section 4.1.700.H.2, the City Council has called up for review the Planning Commission's decision of approval dated April 30, 2015, regarding the subject application.

The Affordable Housing reference within the Planning Commission's decision is an issue that has been raised in reference to the call up. The 2007 Development Agreement Condition #5 requires (8) Affordable Housing units to be constructed in Tract A based on approval for a total of 62 residential units. The subject Master Plan and Subdivision application comprised a majority of Tract A (with the exception of the MFR zoned area) and 11 additional lots outside of Tract A. Exhibit I illustrates the approximate location of Tract A. 36 lots are proposed in "Tract A" with this application. Additional units located in the MFR District will be planned in the future. If the MFR District is estimated to be planned for 15 dwelling units/acre, the total in Tract A would be 64 residential units.

During the April 30, 2015 meeting, the Planning Commission discussed how to apply the aforementioned Condition #5 to the subject application. Condition #5 did not anticipate the current scenario regarding if a less than all of Tract A was being master planned. Also not included in Condition #5 was the timing of when the units were to be constructed once subsequent plans were approved. The Planning Commission decision kept the (8) unit affordable housing requirement and the all the program related terms associated with it. Since there was no timing mechanism in Condition #5, the Planning Commission accepted staff's recommendation that the following timing sequence become part of the decision as Condition of Approval #3:

> "3. Timing of provision of Affordable Housing Units: No later than 24 months from the date applicant obtains a building permit for Phase 1 of the Subdivision, the applicant or third party affordable housing developer shall submit a site plan for the MFR zoned area of the development which includes an illustration of provision of affordable housing units per Condition #2. Within 24 months after this decision, the applicant or third party affordable housing developer shall make the 8 affordable housing units available for rent or sale per the terms of Condition #2."

Staff requests that the City Council consider the above and any other matters associated with this application and issue a decision to uphold or modify the Planning Commission's decision.

Attachments

A. Final Conditions of Approval
B. Staff power point presentation to Planning Commission
C. Approved Minutes from April 30, 2015 Planning Commission meeting
D. Staff report packet for April 30, 2015 Planning Commission meeting
E. Email correspondence: Ed Protas - dated 05/22/15
F. Call up requests: Mayor Frye and Councilor Connolly
G. Email correspondence and attachment ("Testimony in Opposition to Approval of 3 Sisters Partners/Peter Hall"): Ed Protas - dated 06/18/2015
H. Email correspondence: Peter Hall – dated May 27, 2015
I. 2007 Development Agreement and Subdivision preliminary plat illustrating "Tract A" with unit calculations.

Concurrence: _____ CM _____ F&A PD CDD _____ PW

A

FINAL Conditions of Approval

1. Based on prior monetary contributions made to City traffic infrastructure, the 210 pm/peak hour trips referenced in the now expired Development Agreement dated April 20, 2001 remain vested to the site and no additional traffic study shall be required. The building height and setback limitations along the northern property line as referenced in the 2001 Development Agreement have been incorporated into other land use approvals and remain in effect. The aforementioned setbacks may be modified through the City of Sisters land use process.

2. **Conditions of Approval (COA) regarding CP 14-01 (ORD # 448):** The conditions of approval (14 terms) for this land use applications remain in effect. Specifically, CP #14-01 COA (Condition #5) requires the applicant to provide 8 units of affordable housing, encompassing a minimum of 7,000 square feet of building area. These units of affordable housing will be provided in MFR zone of the proposed subdivision during a subsequent site plan application per Condition # 3 below. All other COA terms referenced in CP# 14-01 remain effective and applicable to this application.

3. **Timing of provision of Affordable Housing Units:** No later than 24 months from the date applicant obtains a building permit for Phase 1 of the Subdivision, the applicant or third party affordable housing developer shall submit a site plan for the MFR zoned area of the development which includes an illustration of provision of affordable housing units per Condition #2. Within 24 months after this decision, the applicant or third party affordable housing developer shall make the 8 affordable housing units available for rent or sale per the terms of Condition #2.

4. **Conditions of Approval (COA) regarding Z 14-01 (ORD#449)**: The COA's with the exception of #8, referenced in ZC #14-01 remain effective and applicable to this application.

5. **Modification Requests per 4.5.400B are approved as follows**:
Request for Modifications to Lot sizes in the R District - 6,000 sf minimum, 20% reduction requested = 4,800 sf minimum lot size; Requests for Modifications in the MFR District are: Lot sizes - 3,500 sf required, 20% reduction requested = 2,800 sf minimum, Lot Width - 40' required, 20% reduction requested = 32' minimum Lot Coverage- 60% is the maximum, 20% modification requested = 72% maximum Height- 30' maximum, 20% modification = 36' maximum, Setbacks- All MFR setbacks are reduced by 20%.

6. **Proposed Park**: The City is willing to enter into discussions with the applicant regarding dedicating the proposed park as a publically maintained facility. Notwithstanding the future discussions between the City and applicant, the applicant will provide a developed Park prior to the recordation of Phase IV lots. Portable toilets as a permanent sanitation solution regardless of the final status of ownership and maintenance are not permitted. The submitted site plan is sufficient for an interim solution until the status of the Park's ownership and maintenance is finally determined. An additional Planning Site Plan Land Use application is not required for the park, however prior to development, a Final Site Plan will be submitted for approval by the Community Development Director. The City will work with the applicant to prepare the Final Site Plan for review by the Community Development Director. Planning Commission, City Parks Advisory Board and City Council. All will participate in the decision to decide whether to dedicate the park as a public facility.

7. **Lots to Front Open Space**: Is dependent on a current text amendment currently being processed for City Council approval on May 14, 2015.

8. Revisions to any applicable previously approved Development Agreements will be processed in accordance with the terms of the applicable agreement.

9. Compliance with all state and federal aviation requirements.

A

10. **Water Rights.** Prior to the recording of Phase 3 plat, the applicant shall pay the sum of $8,106 ($700/acre x 11.58 acres) in satisfaction of condition number 3 of the 2007 Development Agreement (requiring the contribution of 11.58 acres of pre-1892 water rights as defined in ORD#448.

11. The Applicant may proceed with construction of either Plat Option 1 or 2 at its discretion.

12. All Sisters Development Code requirements in effect at the time of approval that are not modified by this decision are required to be followed.

Patrick T. Davenport

Patrick T. Davenport Community Development Director

05/07/2015

Date

CITY OF SISTERS PLANNING COMMISSION MEETING

APRIL 30, 2015

I. CALL TO ORDER
II. VISITOR COMMUNICATION
IIV. PUBLIC HEARINGS
A. File No: MP 15-01, SUB 15-01
a. Applicant: 3 Sisters Partners, LLC /Peter Hall
b. Project Description: Type III Review of a Master Plan for a 20.02 acre property, including a Site Plan for a proposed park within the Master Planned Area, and a Tentative Subdivision Plan for a 5 Phase, 77 lot subdivision.

B. File No: CI 15-01
a. Applicant: Michael Black
b. A code interpretation/land use decision clarification to consider allowing options to build single family detached dwellings and/or attached dwellings (townhomes) on 21 remaining lots in the Aspenwood Subdivision.

V. TEXT AMENDMENTS
A. TA 14-06 Sign Ordinance revisions- various Sections throughout 3.4 Signs and Section 5.1.500. Minor Variances

B. TA 14-07 Formula Foods Establishments- 2.5.300 Development Standards - HIGHWAY COMMERCIAL (HC) DISTRICT; L. Formula Food Establishments.

VI. DISCUSSION:
A. Transportation System Plan Update
Transportation Growth Management Grant application for Plan refinement

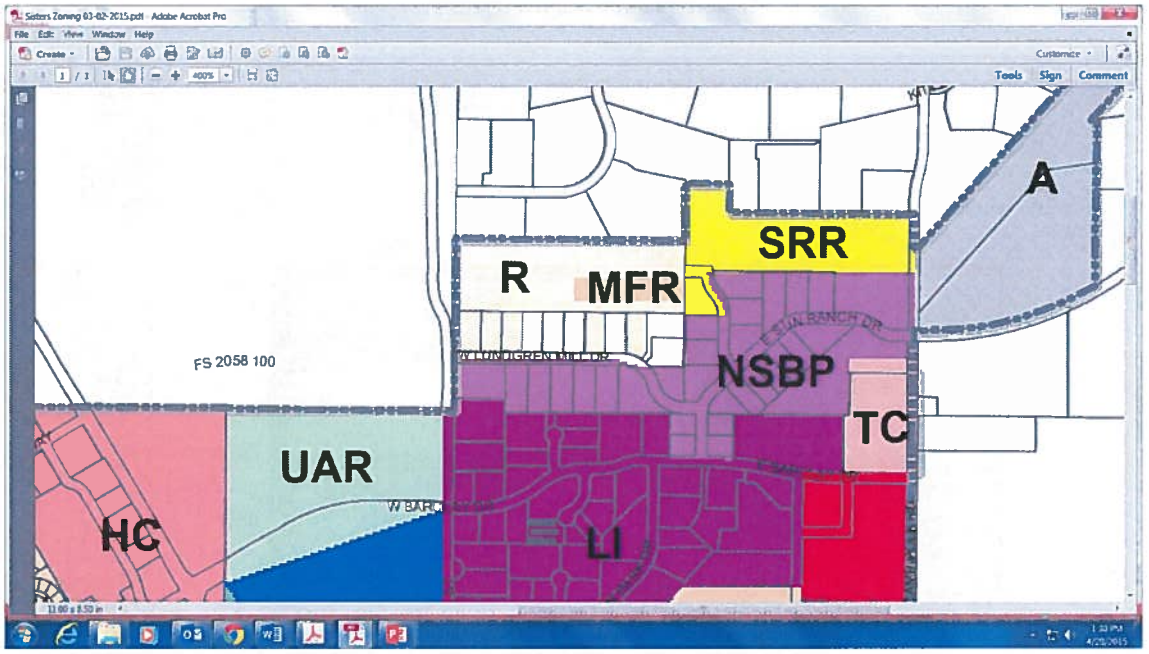
VII. OTHER COMMISSION BUSINESS

VI. ADJOURN

MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

Brief History

- Former sawmill site known as the Lundgren Mill.
- Sisters School District purchased the property in 1986.
- The site was brought into the city limits and rezoned from EFU to IL Light Industrial through County files no. PA 99-5 and ZC 99-3 on December 27, 2000.
- Development Agreement (copy in packet) adopted by the City Council on April 12, 2001 via Ordinance No. 317
- January 19, 2006, Planning Commission approved city file no. SUB 05-07, which created 19 lots within the Three Sisters Business Park
- On June 14, 2007, the applicant and City signed a Development Agreement (copy in packet) that applied to the Three Sisters Business Park lots, as well as the unplatted North Park Subdivision ('Tract A').
- October 22, 2007, the City approved files no. MP07-02, CU07-03, SUB07-04, which resulted in the tentative plat approval of 'North Park', a residential master plan, subdivision and conditional use permit that affected the northern 12.58 acre portion of the parent parcel. These decisions approved 62 residential dwelling units on 57 residential lots.
- July 10, 2014, City Council approved Comp. Plan revision and Rezoning for subject property that completed the current entitlements.


Sisters Zoning 03-02-2015.pdf - Adobe Acrobat Pro
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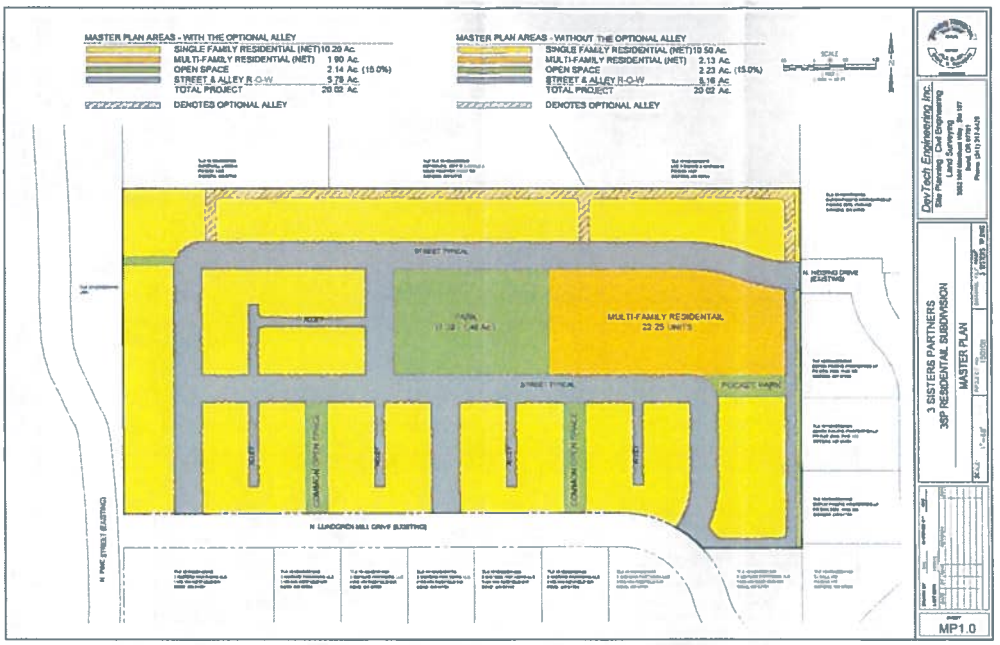
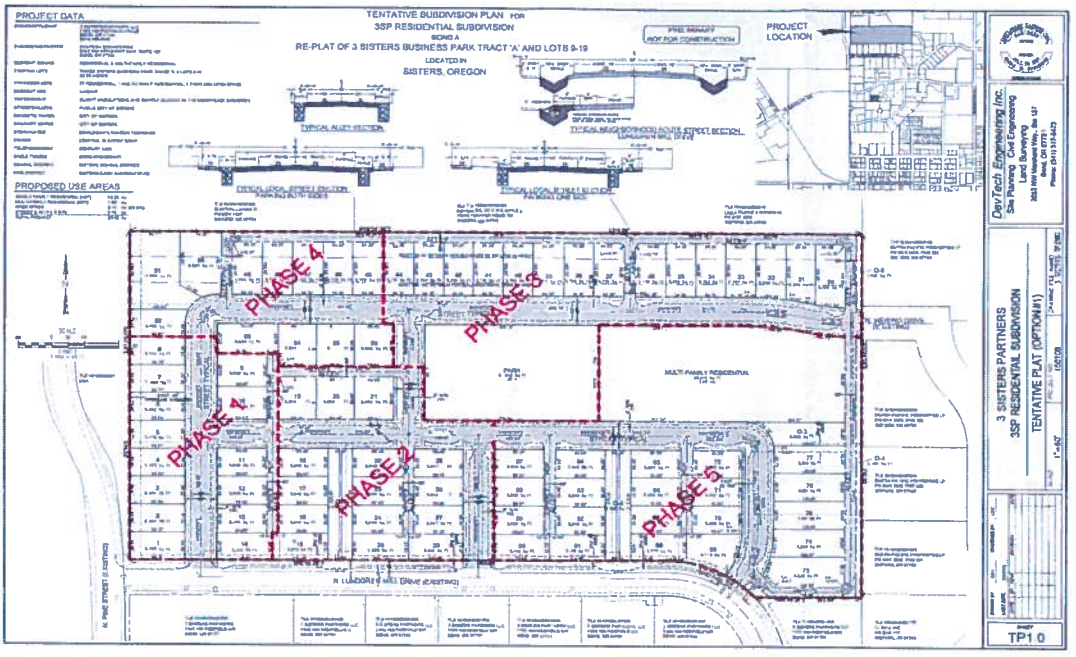
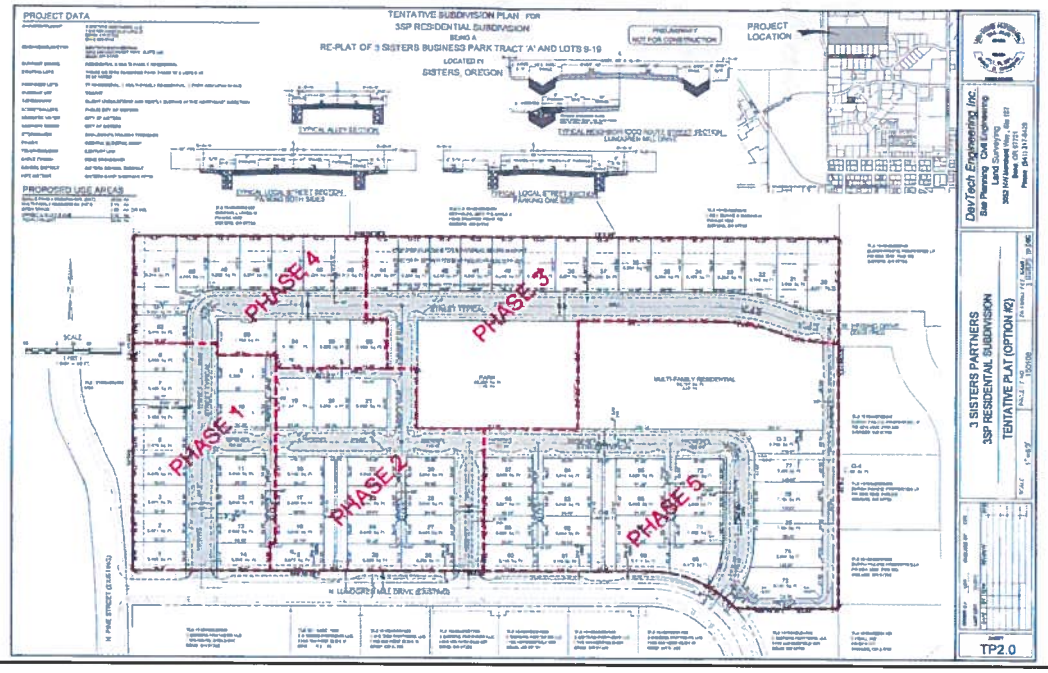
MASTER PLAN


MASTER PLAN AREAS - WITH THE OPTIONAL ALLEY
SINGLE FAMILY RESIDENTIAL (NET) 10.20 Ac.
MULTI-FAMILY RESIDENTIAL (NET) 1.90 Ac.
OPEN SPACE 2.14 Ac. (15.0%)
STREET & ALLEY R-O-W 5.78 Ac.
TOTAL PROJECT 20.02 Ac.
DENOTES OPTIONAL ALLEY
MASTER PLAN AREAS - WITHOUT THE OPTIONAL ALLEY
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.
DENOTES OPTIONAL ALLEY
MULTI-FAMILY RESIDENTIAL
22.25 UNITS
N LUNDGREN MILL DRIVE (EXISTING)
N PINE STREET (EXISTING)
DevTech Engineering Inc.
3 SISTERS PARTNERS
3SP RESIDENTIAL SUBDIVISION
MASTER PLAN
MP1.0

TENTATIVE SUBDIVISION OPTION 1



TENTATIVE SUBDIVISION OPTION 2



MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Brief History

MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- The Brand

CLEARPINE

Sisters, Oregon

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MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

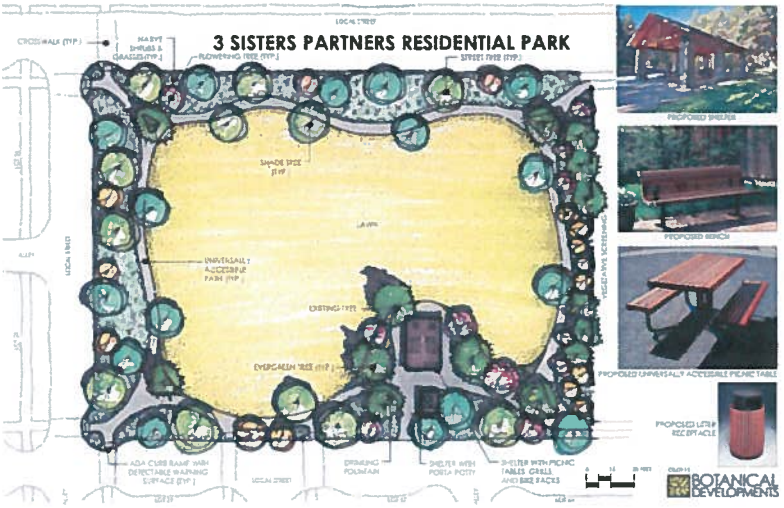
APPLICANT'S PRESENTATION- Master Plan

MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Common Greens

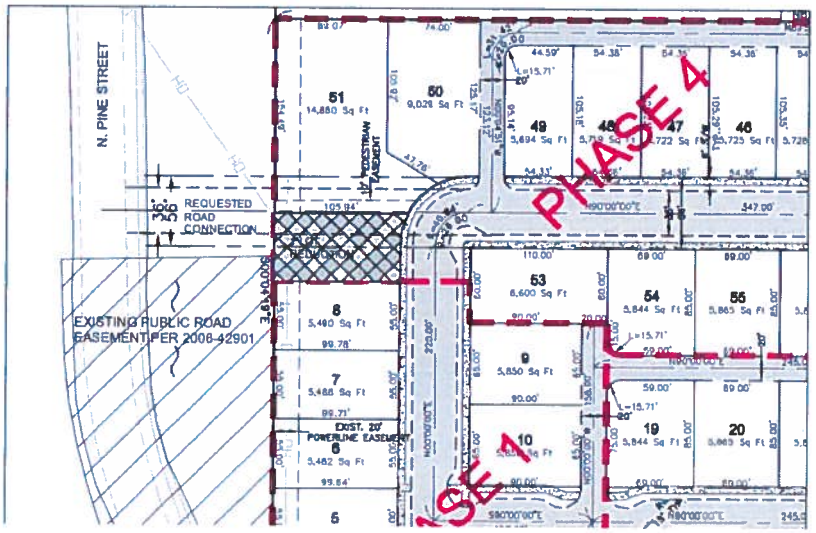
MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Park Concept



MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Possible Street Extension



C

City Planning Commission Minutes
Thursday, April 30, 2015 – 5:30 P.M.
City Hall Council Chambers, 520 E. Cascade Avenue, Sisters, OR 97759

Commissioners Present: Daryl Tewalt, Roy Dean, Jack Nagel, Jeff Seymour, Bob Wright
Commissioners Absent: David Gentry, Darren Layne

City Staff: Patrick Davenport, Community Development Director, Darcy Reed, Associate Planner, Carol Jenkins, Planning Technician

Visitors: Erik Huffman, City Engineer

I. CALL TO ORDER

Acting Chairman Tewalt opened the public hearing at 5:35 p.m. with a quorum of (5 of 7) present.

II. VISITOR COMMUNICATION

John Tehan
510 N. Cowboy Street
Sisters, OR 97759

Mr. Tehan came forward and discussed the Saddlestone subdivision with regards to Accessory Dwellings in the original Master Plan. He also addressed parking, traffic, and the sewer studies that were done when the original Master Plan was put forward.

Director Davenport came forward and stated that in the original Master Plan, Accessory Dwellings were allowed in the previous Development Code, and it is allowed in the Development Code now. It is in the Findings, in the Conditions of Approval, and Accessory Dwellings were not specifically prohibited through the Findings. They have to comply with parking and other utility connections, setbacks and height, etc. He stated that unless they offered to not allow them and the Commission all agreed with that condition and that condition was approved, and it was not specifically prohibited, it is still allowed.

A discussion took place regarding capacity of the infrastructure, the number of people living per structure, and about the sewer studies that were done to handle the system at this time.

City Engineer Erik Huffman came forward and stated that they consider an Accessory Dwelling as one residential sewer service and is calculated as any other residential sewer service. He stated that the gallons per day that is calculated to a typical residential sewer service for the capacity analysis is conservative and it does take into account that some residences have more fixtures than others. The amount of flow that would be added by having an accessory dwelling is within that conservative range. It is considered throughout all of the safety factors on a capacity analysis that is done so that they are all covered.

III. APPROVAL OF MINUTES

No minutes to approve at this time.

IV. PUBLIC HEARINGS

File No: MP15-01 and SUB15-01
Applicant: 3 Sisters Partners, LLC / Peter Hall
Property Description: Type III Review of a Master Plan for a 20.02 acre property, including a Site Plan for a proposed park within the Master Planned Area, and a Tentative Subdivision Plan for a 5 Phase, 77 lot subdivision.

Acting Chairman Tewalt read aloud a statement summarizing the issue and hearing procedures at this time. No commissioner disclosed prehearing contacts, ex parte contacts, or conflicts of interest. No one in the audience challenged any commissioner for bias, prejudgment, or personal interest.

Acting Chairman Tewalt opened the public hearing on File No. MP15-01 and SUB15-01 at this time.

Director Davenport presented the staff report which set forth the Three Sisters Partners, LLC request, location, zoning, comprehensive plan designation, and applicable criteria. The applicant is requesting a Type III review of a Master Plan for a 20.02-acre property, including a Site Plan within the Master Planned Area and a Tentative Subdivision Plan for a 5-phase, 77-lot subdivision and a Park Site Plan.

Director Davenport explained the project to the Commissioners by giving them a brief history of the 3 Sisters Partners, LLC / Clear Pine Subdivision. He gave a visual of the site and the layout of the Master Plan, the Tentative Subdivision Option 1, Tentative Subdivision Option 2, and the 3 Sisters Partners Residential Park. The Applicants Presentation gave a brief history, the Brand, Master Plan, Common Greens, Park Concept, Possible Street Extension, and Proposed Public Right-of-Way.

Director Davenport stated that another important feature to note and will be further discussed is through the Development Agreement in 2001, there were some setbacks that were imposed on this property because originally it was intended for Industrial development and now the applicant is proposing a residential development. He gave a visual of the project site and explained the distance,

height, buffer, and no build area(s), impact fees, will-serve letters, utility and traffic studies that were done and the impacts for this residential development will be less than the industrial development. He discussed the Development Agreement and the process for amending the terms of that Development Agreement that will come back to the Commission in a separate process.

Director Davenport stated that the applicant is proposing to dedicate the Park to the City and is looking for a recommendation from the Commission about this offer of dedication to the City - accept this as a future public facility, or if it is not accepted as a public facility, it would be a homeowner maintained facility at this point.

Director Davenport discussed the 2007 Development Agreement regarding the eight (8) Affordable Housing units and the terms associated with this agreement at this time. He stated that the applicant has offered to put them in the Multi-Family Residential (MFR) portion of the property, but it is not under consideration at this time. He discussed the street circulation, street extension, the joint property, easements, licensing, the requirements and timing of this project.

Director Davenport stated that there are modifications that are being requested by the applicant through the Master Planning process and explained the modifications for lot sizes, lot widths, lot coverage, height, and setbacks at this time. These are all permitted in the Code and the applicant is requesting the maximum percentage in the Code.

A discussion took place regarding the modifications, density, setbacks, and number of affordable housing units, timeframes, costs, open space, Phases 1-5, and median incomes at this time.

Acting Chairman Tewalt invited public testimony at this time.

Mr. Hall came forward and spoke to the Commissioners regarding his proposal at this time. He addressed the process on the property, marketing of the lots, zone change, sidewalks, pavement, landscaping, trees, roof lines, Master Plan, 77-lots dedicated to single family homes, Multi-Family at a minimum of 22 units and a maximum of about 50. He discussed the park design, amenities, open space, common green space, BBQ pits, propane grill, pavers, covered shelters, plat, etc. He discussed the extension of the northern street, public right-of-way, Forest Service property, trail system, circulation and entry points, licensed easement, pedestrian path, etc. He discussed the market concept, mix of housing, builder's guild, side loaded garages, setbacks, etc. He discussed the different phases and the Affordable Housing unit(s) of his project at this time.

A discussion took place with the Commissioners regarding the number of affordable housing units, setbacks, extending the street on the Forest Service property, egress, fire emergencies, public safety, parking, private or public park, sidewalks, bulb-outs, traffic calming features, alley access garages, rear yard setbacks, open space, and width of the right-of-way, etc.

Mr. Blackmore came forward and stated that it was routed to the Fire Marshall, Gary Marshall and they didn't identify any concerns, comments, or have any questions.

Mr. McGhehey came forward and spoke in favor of the application and addressed the dirt road that travels to the north – a lot of to and through concepts. He discussed Pine Meadow Village, the Forest Service property and his concerns. He stated that the price point of the project is needed for a developer as well as a realtor and the need for a variety of homes and builders is a good idea.

Ms. Weed came forward and spoke about the Affordable Housing aspect stating that she feels that the Planning Commission cannot change that Development Agreement and that they can't change the agreement with the buffer.

Director Davenport came forward and stated that the Development Agreement has to be reviewed by the Planning Commission with a recommendation to the City Council. It is the City Councils ultimate decision to do that and their approval authority on that document.

Ms. Weed discussed the Development Agreement back in 2007 for the affordable units and stated that the eight (8) units is fair and there could have been an opportunity to ask for more units during the zone change that just happened and that did not happen - sadly. She discussed two other developments that will be building Affordable Housing that have the same Development Agreements – McKenzie Meadow Village and Shane Lundgren's property. The all agreed to build the Affordable Housing units. She asked about moving the Phases around to get the Affordable Housing started earlier in the project. She also wanted to clarify the median income numbers for Deschutes County is 56,000.00.

Mr. Morgan came forward and expressed his concern for transparency and clarity. He discussed paragraph 5 of the Agreement that goes back to 2007 – Ordinance 448 which was approved last year. He read the paragraph to the Commission and expressed his concerns at this time – 62 units being approved and building eight (8) affordable housing units. He discussed the Sisters School District and losing children in the schools, the hardship on the developers, and the timeframe of these affordable units being built. He discussed his feelings on the park being public or private at this time. He also discussed the issues with Tract A and his concerns regarding this.

Mr. Hall discussed Mr. Morgan's feelings regarding the park and the amenities and whether it should go to the City to be a private or public park at this time. A decision will have to be made at the time the park is constructed as to whether or not the City takes the park as a public resource. At the end of Phase III – they will build the park and amenities and then, see if the City wants the park dedicated to them, yes or no.

Mr. Blackmore came forward and stated everyone is interested in Affordable Housing and the developer is willing to participate and provide it if an when he can. In reality, Affordable Housing does cost money to build and an ability to generate income, save money, be able to provide lots to

individuals. It is good and a positive thing, but timing is questionable. He discussed Tract A with 57-lots back in 2007 in detail, modifications, housing types, non-profits, housing standards, and prescriptive housing types at this time.

Acting Chairman Tewalt closed the public testimony portion of the hearing at this time.

The Commissioners deliberated, expressing concerns and different ideas about the number of Affordable Housing units – phasing of the units, "keeping the number at eight (8) Affordable Housing units", discussing the different housing types, timeframes on development, Conditions of Approval, modified Development Agreement, Master Plan Approval, phasing, lot sizes, square footages, possibly looking at Cluster Homes/Cottage Developments, etc.

Director Davenport came forward and talked about the timeline of the phasing, the different options in the phasing, legal issues, Conditions of Approval, etc. He stated that he is looking for guidance to modify the Agreement, timing of these units, location of the units to be applied to a future modified Development Agreement.

The Commission expressed the concern for the Affordable Housing to make sure it gets done and asked for direction from staff to make sure it happens in a timely manner.

Director Davenport stated that maybe it could be offered to have the Multi-Family Residential (MFR) in Phase III. It is at the halfway point and within Phase III after Phase I and Phase II are done, and at that point the units of affordable housing could be specifically in Phase III and more specifically within an MFR District of what units to be decided later, etc. He discussed having some flexibility in housing types, square footages under roof, cluster homes, detached/attached, etc.

The Commission discussed the proposed condition regarding phasing for the Affordable Housing units to be completed no later than Phase III. They recommended to keep the Affordable Housing units at eight (8) and square footage under roof at 7000 sq. ft. of building area to give some flexibility.

Director Davenport gave an example of the phasing (visual), moving the phasing line down to incorporate the MFR which would be in Phase III.

Acting Chairman Tewalt reopened the public hearing MP15-01 at this time.

Mr. Hall came forward and discussed the Affordable Housing aspect if it were to go into Phase III and what if he couldn't find a developer to do the Affordable Housing in Phase III, then, Phase IV and Phase V would be off the table and it sits as vacant land. He asked the Commission to think about that as they are writing the language – it could inadvertently halt the development. Maybe a date certain in the future would be better than phasing. He discussed the possibility of larger lots, changing phasing as market conditions permit – maybe larger lots in the later phases – maybe change

some of the lots sizes and match the market. He stated that instead of going with a phase, he would rather tie it to a calendar day – at least three (3) years from tonight if approved.

Director Davenport came forward and clarified that the Affordable Housing units are to be provided within 36 months upon approval by City Council of the revised Development Agreement.

1. Annexation Agreement dated April 20, 2001 remain vested to the site.
2. Affordable Housing units remains at eight (8) with 7,000 square feet.
3. Conditions of Approval in the zone change (Z14-01) – remain effective.
4. Modification request per 4.5.400B is allowed by Code.
5. Street Circulation – not required.
6. Park – send to the Parks Board and City Council. This is neutral with no recommendation.
7. Lots to Front Open Space – dependent on a current Text Amendment currently being proposed for City Council approval on May 14, 2015.
8. Aviation Airport – a couple of conditions on lots closest to the airport and for staff to enforce.
9. All Code requirements in effect at the time of approval that are not modified by this decision are require to be followed.
10. Affordable Housing will be done within 36 months. *Mr. Hall* stated that he would like to have the Site Plan submitted by a certain time and delivery of the units by a certain time sometime in two (2) to four (4) years. If it becomes a problem, the applicant can always come back to the Planning Commission.

Acting Chairman Tewalt closed the public hearing at this time.

Acting Chairman Tewalt asked the Commission if they would like to make a motion at this time.

Commissioner Nagel made a motion to approve the draft Conditions of Approval with the changes discussed.

Commissioner Dean seconded. Motion passes.

File No: CI15-01
Applicant: Michael Black
Project Description: A Code Interpretation/land use decision clarification to consider allowing options to build single family detached dwellings and/or attached dwellings (townhomes) on 21 remaining lots in the Aspenwood Subdivision.

Acting Chairman Tewalt asked for Planner Reed to come forward at this time.

Planner Reed came forward and discussed a Code Interpretation (CI15-01) for Michael Black on the 21 remaining lots in the Aspenwood Subdivision. The Aspenwood subdivision was approved as file number SUB02-01 in 2002 to create the 26-lot subdivision.

City Planning Commission
April 30, 2015 – 5:30 p.m.
MP15-01 and SUB15-01 – 3 Sisters Partners, LLC – Peter Hall
CI15-01 – Michael Black
TA14-06 – Sign Ordinance, Minor Variances
TA14-07 – Formula Food Establishments/Highway Commercial (HC) District
Transportation System Plan Update / Transportation Growth Management Grant

Planner Reed stated that this is a request for land use approval clarification/code interpretation of Sisters Development Code 2.3.300 Development Standards. Table 2.3.2 as it relates to future development within SUB02-01, also known as the Aspenwood Subdivision. This is to allow an option to build Single-Family Detached (SFD) dwellings or attached dwellings (Townhomes) on 21 remaining lots. The existing development has a Townhome on Lots 2 and 3; and Single Family Dwelling on Lots 4 and 5. She continued with a visual of the Project Site, the Street View of the Townhomes and the Single-Family Detached and a visual of the Tax Map showing the project site at this time.

Planner Reed gave the Background history of the project site explaining the original file SUB02-01, the lot sizes, and zoning, 2004 Development, Update to the Development Code in 2010, 2010 Development, 2015 Development, Proposed Development, and the Consideration of the Request at this time. In 2010, the City made changes to the Development Code and concurrently reclassified the subject site as the MFR District. The Code was updated to include a standalone section for Multi-Family which is now Chapter 2.3. In 2010, the applicant and owner had building permits approved for lots 4 and 5 for single family detached and that decision for the approval was based on the pre-existing lots clause.

Planner Reed stated that later in 2015, the applicant was informed by another staff member, Director, Pauline Hardie that the earlier decision to allow single family on the small lots of 3,000 square foot lots was incorrectly applied using the pre-existing lots. The applicant was informed that only lots 1 and 12 could be built with single family detached and all the other lots would have to be townhomes.

Planner Reed stated that the applicant has proposed development for the Planning Commission to consider which may be conceptual at this time to allow an option of either single family detached or townhomes and as development moves forward to allow a mixture of either or. The consideration request is that the applicant is requesting the option to build single family detached dwellings or townhomes and staff is asking the Planning Commission to provide the applicant with clarification on which dwelling types can be constructed on the remaining lots.

Planner Reed stated that as the Planning Commission consider the request, note that a mixture of single family detached and townhomes as in the Aspenwood Subdivision currently – the applicant has demonstrated the intent to build smaller and more affordable homes, it will not increase the density or the number of homes, it only affects the type of structure whether it is attached to another building or detached. The request does not release the obligation of future building permit applicants from satisfying other development standards such as building heights, setbacks, etc.

Recommendation:
Staff recommends that the Planning Commission approve the requested Code Interpretation (CI15-01) as it relates to all remaining undeveloped lots within SUB02-01.

City Planning Commission
April 30, 2015 – 5:30 p.m.
MP15-01 and SUB15-01 – 3 Sisters Partners, LLC – Peter Hall
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Commissioner Nagel stated it is a no brainer to approve and the Commissioners agreed.

Acting Chairman Tewalt asked if the applicant would like to come forward at this time.
Mr. Black stated no he did not wish to come forward.

Jeff Makey came forward and stated that he lives in the house that is on lot 4. He said that he bought it 3 ½ years ago and told his friend that he just bought this beautiful townhome in Sisters. He stated that he looks at the whole development and they are townhomes, but depends on your perspective. They are small lots, small square footages, and is hard to get from the front yard to the back yard without going through the house. If being a buyer, they have the choice and so does the builder on what they want to do – single family detached or townhomes. He stated it is a great idea, it makes the neighborhood more buildable and more attractive to bringing in other people because they have the flexibility, etc.

Commissioner Wright asked the developer if he is proposing to build townhomes similar to what is there now.

Mr. Black said yes with minimal connecting wall connections between the buildings and to minimize the common wall.

Commissioner Wright stated that it tends to look like a single level house and not straight up 30-feet and blocking somebody or the neighbor.

Director Davenport stated that the Commission can require what is being proposed here, or allow the applicant the flexibility to propose either/or as time goes by. In doing this, staff wanted to clarify what can happen going forward in requiring him in what to do, or let the applicant vary as conditions change.

Commissioner Wright stated that his comment would be to let the applicant vary based on the market conditions.

Acting Chairman Tewalt asked the Commission if they would like to make a motion at this time.

Commissioner Nagel made the motion to let the applicant do whatever he wants to in developing single family or townhomes.

Commissioner Seymour seconded. Motion carries.

V. <u>TEXT AMENDMENTS</u>

A. TA14-06 Sign Ordinance revisions – various Sections throughout 3.4 Signs and Section 5.1.500 Minor Variances.

Director Davenport came forward and stated that everything that has been read is still applicable. This has to do with revisions to the Sign Code in Section 3.4 in various sections. This has been work shopped several times and just recently it was further work shopped with group of sign experts and people that have an interest in signs to provide some detailed sign provisions.

Director Davenport discussed the Minor Variances Section 5.1.500 stating that the initial proposal was to create a Sign Review Board and after discussions with Legal Council and the way it was written, and the concerns of the different variations of how signs could be applied, etc., is very problematic. He discussed the specific fonts and other subjective requirements that make it very hard to grant a variance with the Sign Code. There is a Minor Change to the number 10 percent to 20 percent in order for staff to give a minor variance. Staff would be able to make those changes up to a 20 percent difference. It would be a Type II decision, staff would notify the Commission of the decision and the Commission would have an opportunity to call it up. Any other sign revisions would have to come to the Commission as a Major Variance to be processed accordingly.

Director Davenport asked the Commission if they would like to go through the Sign Code at this time. The Commission stated they were good with what Director Davenport presented and no need to go through item by item.

Acting Chairman Tewalt closed the public testimony of the hearing at this time.

Acting Chairman Tewalt asked the Commission if they would like to make a motion at this time.

Commission Nagel made the motion to approve TA14-06

Commissioner Dean seconded. Motion passes.

B. TA14-07 (cont.) Formula foods Establishments – 2.5.300 Development Standards – HIGHWAY COMMERCIAL (HC) DISTRICT; L. Formula Food Establishments.

Director Davenport came forward and stated that this is a continuation of TA14-07 and part of that was continued by City Council. This is a revision to Section L in the Highway Commercial (HC) District in regards to Formula Food Establishments. As discussed in sub-sections 1 and 2 – the 400-ft rule are proposed to be stricken from the text, and in its place is a maximum of six (6) is proposed within the Highway Commercial District. He continued to discuss the 400-ft. rule, limitations and locations, etc. If the intent is to severely restrict the locations, staff strongly recommends to go with a cap within the zone instead of the 400-foot rule that can be circumvented. It is much easier to administer and the cap can be changed if necessary to reflect the community's desires.

Director Davenport addressed an email from an absent Planning Commissioner that he received today at this time.

Acting Chairman Tewalt asked if the Commission would like to make a motion at this time.

Mr. Bruce Churchill came forward and stated that he has Todd Taylor's Outlaw Station shopping center listed for lease and several sites that would be appropriate for fast foods. There is not a huge risk of having six (6) or more of these establishments here in Sisters due to the size of Sisters market and requirements that the fast food franchise have for trade areas of 50,000 to 25,000 to 30,000 people within a very small trade area. He stated that he highly supports this Text Amendment.

Mr. Steve McGhehey came forward and stated that he highly supports this and wanted to thank staff and the Commissioners. It's been a struggle with the 400-foot rule. There is more than adequate supply and now it is where the customers want to be. He stated that he highly supports this Text Amendment.

Acting Chairman Tewalt closed the public testimony of the hearing at this time.

Acting Chairman Tewalt asked if the Commission would like to make a motion at this time.

Commissioner Seymour made a motion to approve TA14-07 as presented.

Commissioner Nagel seconded.

Commissioners Tewalt, Dean, Seymour, Nagel approve.
Commission Wright abstains.
Motion passes.

VI. DISCUSSION:
   a. Transportation System Plan Update (TSP)
   b. Transportation Growth Management Grant application for Plan Refinement

Director Davenport stated that the City has an opportunity to apply for a Transportation Growth Management (TGM) grant and is due in mid- June. The current TSP was adopted in January of 2010. Since then, there has been some very significant improvements in town including Cascade Avenue including some other minor improvements. Some things have been changed that was originally envisioned in this plan such as the Barclay Rd. and Hwy 20 intersection. Now, the roundabout concept is moving forward although it is not finalized yet.

Director Davenport stated that the City would like to apply for this grant and time is of the essence to get a recommendation to the City Council and get them to act on it. Staff is proposing to focus

on and get the Planning Commission's recommendation to apply for this grant to refine the current Transportation System Plan (TSP) to recognize the recent accomplishments and recognize what is happening now with the Barclay Rd. intersection, and to reinforce any remaining improvements that have not yet come to pass. Specifically, to focus on a certain area in the City – the east side of the City. There are some unique challenges at Locust St. and Hwy 20, Creekside Park Access, and Hwy 20/Hwy 126 intersection which includes the Three Creeks Brewery, 4th Sisters Lodge, Buckaroo Trail, etc. Staff would like to apply for this grant to do these things, but the specific focus on the Transportation improvements in this area. Once the TSP is updated and whether or not we get the grant. He continued to talk about the specifics on the grant, ODOT input, etc.

Director Davenport asked for the Planning Commissioners recommendation to take this to the City Council at this time.

Commissioner Wright asked if this grant would be correcting the existing TSP and relative short term focus and not looking at it from a long range approach say maybe a 20 year plan as to how to integrate a Transportation Plan to solve issues that could be factors in say 20 years from now.

Director Davenport stated that with the current plan and what the revised plan would be – it would still have a long range focus on it, but now to refine it to recognize what has been done and what is almost about to take place and then, push it ahead looking forward. It is more of an update, but not looking to narrow the planning window, but want to have a long range planning window of future road improvements.

Director Davenport stated that if awarded the grant, there is a whole public input process. It is about a $80,000ish project, a consultant is hired, public input process, data gathering, traffic counts, updating existing information, hearing from the public, and combining everything together. The grant award would be in late summer and we would like to start the process in the fall if awarded the grant.

The Planning Commission gave the nodding of heads to recommend to the City Council the Transportation System Plan Update at this time.

VII. OTHER COMMISSION BUSINESS

Director Davenport stated that the next public hearing will be on May 21, 2015.

VIII. ADJOURN

Acting Chairman Tewalt adjourned the hearing at 9:10 p.m.

City Planning Commission
April 30, 2015 – 5:30 p.m.
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TA14-07 – Formula Food Establishments/Highway Commercial (HC) District
Transportation System Plan Update / Transportation Growth Management Grant

on and get the Planning Commission's recommendation to apply for this grant to refine the current Transportation System Plan (TSP) to recognize the recent accomplishments and recognize what is happening now with the Barclay Rd. intersection, and to reinforce any remaining improvements that have not yet come to pass. Specifically, to focus on a certain area in the City – the east side of the City. There are some unique challenges at Locust St. and Hwy 20, Creekside Park Access, and Hwy 20/Hwy 126 intersection which includes the Three Creeks Brewery, 4th Sisters Lodge, Buckaroo Trail, etc. Staff would like to apply for this grant to do these things, but the specific focus on the Transportation improvements in this area. Once the TSP is updated and whether or not we get the grant. He continued to talk about the specifics on the grant, ODOT input, etc.

Director Davenport asked for the Planning Commissioners recommendation to take this to the City Council at this time.

Commissioner Wright asked if this grant would be correcting the existing TSP and relative short term focus and not looking at it from a long range approach say maybe a 20 year plan as to how to integrate a Transportation Plan to solve issues that could be factors in say 20 years from now.

Director Davenport stated that with the current plan and what the revised plan would be – it would still have a long range focus on it, but now to refine it to recognize what has been done and what is almost about to take place and then, push it ahead looking forward. It is more of an update, but not looking to narrow the planning window, but want to have a long range planning window of future road improvements.

Director Davenport stated that if awarded the grant, there is a whole public input process. It is about a $80,000ish project, a consultant is hired, public input process, data gathering, traffic counts, updating existing information, hearing from the public, and combining everything together. The grant award would be in late summer and we would like to start the process in the fall if awarded the grant.

The Planning Commission gave the nodding of heads to recommend to the City Council the Transportation System Plan Update at this time.

VII. OTHER COMMISSION BUSINESS

Director Davenport stated that the next public hearing will be on May 21, 2015.

VIII. ADJOURN

Acting Chairman Tewalt adjourned the hearing at 9:10 p.m.

Respectfully submitted,

Carol Jenkins, Recording Secretary

City Planning Commission
April 30, 2015 – 5:30 p.m.
MP15-01 and SUB15-01 – 3 Sisters Partners, LLC – Peter Hall
CI15-01 – Michael Black
TA14-06 – Sign Ordinance, Minor Variances
TA14-07 – Formula Food Establishments/Highway Commercial (HC) District
Transportation System Plan Update / Transportation Growth Management Grant

Exhibit A

D

File #:	MP15-01, SUB 15-01
Applicant/ Property Owner:	Peter Hall, Three Sisters Partners, LLC
Request:	Type III Review of a Master Plan for a 20.02 acre property, including a Site Plan within the Master Planned Area, and a Tentative Subdivision Plan for a 5 Phase 77 lot subdivision.
Location:	The property consists of lots 9 – 19 and Tract A of the Three Sisters Business Park Phase I subdivision. The property is situated north of Lundgren Mill Drive, east of N Pine Street and West of the intersection with East Sun Ranch Drive. The subject property is identified as Tax Lots 100-1200 on Deschutes County Assessor's Map # 151004BC.
Planner:	Patrick Davenport
Zoning:	Residential (R) District, and Multifamily (MFR) District
Comp. Plan Designation:	Residential (R) District, and Multifamily (MFR) District
Hearing:	April 30, 2015; 5:30 p.m., 520 E Cascade Avenue, Sisters, Oregon

I. Background/Application

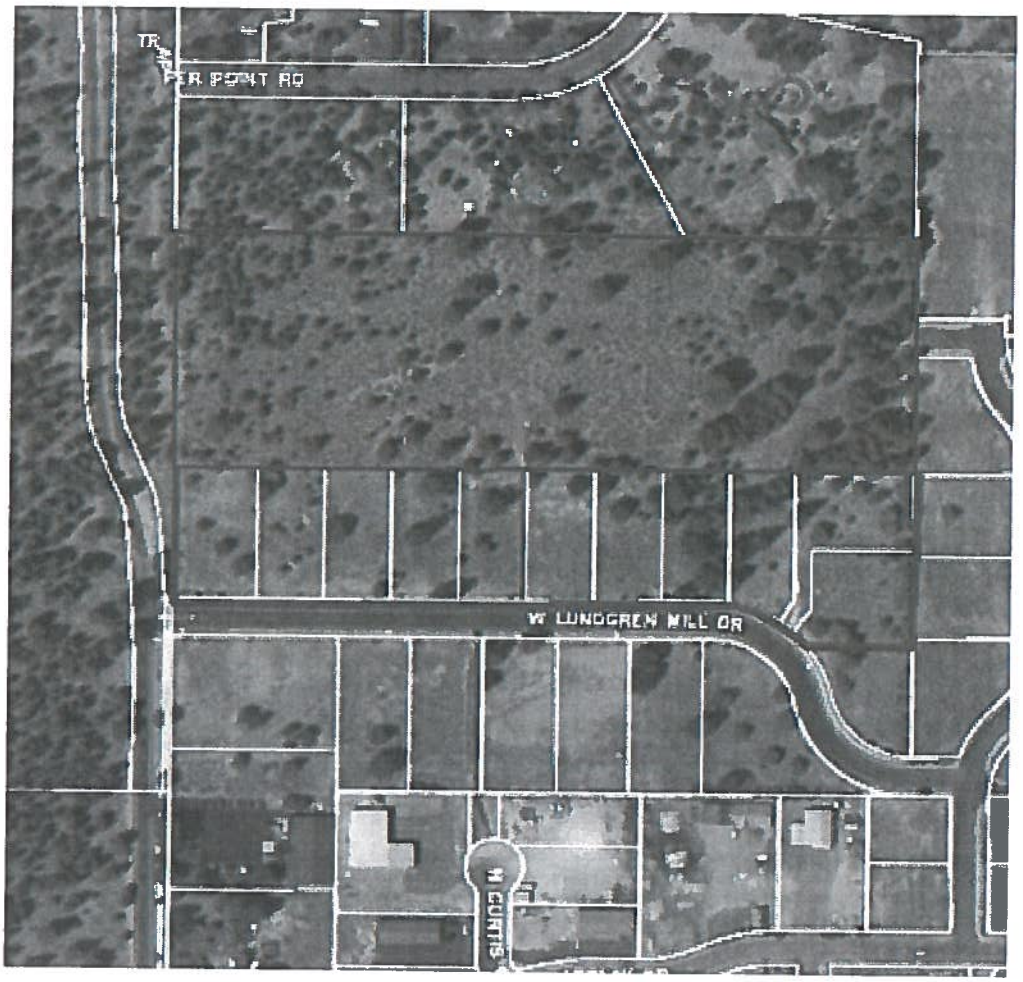
Project Location and Setting

The property is rectangular in shape and is generally level with large significant trees. The property is zoned Residential (R), and Residential Multifamily (MFR), and has a Comprehensive Plan designation of Residential (R) and Residential Multifamily (MFR). The property is situated north of Lundgren Mill Drive, east of N Pine Street and West of the intersection with East Sun Ranch Drive. The subject property is nearly level with significant size Ponderosa and Juniper trees and various native growth underbrush. Adjacent land uses, Zoning and Comprehensive Plan designations for the surrounding properties are summarized as follows:

	Land Use	Zoning Designation	Comprehensive Plan
Site	1 lot developed, rest vacant	Residential (R), Residential Multifamily (MFR)	Residential (R), Residential Multifamily (MFR)
North	Trapper Point S/D rural residential	Deschutes County jurisdiction	Deschutes County jurisdiction
South	Vacant	North Sisters Business Park (NSBP)	North Sisters Business Park (NSBP)
East	Vacant	North Sisters Business Park (NSBP), Sun Ranch Residential (SRR)	North Sisters Business Park (NSBP), Sun Ranch Residential (SRR)
West	Forest land	United States Forest Service	United States Forest Service

File Number: MP 15-01 & SUB 15-01
Hearing Date: April 30, 2015

Project Location

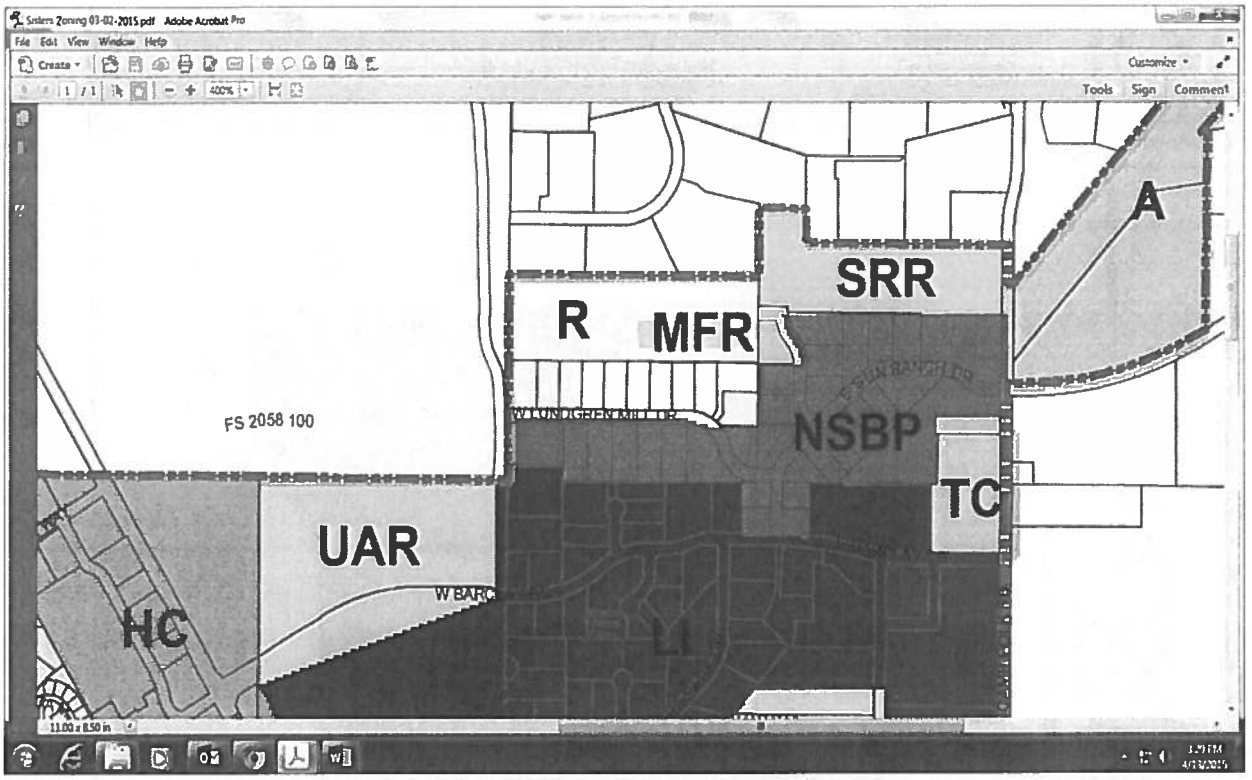


Background: As referenced with additional detail in the applicant's attached Burden of Proof, the site's prior land development actions/approvals have occurred in the following sequence:

- PA-99-4 / ZC 99-1 Deschutes County Decisions that were followed by Annexation
- SUB 05-07– Three Sisters Business Park Subdivision
- C06-04, CP06-03, Z05-02 -Comprehensive Plan Amendment converting 12.58 acres to R and MFR and 16.91 acres to LI/NSBP
- CP14-01 – Comprehensive Plan Amendment Zone Change converting 8.32 acres of LI/NSBP to R

File Number: MP 15-01 & SUB 15-01
Hearing Date: April 30, 2015

ZONING MAP



Project Request

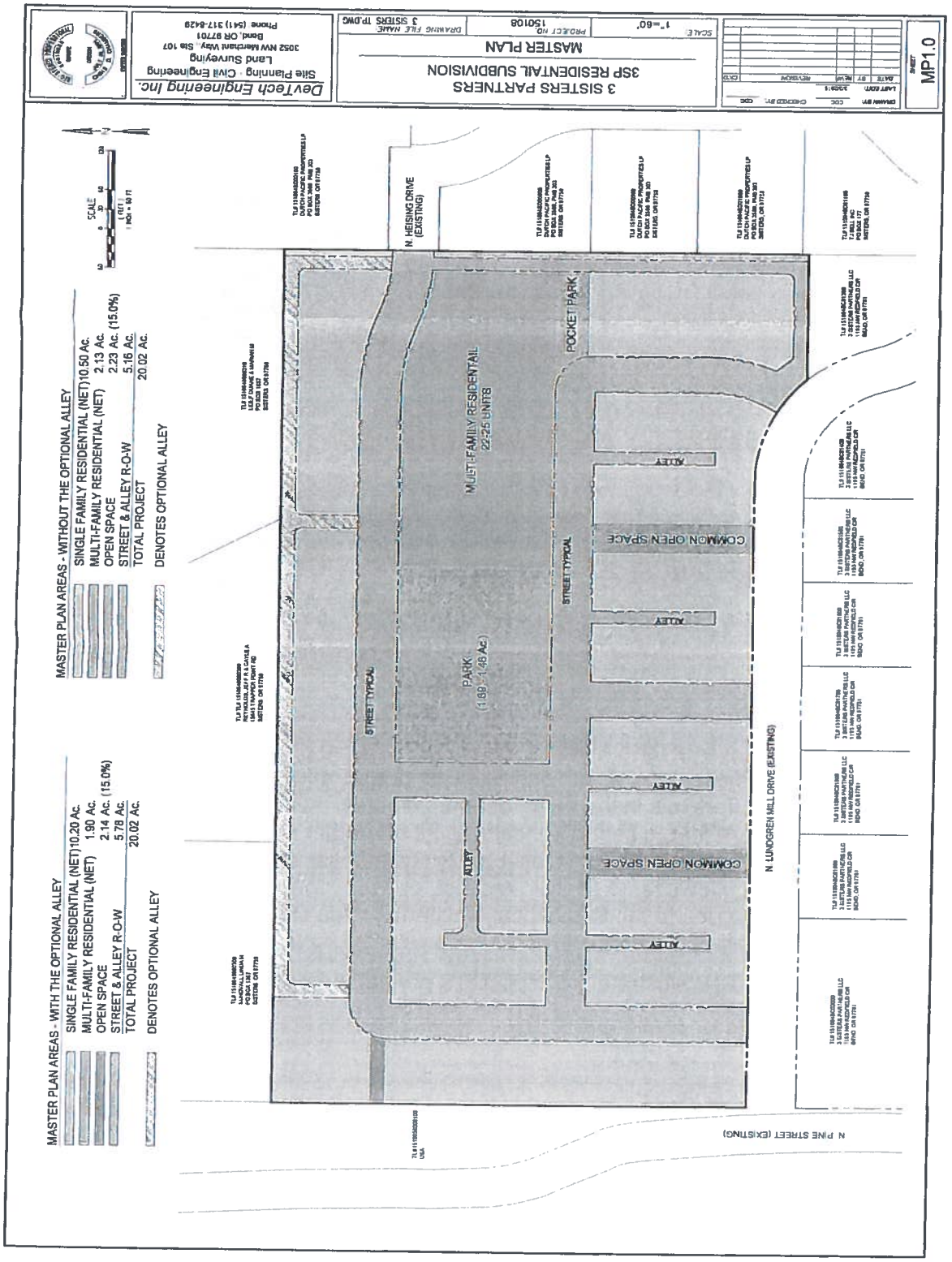
The applicant requests approval for a Master Plan of a 20.02 acre property, a Tentative Subdivision plan for a 5 Phase subdivision, and Site Plan for a Park within the Master Planned area. The development offers lots in the range of approximately 5,000 square feet to approximately 8,600 square feet, a centrally located park and other additional, smaller areas of open space. A Site Plan for the 2.13 acre Multi-Family Residential area is not being considered as part of this application. However, a specific request for exceptions per 4.5.400B Master Planned Developments applies to the Residential Multifamily area of the development and is under consideration via this application.

The following four plan sheets illustrate the applicant's proposal:

1. Master Plan
2. Tentative Subdivision Option #1
3. Tentative Subdivision Option #2
4. Park Site Plan

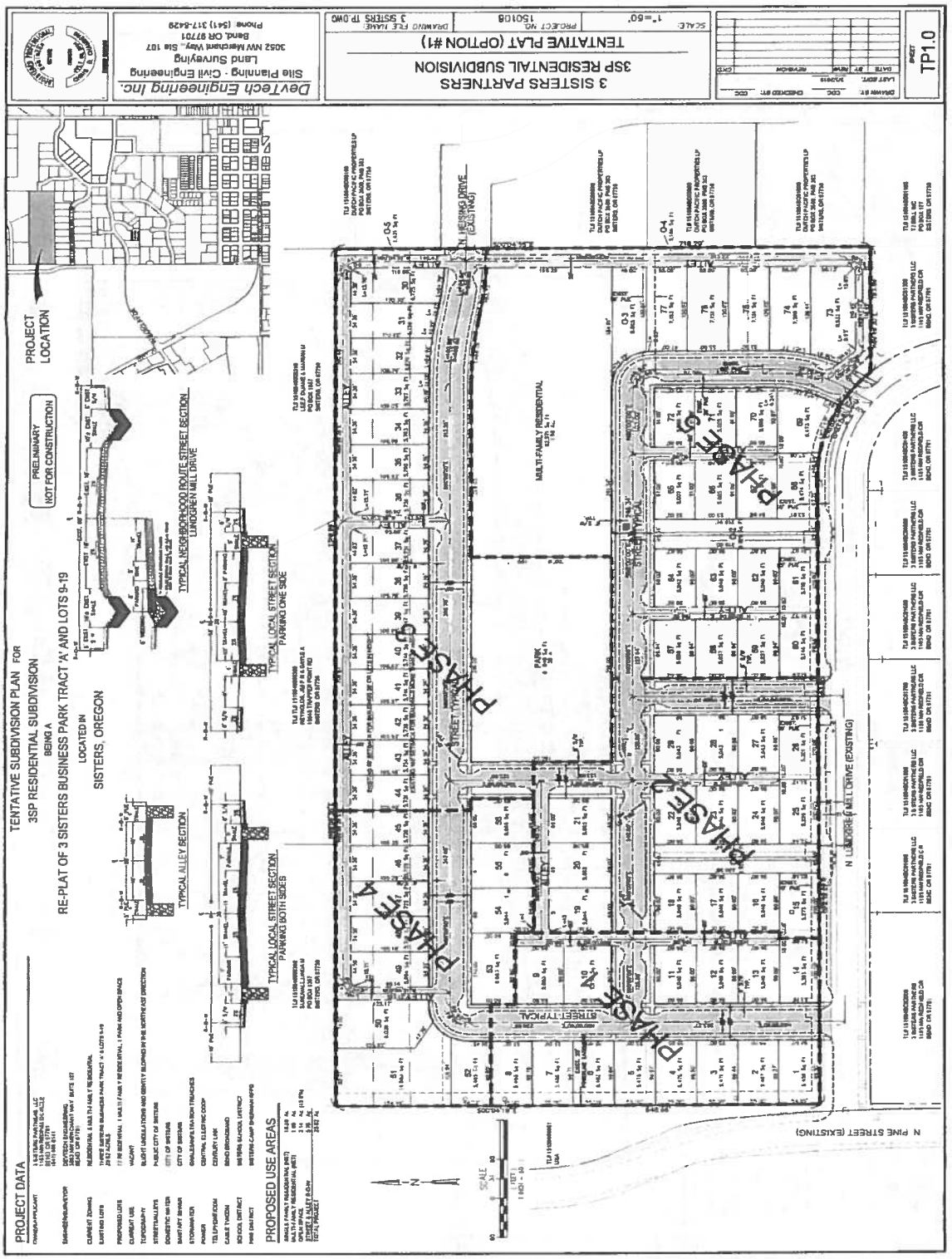
File Number: MP 15-01 & SUB 15-01
Hearing Date: April 30, 2015

PROPOSED MASTER PLAN



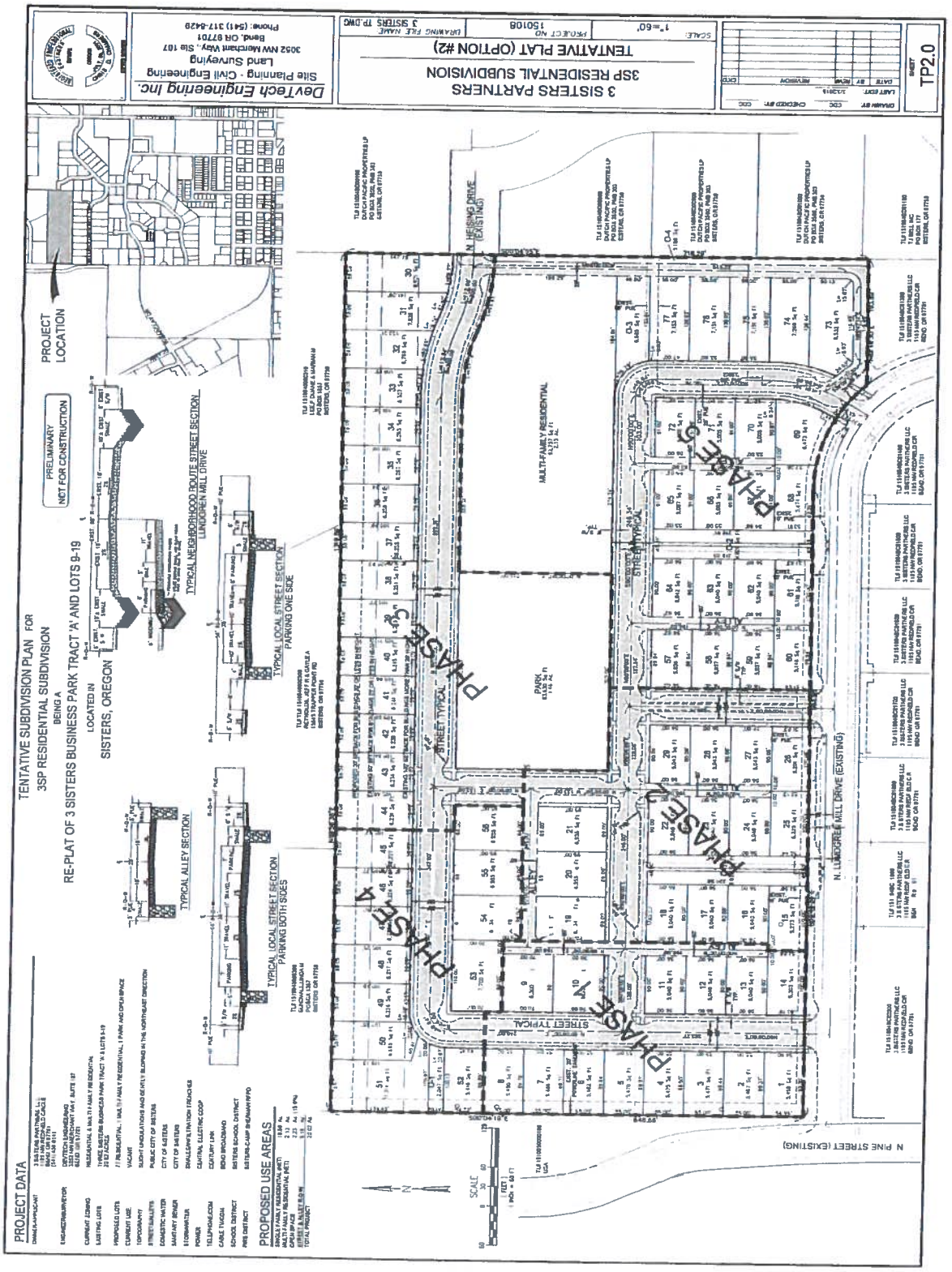
File Number: MP 15-01 & SUB 15-01
Hearing Date: April 30, 2015

PROPOSED SUBDIVISION OPTION #1



File Number: MP 15-01 & SUB 15-01
Hearing Date: April 30, 2015

PROPOSED SUBDIVISION OPTION #2



II. Applicable Criteria, Standards, and Procedures:

Procedures: Chapter 4.1; Types of Applications and Review Procedures

Compliance with Approval Criteria:

Chapter 4.5: Master Plans

Chapter 4.3: Land Divisions and Lot Line Adjustments

Chapter 4.2; Site Plan Review (for proposed Park)

Standards: Chapter 2.1; Residential Districts

Chapter 2.3; Multi-Family Residential

Chapter 2.11; Airport Overlay Zone

Chapter 2.15; Special Provisions

Chapter 3.1; Access and Circulation

Chapter 3.2; Landscaping and Screening

Chapter 3.3; Vehicle and Bicycle Parking

Chapter 3.4; Signs

Analysis of Application

This staff report and its Conclusionary Findings will address all of the above listed criteria. The applicant's Burden of Proof and staff's response are provided in the Conclusionary Findings and the reports will conclude with recommendations of approval with conditions or recommendation of denial.

Conclusionary Findings

Basis for Decision. Chapter 4,1, Table 4.1.200, requires a Master Plan and Subdivision to be processed as a Type III application. Although the Site Plan review for the proposed Park is a Type II review, it is an integral part of the proposed development and therefore its review is included in this staff report. Staff mailed a notice to neighbors within 250 feet of the project on April 10, 2015, and gave notice to the applicant to post the property on April 13, 2015 and published a notice in the Nugget newspaper on April 15, 2015.

Approval or denial of the subject Type III applications for a Master Plan, Subdivision and Type II application for a Site Plan shall be based on standards and criteria in the Development Code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the City as a whole.

III.A Chapter 4.5 – Master Planned Developments

4.5.200 Applicability and Uses

A. Applicability. The Master Planned development designation may be combined with any of the City's land use districts. An applicant may develop a project as a Master Planned Development. A Master Planned development shall be used for any property or combination of contiguous properties of ten (10) acres or larger in the Residential District and of five (5) acres or larger in the Residential Multi-Family, Industrial or the Commercial Districts, and for all Major Retail Developments.

Applicant Response: The property is Zoned Residential (R) and Multifamily Residential (MFR) and is 20.02 acres, with over 10 acres in the R zone, thus the property is required to be developed as a Master Planned development and this chapter applies.

Staff's Response: Although a Site Plan for the Multifamily Residential (MFR) portion of the property is not proposed in this application, a portion of the property situated in the Residential (R) zoning district requires master plan approval. The applicant has applied for a Master Plan for the entire property (both the R and the MFR zoned areas) and the application is being reviewed accordingly.

B. Uses.

1. **Master Planned development (MP) in the Residential (R) and Multi-Family Residential (MFR) Districts shall include uses in accordance with the underlying zoning districts. Master Plans are encouraged to have a mix of residential uses.**

2. **MP in other Districts shall have a mix of appropriate uses in accordance with the underlying zoning district.**

3. **Use(s) not permitted in the underlying zone may be permitted and approved to occupy up to 20% of the gross area of the MP. Said use(s) shall be considered to be a conditional use and may be approved subject to compliance with the conditional use permit criteria in Chapter 4.4.**

Applicant Response: The property is zoned R and MFR, thus according to the standards of these sections is required to allow uses that are permitted in the underlying zone; the development is further encouraged to have a mix of residential uses. As detailed on the Master Plan Exhibit, the proposal plans for R densities and uses in the R zoned area of the site, and MFR densities and uses in the MFR zoned portion of the site. Furthermore as depicted on the Tentative Subdivision Plan, lots in the R zone are planned for detached single family homes and include a variety of lot sizes and features, including lots with street frontage, lots with alley access, lots that front on green space, and lots on with significant open space features close by.

In addition to the R zone, the property includes 2.39 acres of MFR zoned property. The MFR zone allows for a variety of housing options to meet density requirements, including attached single family homes, duplexes, triplexes, multi-family housing, cottage housing and apartments. As detailed on the Tentative Subdivision Plan, the MFR zoned area is proposed to be retained as one lot at this time. Retaining one lot will provide the greatest amount of flexibility to accommodate housing options demanded by the market at time of development.

Other "not-permitted uses" which could be permitted under this section are not proposed in association with this Master Plan. Thus given the design and diversity of housing options, the proposal complies with both the required and recommended elements of this section.

Staff's Responses to 4.5.200.B Uses

1. Master Planned development (MP) in the Residential (R) and Multi-Family Residential (MFR) Districts shall include uses in accordance with the underlying zoning districts. Master Plans are encouraged to have a mix of residential uses.

Staff Response - The applicant is proposing uses in conformance with the underlying zoning district – Residential (R). When the Multifamily Residential portion of the property is evaluated via a future site plan application, a mix of residential uses, although not a mandatory requirement in this subsection, will be encouraged in order meet the intent of this Section.

2. MP in other Districts shall have a mix of appropriate uses in accordance with the underlying zoning district. This subsection is not applicable.

3. Use(s) not permitted in the underlying zone may be permitted and approved to occupy up to 20% of the gross area of the MP. Said use(s) shall be considered to be a conditional use and may be approved subject to compliance with the conditional use permit criteria in Chapter 4.4. The applicant is not proposing uses that are not permitted in the underlying zoning district.

C. Accessory Uses. Accessory uses such as laundry rooms, recreational vehicle storage areas, storage and maintenance facilities and similar uses may be permitted. All accessory buildings/uses shall be approved per the Master Plan,

Applicant Response: Although permitted under this section, accessory uses are not proposed at this time, thus this section does not apply.

Staff's Response: Accessory uses as described in the subsection are not being proposed by the Applicant at this time, but can be permitted if applied for in the future. The underlying District regulations permits Accessory Uses and Structures and Accessory Dwellings per Chapter 2.2, Table 2.2.1 Use Table for the Residential District, Section 2.15.300 Special Provisions – Accessory Dwellings and Section 2.15.400 Special Provisions - Accessory Structures. Each lot in the subdivision would still be eligible for Accessory Structures and Dwellings unless proposed to be prohibited by the Applicant and agreed to by the Planning Commission. The applicant has not proposed to prohibit any uses that would otherwise be permitted in the zone.

4.5.300 Review and Approvals Process

A. Submittal requirements as required by Site Plan Review, Chapter 4.2, may be processed as part of the Master Plan Approval. When the submittal requirements including elevations and floor plans are not included as part of the Master Plan application, then subsequent Site Plan Review applications and approvals shall be required as a condition of approval of the Master Plan. All Site Plan Review applications shall be submitted prior to the expiration of the Master Plan approval.

Applicant Response: The proposal includes a Master Plan, along with a Subdivision, and a Park Site Plan. As permitted by this section, elements of the Master Plan requiring Site Plan Review, may be processed as part of this review. With the current submittal, the applicant has prepared a Site Plan for the Park and is requesting that it be reviewed with the Master Plan submittal. A comprehensive review of Chapter 4.2 and the applicable Development Standards of Chapters 2 and 3 are addressed below in this narrative, and as detailed therein the proposal complies will all applicable approval criteria and development standards.

Future development of the MFR area will also need Site Plan Review, as the property will likely be developed with attached single family homes, duplexes, triplexes, cottage housing, or apartments. When the MFR area develops, the applicant understands that additional Site Plan review may be required and understands that a condition of approval addressing this provision may be added to the decision.

Staff's Response: The applicant has provided an accurate analysis of this subsection. The Site Plan for the proposed Park is being reviewed via this application and contains no elevations for review. The Site Plan for the Multifamily Residential portion is not part of this application and a future review of that portion of the property will be required prior to development.

B. The Master Planned development and all other concurrent applications shall be reviewed using the Type III procedure in Chapter 4.1, the submittal requirements in Section 4.5.500, and the approval criteria in Section 4.5.700.

Applicant Response: Pursuant to this provision, it is anticipated by the applicant that the Master Plan, the Tentative Plan, and the Site Plan will all be reviewed concurrently via the Type III review procedures.

Staff's Response: This application for a Master Plan, Tentative Plan, and Site Plan for the proposed Park will be reviewed as a Type III review.

C. As a condition of approval, the applicant shall record a deed restriction on the subject property and all future lots and parcels created, noting inclusion in the approved Master Planned Development.

Applicant Response: Subsequent to approval, the applicant agrees to file a deed restriction, indicating that the property is included in the Master Planned Development.

Staff's Response: The applicant has met the requirement of this subsection.

D. Land Use District map designation. After the Master Plan has been approved, the Land Use District Map shall be amended to indicate the approved Master Planned Development (MPD) designation for the subject development site.

Applicant Response: The applicant understands that subsequent to approval, Staff will amend the Land Use District Map to indicate the Master Plan Designation on the site.

Staff's Response: Staff will amend the Land Use District Map to indicate the Master Plan Designation on the site, subsequent to approval.

4.5.400 Property Development Standards

A. If the continuous horizontal distance (i.e., as measured from end-wall to end-wall) of an individual multi-family building shall incorporate five of the following features on all elevations;

1. **Upper story setbacks, provided one or more of the upper stories are set back from the face of the building at least six feet.**
2. **Dormers**
3. **Gables**
4. **Recessed entries**
5. **Covered porch entries**
6. **Cupolas or towers**
7. **Pillars or posts**
8. **Eaves (min. 12-inch projection)**
9. **Window trim (minimum 4-inches wide)**
10. **Bay or oriel windows**
11. **Balconies**
12. **Decorative patterns on exterior finish (e.g., scales/shingles, wainscoting, ornamentation, and similar features)**
13. **Decorative cornices and roof lines (e.g., for flat roofs)**
14. **An alternative feature providing visual relief, similar to options 1-13.**

Applicant Response: The Master Planned development includes areas where multifamily dwellings could be developed, however specific development plans for multi-family buildings are not proposed at this time. Future development will be required to conform to these development standards, which will be review in association with the applicable Site Plan review and/or Building Permit review.

Staff's Response: The applicant is not proposing multifamily dwelling types via this application. The Multifamily Residential (MFR) portion of the development allows multifamily dwelling units as a permitted use but proposals will be reviewed when the Site Plan is submitted for that specific area.

B. Development standards, except for density, landscape and open space, may be modified by up to 20 percent of the required standard of the underlying Zone District. Dimensional standards include lot area, lot width, setbacks, lot coverage, lot depth, and access spacing on local streets. These development standards may be modified upon a finding by the Planning Commission that such modification will not be detrimental to the general welfare, City of health or safety of the City of Sisters and will enhance the visual characteristics of the neighborhood.

Applicant Response: While the applicant has designed a plan to conform the Development Code standards to the greatest extent practical, a few exceptions are being requested to ensure a mix of housing types and to allow for a centrally located park, that encumbers both MFR than R zoned areas. The R zoned lots are generally planned for detached single family dwellings, which will require only minor exceptions to code standards. The MFR zoned area on the other hand, does not have a detailed plan at this time, thus to ensure the necessary density and to provide the most flexibility in design, the applicant is requesting a number exceptions to development standards in the MFR zone, as part of the Master Plan. Details of the requested exceptions are addressed below.

Residential Zone

Frontage – The Master Plan shows areas that will have frontage on open green spaces instead of a street. The Tentative Plan documents that 8 lots are proposed in these areas. Pursuant to Development Code text amendment TA-14-07 approved by Planning Commission on 4/16/15,, it is anticipated that the City Council will formally approve green-space fronted lots through the Master Planning process. Thus although an exception to a development standard, this exception does not fall under the 20% modification allowance permitted in this section.

Lot sizes – 6,000 sf minimum, 20% reduction requested = 4,800 sf minimum lot size
Lot Width - 45' - no modification requested
Lot Coverage- 60% max - no modification requested
Height- 30' max – no modification requested
Setbacks- no modification requested

Residential Multi-family Zone

To provide centrally located open space, the Master Plan has been designed with a Park near the middle of the property. The result of the location is that the park falls significantly within the MFR zone, impacting the ability to easily provide density. While densities can be achieved with or without development standard modifications, greater flexibility will provide more options in developing a creative design. Unlike the R zoned area, the MFR zoned area does not have a proposed specific site plan at this time.at this time, thus the applicant is requesting a modification of 20% for all of the allowable development standards to provide the greatest flexibility for future development. The requested modifications are addressed below:

Lot sizes – 3,500 sf is standard, 20% reduction requested = 2,800 sf minimum
Lot Width - 40' is the standard, 20% reduction requested = 32' minimum
Lot Coverage- 60% is the maximum, 20% modification requested = 72% maximum
Height- 30' is the maximum, 20% modification = 36' maximum
Setbacks- Requested that all MFR setbacks be reduced by 20%.

The property is significantly separated from surrounding areas and the MFR zone, although along the eastern portion of the property, is situated near a planned higher density affordable housing development. Thus, the exceptions will generally be internal to the master plan and will not impact health, safety, and visual characteristics of the community or the general welfare of the City of Sisters.

Staff Responses: Staff feels that these requests are reasonable and will help the City achieve a goal of enabling compact urban development. Staff also feels that this request will not be detrimental to the general welfare, City of health or safety of the City of Sisters and will enhance the visual characteristics of the neighborhood. The current development layout is predicated on the approval of TA-14-07

C. Except for residential uses, parking space requirements may be modified up to 20 percent of the required standard upon a finding by the Planning Commission that such modification will not be detrimental to the general welfare, health or safety of the City of Sisters and will enhance the visual characteristics of the neighborhood. All other vehicle and bicycle parking standards shall be per City Standards and shall be provided for in the submitted plan.

Applicant Response: The Master Planned Development does not propose any uses other than residential uses, thus this section's ability to modify parking requirements is not applicable.

Staff's Response: The applicant has provided an accurate analysis of this subsection.

D. Public and private streets and alleys shall comply with the Public Works Construction Standards, latest edition. See also Access and Circulation, Chapter 3.1.

Applicant Response: The Master Development Plan includes public streets and alleys. Street and alley conceptual locations are included on the Master Plan. Detailed plans, including street and alley rights of way and cross sections are provided on the Tentative Subdivision Plan. As detailed on the detailed Tentative Subdivision Plan, ROW's have been designed to a total width of 56ft, including 11ft travel lanes and double sided 7ft on-street parking, 5ft foot landscape swales and 6ft foot sidewalks on both sides of the street. Alleys have been designed to a width of 20ft. The design of both the streets and the alleys were developed after multiple discussions with the Public Works Department, and the designs comply with the latest edition of the City of Sisters Public Works Construction Standards. Furthermore, a complete analysis of Chapter 3.1 (Access and Circulation) is included below and as detailed in that section, the proposal complies with all applicable standards of that Chapter, thus the proposal complies with the Master Plan approval criterion of this section.

Staff's Response: The applicant has met the requirement of this subsection.

E. Landscaping. A landscaping plan in accordance to Chapter 3.2 showing all fences, walls, Hedges, screen plantings and trees shall be provided for in the submitted plan.

Applicant Response: The Master Plan includes an Open Space/Landscaping Plan for the site's open spaces, however individual lot landscaping is not proposed at this time. A complete analysis of Chapter 3.2 is included below and as detailed in that section, the proposal complies with all applicable sections of that Chapter, thus the proposal complies with the Master Plan Approval provision of this section.

Staff's Response: The applicant meets the requirements of this Section

F. Laundry Facilities. All dwelling units shall be provided with internal laundry facilities or an accessory laundry building shall be provided on site.

G. Garbage and recycling collection areas. All exterior garbage cans, garbage collection areas, and recycling collection areas shall be oriented away from the street and adjacent properties. Trash enclosures shall be constructed of solid, durable and attractive walls/fences, a minimum of six (6) feet in height, with solid doors, and shall be visually consistent with project architecture. Trash receptacles for pedestrian use are exempt. Trash enclosures shall be compliant with all applicable fire codes.

Applicant Response: The proposal includes a Master Plan, a Tentative Subdivision Plan, and a Site Plan for a Park. Other than the Park, vertical development is not proposed, thus laundry facilities are neither proposed nor appropriately reviewed at this time. Regarding the Park, the only needed trash receptacles are for pedestrian use, which are exempt from the provisions of

this section. Any other future development will be required to submit the necessary applications (Site Plan, building permit, etc.) and in association with the future review, all required elements will be required to be planned for, including any needed provision of a laundry facilities, along with garbage and recycling.

Staff's Response: The applicant has provided an accurate analysis of Subsections F and G.

H. Open Space. The net acreage of the development site shall be used to calculate the minimum required open space of 15%. Net acres shall be determined by subtracting land dedicated to the public for rights-of- way or private streets and alleys.
Usable open spaces may be provided in the form of natural areas, tree preservation areas, playgrounds, active or passive recreational areas, and similar areas. Portions of the right-of-ways that include tree preservation or parkway strips 10-feet or greater may also be counted as open space. Usable open space area shall not include: drainage swales with slopes steeper than a 3:1 slope, right-of-ways for public or private streets and alleys, parkway strips less than 10-feet, vehicle parking areas, areas adjacent to or between any structures less than ten (10) feet apart, setbacks, patios and private yards.

Open space area calculations and dimensions shall be provided for in the plan submitted. Open space must be readily accessible to all lots and uses within the Master Plan development, and be generally accessible to the public (using a public access easement). Access to private recreational buildings can be restricted to residents within the Master Plan development.

Open space shall be designated as a common area on the Master Plan and on all plats, as applicable. Open space may be dedicated to the public, if approved by a public agency with responsibility for open space, recreation, or park facilities. If the open space is privately owned, it shall be maintained by a homeowners association, property owner, or other legal entity.

Applicant Response: As detailed on the Master Plan, the subject property is 20.02 acres and there are 2 options for development; Option 1 has an alley along the north property boundary and Option 2 does not have an alley along the north property boundary. With Option 1, 5.78 acres are planned for public right of way, resulting in 14.24 net acres. Under Option 1 the provisions of this section establishes that 15% of these net acres, or 2.136 acres, be provided as open space within the Master Planned Development. With Option 2, 5.16 acres are planned for public right of way, resulting in 14.86 net acres. Under Option 2 the provisions of this section establishes that 15% of these net acres, or 2.229 acres, be provided as open space within the Master Planned Development.

The Master Plan (as detailed on the Master Plan Exhibit) provides for the required open space within a park, a pocket park, common corridors with walkways, and buffers which collectively provide the required open space under either option. The subdivision will create the necessary lots to carry out the preferred option.

Lastly, all open spaces are shown on the Tentative Plat and will be properly designated on subsequent final plats in accordance with this section. Also, after the initial development of the park area, the applicant plans to engage in discussions with the City Park Department regarding park ownership. If negotiations result in conveyance or dedication of some or all of the open

space to the public, then the City would be responsible for park maintenance. However if negotiations do not result in public ownership of all or some of the open space, then the open space, or any portion thereof, will be maintained by the Homeowners Association. Details of ownership and maintenance are planned to be established prior to final plat for the phase in which the open space is included in.

Staff's response: The applicant has provided an accurate analysis of this subsection for both Options and meets the minimum requirements.

I. **Amenities. All residential planned developments shall provide recreational amenities Which may include: a swimming pool, spa, clubhouse, tot-lot with play equipment, picnic area, gazebo, barbecue area, day care facilities, and court-game facilities. The minimum number of amenities required shall be according to the following schedule.**

1 to 11 units 1 amenity

12 to 40 units 2 amenities

41 to 100 units 3 amenities

More than 100 units 4 amenities

Applicant Response: The proposal is for a residential Master Planned Development that will have approximately 100 residential units at build out, thus require a minimum of three amenities. The development will be phased and amenity development, including the park will be important components of the neighborhood design. Thus, the applicant has an incentive to develop the park and the amenities as soon as possible. The applicant proposes to develop the park in association with Phase III. This is a logical time as the streets, infrastructure, and neighboring properties will be developed at this time. While the park (and amenities) may not be developed prior to this time, a significant amount of undeveloped open space will be available for use, then once developed, the park will meet the amenities requirement, thus overcoming any short term deficiencies.

The Applicant envisions up to three amenities, as shown on the Park Site Plan exhibit. Also the Master Plan proposes to include walking paths in the common green areas that intersect with Lundgren Mill Drive. Collectively, the planned amenities and the development plan meet the requirements of this section in a practical manner that best serve the community.

Staff Response: The applicant is proposing 77 residential lots in the Residential (R) zoned portion of the property via this application but the site plan for the Multifamily Residential portion of the property is not being proposed at this time. Therefore the total number of residential units at full build out of the subject property is not know at this time. Using the applicant's preferred Option #2, the MFR portion of the property could yield 19-40 additional units. However, the conditions of approval on the rezoning application (Z 14-01) limits the peak hour trips from this development based upon current infrastructure capacity, therefore the applicant will be required to incorporate the relevant Z14-01 conditions of approval when designing the MFR portion of the property. The applicant's 100 unit estimate for the total development is reasonable for the purposes of calculating the Amenities per this subsection. The list of amenity options provided in this subsection is an example. As detailed on the Park Site Plan, the applicant has proposed a shelter, a bench, picnic tables and a litter receptacle. Furthermore, as detailed on the Phasing

Plan, the applicant has proposed the development of the park in association with Phase 3 of the development. Thus, the proposed amenities conform to the standards of this section.

J. Public Improvements Needed for Development. Development shall not occur unless the public improvements serving the development comply with the Public Works Construction Standards, latest edition,

Applicant Response: The applicant team has worked closely with City Staff in the development of the public improvements depicted on the Tentative Subdivision Plan; the proposed improvements have been designed in accordance with the latest edition of the Public Works Construction Standards. The Master Plan identifies the conceptual locations of all planned facilities and the Tentative Subdivision Plan provides detailed plans for water, sewer and transportation facilities, including sizes, locations and design specifications. Prior to construction of any public facilities, complete engineered plans (consistent with the Tentative Plans) are required to be submitted to the Public Works Department for final review and approval in accordance with established City review procedures. The combination of the Staff correspondence, private design in accordance with the Public Works Construction Standards, and the City's public improvement review procedures, collectively ensure conformance with the Public Work Construction Standards document. Thus the proposal conforms to this Master Plan approval criterion.

Staff's Response: The applicant has provided an accurate analysis of this subsection.

K. Conditions of Development Approval. No development may occur unless required public facilities are in place or are guaranteed in conformance with the provisions of this Code and the Public Works Construction Standards, latest edition. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact.

Applicant Response: The proposal includes a Master Plan, along with a Tentative Subdivision Plan, and a Park Site Plan. The proposal includes the installation of public facilities necessary to provide capacity for each phase of development and the applicant plans to install the planned infrastructure prior to the final plat for any phase. Thus the plan, as proposed, ensures that all required public facilities will be in place in accordance with the latest edition of the Public Works Construction Standards and the standards of this code. Given the planned improvements, it is not expected that the City will need additional public improvements to meet any development code standards. However, the applicant understand that should the City find the need for additional public improvements, constitutional law and the standards of this section establish that the City document a nexus to this project, and that any conditioned improvements be roughly proportional to the impact of the required development. Also, should additional improvements be required, constitutional law establishes that the burden falls upon the City to document how such improvements are roughly proportional to the projects impact.

Staff's Response: The applicant has provided an accurate analysis of this subsection.

L. Mixed-use Development Requirement

Applicant Response: The proposal is for a Residential Master Planned Development and does not include any mixed-use elements. Should mixed use be proposed in the future, as part of the Multi-family residential development, the applicant understands that these provisions would apply.

Staff's Response: The applicant has provided an accurate analysis of this subsection.

M. Gated communities

Applicant Response: The proposal does not include a gated community, therefore this section does not apply.

Staff's Response: The applicant has provided an accurate analysis of this subsection.

4.5.500 Master Plan Submittal Requirements

A. Submittal requirements. The applicant shall submit an application containing all of the general information required for a Type III procedure, as governed by Chapter 4.1. In addition, the applicant shall submit the following:

1. A detailed project description by the applicant; this statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant;

2. Burden of Proof documenting compliance with all applicable approval criteria;

Applicant Response: This document and the associated exhibits detailed in the General Facts section provide the required project description and burden of proof, documenting compliance with all applicable approval requirements. In the event the City or any interested party determines that other criteria apply, the applicant will supplement the record to address, as warranted.

3. Complete application form with fee;

Applicant Response: The submittal includes the appropriate City of Sisters Application Form, along with the required application fees.

4. Electronic copies of all materials submitted (acceptable file types to be determined by the Community Development Director or designee); and,

Applicant Response: In addition to a hard copy, the applicant provided the City with electronic copies of the entire submittal package in PDF format on a CD.

5. Preliminary title report or equivalent printed within 90 days of the date of the application submittal.

Applicant Response: A preliminary title report dated February 22, 2015 is included in the submittal materials.

Staff's Responses: The applicant has met the requirements of this subsection in Items #1-5.

6. Existing Conditions Site Plan

Applicant Response: The existing conditions of the site are detailed on the Engineering Plan set of the Tentative Subdivision Plan.

7. Topographic Map at appropriate contour intervals to be determined by the Community Development Director

Applicant Response: The existing conditions map, included on the Tentative Subdivision Plan includes existing contours at adequate intervals. Furthermore, the Tentative Subdivision Plan shows proposed contours in association with site development.

Staff's Response: The applicant has met this requirement

8. Access and Circulation Map

9. Site Plan - proposed

10. Landscape/Open Space Plan

Applicant Response: The Master Plan includes an Access and Circulation Plan, a General Site Development Plan, and the Open Space Plan, in conformance with these requirements. Furthermore, the proposal includes a Tentative Subdivision Plan and a Park Site Plan. These two development components provide details regarding access, circulation, site development, and landscaping. The submitted materials are therefore sufficient to assess the proposals compliance with approval criteria and development standards.

Staff's Responses to Items #8-10: The Access and Circulation plan has been adequately illustrated by the applicant. The Site Plan for the proposed park does not contain specific landscape design elements including which existing significant trees, however a more detailed park site plan will be presented to City staff prior to construction of the park. Applicant has stated the Park will be constructed during Phase 3 of development Staff will work closely with the developer to coordinate future approvals with the City Parks Advisory Board, Planning Commission and City Council to design this park should the applicant propose to dedicate it as a public park.

11. Utility Plan

12. Conceptual Drainage Plan (to include benchmarks and elevations at staffs discretion)

Applicant Response: Utility and conceptual drainage plans are included on the Tentative Subdivision Plan. Public streets and alleys have been designed to the City's Public

Improvement standards which have a design that accommodates drainage from the public streets alleys within the right of way. Outside of public improvements, the Park Site Plan documents that drainage from the site will be maintained on site and the other planned lots are sufficiently sized to accommodate drainage on site; a comprehensive drainage facility is not proposed.

Staff's Response: The applicant's tentative subdivision plan meets the minimum requirements. The applicant will be required to provide detailed construction drawings to the City for approval prior to performing any site construction.

13. Elevations and floor plans of all proposed buildings, unless reviewed during subsequent Site Plan Review applications.

Applicant Response: The Master Plan and Tentative Subdivision Plan include a land layout and design. Vertical construction is not planned at this time, thus elevations and floor plans are not appropriately reviewed at this time. Vertical construction on the individual lots will be reviewed in association with future site development review requirements (building permits for detached single family homes and site plan review as required for attached single family, duplex, triplex, multifamily or cottage housing).

The Park Site Plan includes an illustrative concept plan. Elevations of the planned structure is included, meeting the submittal requirements of this section.

Staff's Responses: The applicant is proposing to develop 77 lots for single family detached residential units in the Residential (R) district portion of the property. At this point in the development phase, providing specific elevations and floor plans for the type of development being proposed is premature. When a building permit is applied for each of these housing units, the permit applicant will be required to meet the SDC portion for mandatory architectural design elements per 2.2.300.G Design Standards as well as any other applicable SDC requirements in effect at the time of building permit application. The applicant has provided a proposed elevation of a picnic shelter and indicated that the park will be developed with Phase 3 of he development. The applicant has also indicated their intent to comply with this section when the eventual site plan for the Multifamily Family (MFR) is submitted.

14. Sign Plan if applicable

Applicant Response: There is an existing monument at the intersection of N. Pine Street and Lundgren Mill Drive. A second monument currently exists at the east end of Lundgren Mill Drive. The applicant proposes to revise the signage at one or both ends to reflect the

name of this residential subdivision, but otherwise leave the monuments unchanged from their current status.

Staff Response: Other than the subdivision entrance signs as described by the applicant, all other signs with one exception should be related signage for public streets such as Stop and Street name signs. New or modified subdivision signs will be approved by Community Development Department staff and public street-related signs will be approved by the City Public Works Department. The one exception is related to the proposed park. If the park is eventually dedicated to the City, the park would have signs indicating its name and other signs stating the rules and regulations of the park. This park signage plan would be a part of a detailed site plan as previously mentioned.

15. Tentative Plat if applicable

Applicant Response: The proposal includes a Master Plan, in addition to a 5 Phase Tentative Subdivision Plan. The proposal is supported by a Tentative Plat that includes all of the required submittal components, detailed in Section 4.3.500 of the Development Code, thus conforms to this submittal requirement.

Staff Response: The applicant meets the requirements of this subsection.

16. Development Schedule

Applicant Response: A development schedule is included as an Exhibit to this proposal. A total of five Phases are proposed, over a period projected to be 4-5 years.

Staff Response: The applicant has met the requirements of this subsection. The phases of the construction have been adequately illustrated on the tentative subdivision plan and is a verified commitment. However, the applicant's proposed construction schedule to reach completion is only an estimate and is dependent on several external conditions. The applicant should not be held to this estimate of projected completion.

17. Copy of all existing covenants and restrictions, and general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).

Applicant Response: Included as an Exhibit is a draft copy of the CC&Rs for the Master Planned Development.

Staff Response: The applicant has met the requirements of this subsection. However, the City will not be responsible for enforcing any conditions in the proposed or final CC& R's. Any requirements or statements in contradiction to the conditional approval granted herein or contradictory to the applicant's Burden of Proof are deemed invalid. Additionally, any regulations that are in contradictory to or similar to but less lenient than City regulations will not be recognized or enforced by the City.

18. Special studies prepared by qualified professionals may be required by the Community Development Director, Planning Commission or City Council to determine potential traffic, geologic, noise, environmental, natural resource and other impacts, and required mitigation.

Applicant Response: Prior to submittal, the Community Development Director has not indicated that any additional special studies are required.

Staff Response: Staff has not required any special studies for this proposal.

4.5.600 Comprehensive Sign Plan

A. Comprehensive Sign Plan is intended to integrate the signs proposed for a development project with the design of the structures, into a unified architectural statement. A Comprehensive Sign Plan provides a means for defining common sign regulations for multi-tenant projects, to encourage maximum incentives in the design and display of multiple signs and to achieve, not circumvent the intent of this Ordinance.

1. Applicability. A Comprehensive Sign plan shall be required for all Master Plans. Signs shall comply with the provisions of this ordinance and Chapter 3.4 Signs.

2. Approval Authority. The City shall approve a Comprehensive Sign Plan as part of the Master Plan approval.

3. Application Requirements. The Comprehensive Sign plan shall include all information and materials required as follows:

a. Location: identification of sign locations on the buildings and on the property.

b. Materials: description of the type of sign and sign materials including construction materials and proposed lighting if any.

c. Size: itemization of sign size or sign band area at identified locations.

d. The Comprehensive Sign plan shall accommodate future revisions that may be required because of changes in use or tenants; and

e. Signs located in the Commercial Districts shall comply with the 1880's Western Design Theme.

4. Revisions to Comprehensive Sign Plans. The Community Development Department may approve revisions to a Comprehensive Sign plan if the intent of the original approval is not affected.

Applicant Response: The applicant proposes to revise the monument signage at one or both ends of Lundgren Mill Drive, to reflect the name of this residential subdivision. A photo of the signage at the western entrance is included as an Exhibit. The applicant intends to place a second sign at the eastern entrance, of similar design.

Staff's response: The issue regarding a Sign plan has been previously addressed in a staff response in to **4.5.500 #14 Signs.**

4.5.700 Master Plan Approval Criteria
The City shall make findings that all of the following criteria are satisfied when approving, or approving with conditions, the Master Planned development. The City shall make findings that at least one of the criteria is not satisfied when denying an application:

A. Comprehensive Plan. All relevant provisions of the Comprehensive Plan are met;

Applicant Response: The Comprehensive Plan is "...is the official planning document for the Sisters Urban Growth Area comprised of the existing City Limits and proposed Unincorporated Urban Growth Area within the Urban Growth Boundary..." (Sisters Comprehensive Plan / Introduction Page 1 - Paragraph 1), it is a broad-based document that guides and directs the community, it is an evolving document. The Comprehensive Plan is a substantial document that includes an Introduction, information regarding the Citizen Involvement process, General Goals and Objectives, a Background, and "Goals, Findings, and Policies". The "Goals, Findings and Policies" section contains specific policies statements that are measureable. These Policy Statement are the portion of the text from which it can be determined how the established Goals are going to be met.

In this section the applicant identifies the policies that that are applicable to this proposal and provide a response of how this proposal is consistent with the policy. In the event the City Staff, Planning Commission, City Council, or a Citizen feels that additional Policies are applicable, the will address them as warranted.

Goal 1: Citizen Involvement

1.1 GOAL

"To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process."

1.4 POLICIES

1. The City of Sisters shall seek out and encourage public participation in all aspects of the City planning process.

Tasks –

a. Planning Commission and City Council meetings shall be held on a regularly scheduled basis.

b. Planning Commission and City Council meeting agendas shall be publicized in a manner that makes this information widely available.

d. The City shall use a variety of methods to achieve citizen involvement.

Applicant Response: The Sisters Development Code contains procedures for all land use applications. The Development Code has been developed to be consistent with this Comprehensive Plan and the current proposal is being review in accordance with the adopted

Development Code procedures, including public notification and a hearing before the Planning Commission. The proposal, being reviewed in accordance with the adopted procedures is therefore consistent with these policies.

f. Establish a coordinated process for parks planning that involves residents, community groups, visitors, stakeholders, Parks Advisory Committee, and City staff.

Applicant Response: The applicant has planned a park to enhance the project and to comply with the City's Master Plan open space requirements, the park scheduled for development as part of Phase 3 of the development. The park planning process in Sisters is guided by the Park Master Plan. Park Master Plan identifies walkway system along Lundgren Mill Drive, but otherwise does not specify a needed park on this property. Thus, the City has established a coordinated process for park planning and revision to the plan is not needed to accommodate this site specific land use approval.

The applicant would be willing to engage in additional discussions and park planning efforts to ensure that that park meets City needs and desires, however should the additional park planning efforts result in additional time, costs, or changes to the plan, the applicant would request that the Park Site Plan be continued at that time, or that any modifications and costs associated therewith be the responsibility of the City Park Department and not burden the applicant.

Staff's Response: The applicant and the processing of this land use application meets the requirements of Goal 1.4 Citizen Involvement - Policies. In regards to the proposed Park, staff will discuss with the applicant the possibility of the proposed Park being dedicated as a public facility.

Goal 2: LAND USE PLANNING

2.1 GOAL "To establish a Land Use Planning process and policy framework as a basis for all decisions and actions related to the use of land and to assure an adequate factual base for such decisions and actions."

2.4 POLICIES

1. The City of Sisters shall develop land use codes and ordinances that are based on an adequate factual basis as well as applicable local, state, and federal regulations.

Tasks –

a. Codes and ordinances shall spell out responsibilities for administering and enforcing land use policies.

b. The City of Sisters Development Code shall be used to facilitate the development process and to implement the land use goals outlined in this Plan.

Applicant Response: The City has adopted the Sisters Development Code to administer and enforce land use policies. This proposal is being reviewed in accordance with the adopted code, which is consistent with these policies.

Staff's Response: The applicant and the processing of this land use application meets the requirements of Goal 2.4 Land Use Planning - Policies

Goal 3: Agricultural Lands

3.1 GOAL

"To preserve and maintain agricultural lands outside the City limits by promoting efficient use of urban lands inside the City limits."

3.3 POLICY

1. As the City expands its City Limits, lands designated for agricultural, forest, or rural residential uses by Deschutes County shall be re-designated to an urban, City of Sisters zoning designation according to procedures and methodologies established by the State of Oregon, Deschutes County, and the City of Sisters.

Applicant Response: Because the subject property is not agricultural land, this policy does not specifically apply, however permitting the planned Master Planned Development will allow for development in accordance with the planned use of the land, allowing for efficient use of land within the City and preserving agricultural lands outside of the City. Thus approving the proposal will ensure consistency with the goal of this chapter.

Staff's Response: The applicant and the processing of this land use application meets the requirements of Goal 3 Agricultural Lands - Policy

Goal 4: FOREST LANDS

4.1 GOAL

"To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture"

4.4 POLICIES

1. The City shall protect the economic, recreational, and ecological value of forested lands outside the UGB.

Task – a. The City shall require efficient use of urban lands inside the Sister UGB.

Applicant Response: The property is currently zoned for residential use and the City of Sisters has an undersupply of residential development, thus permitting the Master Plan would allow for development as anticipated on this property. Allowing permitted development of a needed housing type will decrease the need for development in other areas, such as forested lands outside of the UGB. Ultimately, approving development as planned and in accordance with the planned use, will ensure conformance with this Chapter.

Staff's Response: The applicant and this land use application meet the requirements of Goal 4 Forest Lands – Policies.

Goal 5: Open Space, Scenic and Historic Areas, Natural Resources

5.1 GOAL

"To protect natural resources and conserve scenic and historic areas and open spaces."

5.4 POLICIES

1. The City shall promote a harmonious relationship between residential, commercial, and industrial development.

Tasks –

> ***a. The City shall balance quantities of land to ensure land is available for a variety of uses, classified in a manner consistent with the carrying capacity of the land.***
>
> ***b. The City's Development Code shall contain provisions to include open space as a part of a Master Planned Development.***

Applicant Response: The Planning Commission and the City Council have been extensively involved in the recent Comprehensive Plan Amendment and Zone Change (CP14-1), that converted a portion of the property from IL / North Sisters Business Park to Residential (R). Through those land use proceedings, the City made extensive efforts to approve a zoning design that was found to promote a harmonious relationship between Residential uses and the nearby North Sisters Business Park and Light Industrial zoned properties. The current proposal does not change the quantity of land for any use or the location of these zones, instead the Master Plan proposal provide a conceptual plan for residential uses in accordance with the planned densities of the underlying zones. Furthermore, in accordance with the Master Plan requirement for open space, the proposal includes more than 15% of the net site area as open space. Because the Master Plan has been designed in conformance with the Development Code, to meet required densities, and to provide at least the minimum required open space, it is consistent with these Comprehensive Plan Policies.

2. The City shall identify and protect historical sites within the UGB.

3. The City shall identify and protect natural, riparian, and scenic resources within the UGB.

Applicant Response: The subject property has not been designated as an historical site and it does not have any identified natural, riparian, or scenic resources, thus development as proposed is consistent with the Goals and policies of this section.

Staff's Response: The applicant meets the requirements of Goal 5: Open Space, Scenic and Historic Areas, Natural Resources – Policies.

Goal 6: Air, Water, Land Resource Quality

6.1 GOAL

"To maintain and improve the quality of the air, water and land resources of the City."

6.4 POLICIES

1. The City of shall ensure the protection and wise use of our natural resources.

Tasks – a. The City shall ensure vegetation is and remains an integral part of Sisters.

Subtasks –1. The City shall encourage the protection of mature trees throughout the community. Native landscaping should be encouraged in all new developments. Mature trees, particularly Pinus Ponderosa, (Ponderosa Pine) should be protected in new developments and mitigation measures for cut trees shall be established. A standard shall be developed and added to the City's Development Code in Chapter 3.2, Landscaping, Street Trees, Fences and Walls to reflect protection requirements.

Applicant Response: The Goals and Policies of this section are implemented through landscaping standards of Chapter 3.2 of the adopted Development Code. The Development Code Landscaping standards apply to land division and site development, both of which are addressed in Section IV below. The existing conditions are documented on the Engineering Plan Set (Tentative Subdivision Plan) and as noted thereupon, the site has approximately 150 significant trees. Preservation of all of the significant trees is not practical when weighing the needs for residential and economic development in Sisters and tree preservation. Through the design of the conceptual planning phase, including the Tentative Subdivision Plan, the applicant identified approximately 30 "monumental" trees. These are the most prominent and significant trees on the site. Infrastructure has been planned to avoid these trees and future home design will also be designed to avoid these trees to the greatest extent practical. Other trees on this site may be impacted by infrastructure development, however trees outside of the proposed rights of way will be retained until time of lot development, so that individual lots can be designed to meet homeowner needs, while preserving trees to the greatest extent practical; in conformance with Development Code standards and consistent with the policies of this chapter.

Staff's Response: There is no definition for "monumental trees" as described by the applicant. The applicant meets the requirements in Goal 6: Air, Water, Land Resource Quality – Policies.

Goal 7: Natural Disasters and Hazards

7.1 GOAL

"To protect people and property from natural hazards."

7.4 POLICIES

5. During preliminary subdivision review, the planning staff, in coordination with the Sisters – Camp Sherman Rural Fire Protection District, shall indicate whether the developers' plan has adequately provided for fire protection.

Applicant Response: The proposal includes a subdivision. The Tentative Plan has been designed to the applicant's interpretation of the Fire Code. Furthermore, prior to submittal, the applicant has coordinated with City Staff who held discussion with the Sisters-Camp Sherman Rural Fire Protection District regarding fire protections. In addition to the preliminary coordination, it is the applicant's understanding that the City will formally coordinate with the Sisters – Camp Sherman Rural Fire Protection District as required in the review of this proposal. Thus the efforts that have been undertaken, in addition to the formal review procedures ensure consistency with this Comprehensive Plan Policy.

6. The City shall require certain land-disturbing activities associated with site clearing, grading, construction and other improvement to employ erosion control practices to prevent increased stream sedimentation.

8. Standards for new development shall require stormwater runoff to be infiltrated or detained onsite to the maximum extent practicable, or stored and treated in a regional facility to preserve the natural hydrograph and water quality of Whychus Creek.

Applicant Response: The proposal includes a subdivision and a site plan for a Park, which include land disturbing activities and impervious surfaces associated with development. The site is situated a sufficient distance from Whychus Creek and/or any stream, furthermore the applicant proposes construction in conformance with all city requirements, including any required erosion control measure and all storm drainage requirements. The submitted plan in association with the established review procedures will ensure consistency with this policy.

Staff's Response: The applicant meets the requirements of Goal 7: Natural Disasters and Hazards - Policies

Chapter 8 Recreation Needs

8.1 GOALS

"To satisfy the recreational needs of the citizens of the City and visitors, and, where appropriate, to provide for the siting of necessary recreational facilities."

"Maintain adequate park facilities providing a variety of recreational and cultural opportunities for residents and visitors of Sisters."

Applicant Response: The policies and tasks developed to implement this goal involve activities of the City, stakeholders and the community, in addition to the acquisition of park amenities. Although a park is proposed, the site does not include a planned or needed park, pursuant to the Park Master Plan, and none of the policies included in this section pertain to a Master Planned Development or Tentative Subdivision Plan.

The applicant intends to develop the Park as detailed on the Site Plan during or prior to Phase 3 development. After initial construction of the Park has been completed, applicant would be willing to engage in discussions with the Park Department and the Park Advisory Board, regarding public needs and desires of additional amenities. Because the proposed open space and parks meet the requirements of the Development Code, the applicant requests that any changes or modifications to the Park, be reviewed as an extension to the Site Plan, and/or be the responsibility of the City Park department, pursuant to negotiations with the applicant.

Staff's Response: Staff prefers to discuss the potential dedication of the proposed Park with the applicant prior to its development. The provision of the proposed Park and preservation of significant trees within the Park generally meets the requirements of Goal 8. Once these issues are agreed upon, the applicant meets the requirements of Goal 8 Recreation Needs.

Goal 9: Economic Development

9.1 GOAL

"To provide adequate opportunities for a variety of economic activities vital to the health, welfare, and prosperity of the City's citizens."

9.4 POLICIES

1. The City shall guide growth in a manner that will result in a balance between economic and environmental interests.

Applicant Response: The Planning Commission and the City Council held extensive discussions regarding this property and the need to balance economic, residential, and environmental interests, before approving the Comprehensive Plan Map and Zoning Map Amendments that converted the land to residential uses. The current plan includes a Master Plan to develop residential uses in accordance with the development standards of the underlying zone, thus the majority of the policies of this section are not applicable to the proposed development.

Staff's Responses: The applicant and the proposed development meet the requirements of Goal 9 Economic Development

9.4 POLICIES

1. The City shall guide growth in a manner that will result in a balance between economic and environmental interests.

Tasks

> **c. The City shall assure development contiguous to commercial and residential zones is designed and built in a manner that is consistent and integrates with the character and quality of those zones.**

Applicant Response: Great care has been taken in the development of the Master Plan. The proposal includes a design that orients lots (and subsequent structures) near Lundgren Mill Drive, North Sisters Business Park, and the Industrial Zone towards an internal street system and away from Lundgren Mill Drive and the nearby non-residentially zoned properties. The transportation system is integrated, providing needed connections, but the connections are provided to diminish the impacts of potentially conflicting uses. The proposed design thus conforms to this policy.

Staff's Responses: The applicant and the proposed development meet the requirements of Goal 9 Economic Development

Goal 10: Housing

10.1 GOAL

"To provide for the housing needs of citizens of the City and ensure that land development allows for different housing types and densities."

10.4 POLICIES

1. All residential developments shall retain and respect the physical characteristics of the site pertaining to existence of endangered species, significant natural features, soils, slope, geology, erosion, flooding and natural vegetation to the greatest extent possible. These developments shall be designed to be safe and aesthetically pleasing, recognizing and respecting the character of the area in which they are located.

Applicant Response: The City of Sisters has adopted a Development Code, which provides standards to ensure that this policy is met. As detailed throughout this burden of proof narrative, the proposal complies with all applicable development code standards and criteria, thus conforms to this policy as prescribed by code.

4. All residential development shall be provided with orderly extension of City services including sewer and water.

Applicant Response: The Master Plan and the Tentative Subdivision Plan include a plan for the extension of City Services. The plan ensures that services are extended throughout the site as needed for each phase of the development. The plan and design is consistent with all Development Code Standards in addition to Public Works Construction Standards, thus orderly as prescribed in the Development Code, thereby ensuring consistency with this policy.

6. Areas dedicated or provided as public, semi-public, or private open space as part of a residential development, as provided by the Development Code, shall be counted as part of the total area when computing residential densities for any given development. The gross size of the parcel will be used when calculating the minimum and maximum residential density allowed on a lot or parcel. It is the policy of the City to achieve a range of residential densities from 3-8 units per gross acre for standard residential and from 9-20 units per gross acre for multi-family residential.

Applicant Response: The property is 20.02 gross acres in size, consisting of 2.39 acres of MFR and 17.63 acres of R. Pursuant to this policy the land should achieve densities in accordance with the following ranges:

MFR (2.39 acres)	= 21.51 – 47.8
R (17.63 acres)	= 52.89 – 141.04
Total	= 74.40 – 188.84

As detailed on the Master Plan, the proposal includes 77 R zoned lots that are planned for detached single family homes and one MFR zoned area that could accommodate 22-25 units, based upon the housing type (attached single family homes, duplexes, triplexes or multifamily dwellings). The proposed densities are consistent with those prescribed in the Comprehensive Plan and the Development Code, thus conform to this policy.

Staff's Responses: Conditions of Approval Agreement 02/27/2007 Condition #5 state that the applicant will provide 8 affordable housing units. The applicant has indicated that these units will be provided when the MFR portion of the property is developed.

Goal 11: Public Facilities and Services

11.1 GOAL

"To plan and develop a timely, orderly and efficient arrangement of public facilities to support the City's development."

11.4 POLICIES

2. The City shall ensure that all properties within the Urban Growth Boundary are able to be provided with water, sewer, electrical and phone utilities.

Tasks-

b. Public facilities and all utilities (phone, cable, and power) shall be located underground and required "to and through" when a property is developed or redeveloped, in order to ensure that neighboring properties can be served in the future.

Applicant Response: The Master Plan and Tentative Subdivision include details of how each property will be served with water, sewer, electrical and phone utilities. Furthermore, all utilities have been planned underground and Will Serve letters from CEC, BendBroadband, and Century Link have been included with the proposal documenting utility providers willingness to serve the property.

Staff's Responses: The applicant meets the requirements of Goal 11 Public Facilities and Services.

Goal 12: Transportation

12.1 Transportation Goal

"To provide and encourage a safe, convenient and economic transportation system."

12.4 POLICIES

2. The City will be proactive in obtaining all elements of a well functioning multi-modal transportation system through all legal means.

Tasks –

> **b. Right-of-way for planned transportation facilities, access ways, paths, or trails shall be preserved through all practical means, including exaction, voluntary dedication, conditions of approval, setbacks, or other appropriate means.**
>
> **c. The City of Sisters shall include a clear and objective process for the approval of transportation projects in the City's Development Code.**
>
> ***d. New development shall integrate with the existing street and grid system to facilitate local traffic flows, access to developments, and safe access to state highways.***
> ***e. All public streets shall be constructed to City Public Works Construction standards.***

Applicant Response: In association with the Three Sisters Business Park, Phase I subdivision, the property has been developed with street and transportation improvements adequate to serve the previously planned North Sisters Business Park traffic volumes. The current proposal extends the existing facilities and the planned improvements. As detailed on the Master Plan and the Tentative Subdivision Plan, the improvements have been designed in conformance with City Public Works Standards, along with Development Code requirements. Based upon the submitted materials, the proposal is consistent with these policies.

7. Residential street lighting shall be designed consistent with the 1880s Western Design Theme, Dark Skies ordinance, and Development Code.

8. Street signs of a type approved by the City shall be provided by the developer for each new residential development.

Applicant Response: The proposed Tentative Subdivision Plan does not include street lighting. Street signs are anticipated to be similar to other street signs in the City and the developer will submit the design to the City for approval prior to installation.

Staff's Response: The applicant meets the requirements of Goal 12 Transportation.

Goal 13: Energy

13.1 GOAL

"To manage land uses in a manner to maximize the conservation of all forms of energy based upon sound economic principles."

13.4 POLICIES

1. All new development shall occur in a manner that encourages energy efficiency.

Tasks –

> ***a. All new development shall provide solar access, in accordance with the standards described in the Development Code, as conditions allow.***

Applicant Response: A comprehensive review of the solar access standards of Section 2.15.2500 are included in Section IV of this narrative. As detailed in Section 2.15.2500, the proposal provides solar access as prescribed in the code, thus is consistent with this Comprehensive Plan Policy.

> ***b. All new development shall conform to adopted building and development codes.***

Applicant Response: This proposal includes a Master Plan, a Tentative Subdivision Plan and a Site Plan for a park. As detailed throughout this review, the proposal complies with the applicable Development Code approval criteria and development standards. Regarding building codes, the park structures have been designed to the applicable building code standards, further review will be conducted after planning approval, in association with building permit applications. Also, future development of the MFR zoned development (attached single family homes, duplexes, triplexes, multi-family, cottage housing) will require Site Plan review and all development, including detached single family homes that are planned on the R lots, will require building permit applications. Thus the proposal, in addition to the City's review procedures (including Site Plan and Building Permits) will ensure compliance with this policy.

> ***d. Infrastructure in new developments, such as bike lanes, paths, and trails shall be laid out to provide convenient access to places of education, recreation, and shopping in an effort to promote energy efficiency. Routes should be constructed according to the City TSP, Sisters Area Trails Plan, or other applicable plans.***

Applicant Response: The transportation, bicycle and pedestrian routes have been designed after review of the City's TSP, the Sisters Area Trail Plan, and other applicable plans. The transportation system has been designed to connect to the multi-modal facilities within Lundgren Mill Drive, via local roads and green space corridors. These connections provide access to schools, recreation, and shopping throughout the City. Furthermore, the plan proposes a pedestrian connection to the existing forest service trails at the northwest corner of the property, enhancing connections to recreational opportunities, in accordance with this policy.

Staff's Response: The applicant meets the requirements in Goal 13 Energy.

Goal 14: Urbanization

14.1 GOALS

"To provide for an orderly and efficient transition from rural to urban land use."

14.4 POLICIES

1. ***The City shall promote development within the UGB to minimize the cost of providing public services and infrastructure and to protect resource land outside the UGB.***

Applicant Response: The subject property is within the UGB and it is developed with public services and infrastructure, thus pursuant to this policy, the City should promote and encourage development of this property to minimize the cost of providing services and infrastructure and to protect land outside of the UGB.

3. The Urban Growth Boundary is the official area for which to plan all land uses, public facilities, and annexations.

4. The City shall provide for an orderly and efficient conversion of urbanizable land to urban land, the City will manage the UGB to maintain the potential for planned urban development on urbanizable lands.

Applicant Response: The subject property is within the UGB and it has been developed with infrastructure throughout the site, the proposal does not expand or amend the UGB, it just manages lands within the UGB to allow for the efficient use of the land in Sisters. Development in accordance with the permitted uses is consistent with these policies.

Staff Response: The applicant meets the requirements of Goal 14 Urbanization.

- End of 4.5.700.A - A. Comprehensive Plan. All relevant provisions of the Comprehensive Plan are met;

B. Land Division Chapter. All of the requirements for land divisions, as applicable, shall be met (Chapter 4.3);

Applicant Response: A comprehensive review of Chapter 4.3 is included in Section III.B below. As detailed in that section, the proposal complies will all requirements of Chapter 4.3, therefore the proposal complies with this Master Plan Approval Criterion.

C. Chapter 2 Land Use and Chapter 3 Design Standards. Land use and design standards contained in Chapter 2 and 3 are met, except as modified by Section 4.5.400.

Applicant Response: A comprehensive review of Chapters 2 and 3 are included in Section IV below. As detailed in those sections, the proposal complies will all applicable development and design standards prescribed in Chapters 2 and 3, therefore the proposal complies with this Master Plan Approval Criterion.

D. Property Development Standards. Land use and design standards contained in Section 4.5.400 are met.

Applicant Response: A comprehensive review of Section 4.5.400 was addressed above. As detailed in that section, the proposal complies will all Master Plan Property Development Standards, therefore the proposal complies with this Master Plan Approval Criterion.

E. Architectural Features. The Master Plan includes architectural features that complement and enhance positive characteristics of the site and surrounding area. Setbacks from streets shall be staggered or buildings otherwise provided with architectural features that assure variety and interest along the street. Master Plans in the Commercial Districts shall comply with the 1880's Western Frontier Design Theme;

Applicant Response: The proposal include a Master Plan, a Tentative Plan, and a Site Plan for a park. The proposal generally establishes a "land" development plan for the site. With the exception of park amenities, vertical construction is not proposed at this time, but it is planned that vertical development (detached single family home construction on R zoned lands and townhouses, duplexes, triplexes or multifamily on the MFR zoned land) will comply with the standards of the underlying zones and the Architectural Design requirements of Section 4.5.400.A. Upon development these uses will be required to have adequate features to assure variety and interest for the residential development. A Site Plan for the Park is included in this submittal, the park has been designed with a significant amount of open space, large setbacks and architectural variety, thus in conformance with this section. Also, the proposal does not include a commercial district, thus the western theme does not apply. Based on the submitted materials, the proposal adequately documents compliance with this Master Plan Approval Criterion.

F. Compliance with Purpose of Master Planned Development Chapter. The Master Plan substantially meets the purpose of Section 4.5.100; and

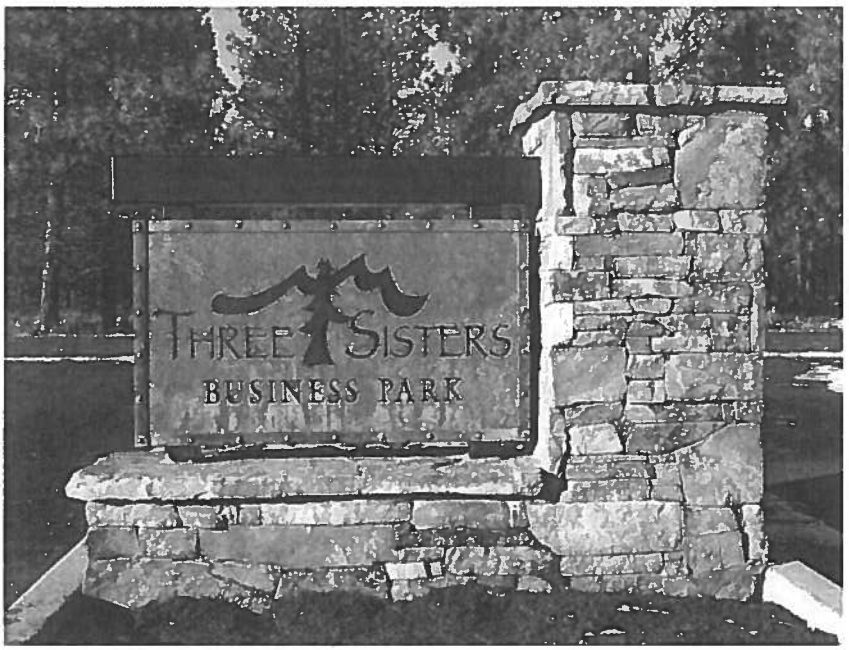
Applicant Response: The stated purpose of the Master Planned Development Chapter (4.5.100) is:

> *The purpose of this Section is to encourage creativity, flexibility and open space in the planning of Residential, Commercial, Industrial and Mixed Use Developments.*

The proposed Master Planned Development is not a standard cookie-cutter subdivision. The Master Plan sets out a creative plan that effectively incorporates multiple City zones, a mix of lot sizes, and a mix of housing types, while providing useable open spaces and unique clusters of housing. The proposal builds upon the established zones, meets required densities, and overlays an internal public systems (water, sewer and transportation) that efficiently connect to the existing systems. The proposal includes a design that incorporates lots that front on open spaces, establishing s unique cluster feel, lots with alleys, and a significant amount of open spaces, including a centrally located park. As stated in this chapter's purpose, design elements such as these are encouraged, thus the proposed design conforms to this Master Plan Approval Criterion.

G. Comprehensive Sign Plan. The Master Plan is in compliance with Section 4.5.600, Comprehensive Sign Plan.

Applicant Response: The applicant has previously constructed signage for Three Sisters Business Park. The existing monument at the west end will continue to be used, but will include a name change to reflect the new name for the residential subdivision. On the east end, a new sign will be constructed in similar fashion. A complete review of 4.5.600 was included above. See Exhibit "Signage Image".



H. Conformance with applicable public works, building and fire code standards.

Applicant Response: The Master Plan identifies locations of planned facilities along with general design specifications. The Tentative Subdivision Plan includes specific plans for main lines and service lines, including size, locations and specification. Additionally, prior to construction, the all tentatively approved plans are required to be submitted to the Public Works Department for final review and approval, before construction. After consultation with City Staff, the infrastructure design has been developed in conformance with the Public Work Construction Standards document, and through multiple review stages, the City's standard review process will ensure conformance with this Master Plan Approval Criterion.

Staff Response: The applicant meets the requirements of 4.5.700 Master Plan Approval Criteria.

4.5.800 Approval Durations, Extensions and Amendments.

A. Master Plan Approval Duration. The Master Plan approved by the Planning Commission shall expire three (3) years from the date on which the decision is final, if no construction or significant infrastructure improvements of the planned unit development has been initiated.

B. Extension

C. Additional Approval Time Extension

Applicant Response: The applicant has the necessary financing to initiate the infrastructure improvements for Phase 1 and will begin development activities immediately after City approval, thus anticipates compliance with the initial duration. However, should unforeseen market conditions arise, the applicant understands the approval duration and process for extensions detailed in this section.

D. Modifications to Master Plan

Applicant Response: A Modification is not proposed at this time, however, in the event the Master Plan needed to be modified in the future, such a modification will be subject to the modification procedures in place at that time.

Staff Responses: The applicant has acknowledged the requirements of **4.5.800 Approval Durations, Extensions and Amendments.**

III.B Chapter 4.3 - Land Divisions and Lot Line Adjustments

4.3.100 Purpose
The purpose of this Chapter is to:

A. Provide rules, regulations and standards governing the approval of subdivisions, partitions and lot line adjustments;

B. Carry out the City's development pattern, as envisioned by the Comprehensive Plan;

C. Encourage efficient use of land resources, full utilization of urban services, and adequate provisions for motor vehicle, pedestrian and bicycle circulation;

D. Promote the public health, safety and general welfare through orderly and efficient urbanization;

E. Lessen or avoid traffic congestion, and secure safety from fire, flood, pollution and other dangers;

F. Provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision for transportation, water supply, sewage and drainage; and

G. Encourage the conservation of energy resources.

Applicant Response: This section is a purpose statement and does not contain any specific measureable standards or criteria from which to assess the application. Instead this section is considered when interpreting ambiguous standards and criteria within this chapter.

Staff's Response: The applicant has acknowledged the intent of this Section.

4.3.200 General Requirements

A. Compliance with ORS Chapter 92. All subdivision and partition proposals shall be in conformance with State regulations set forth in Oregon Revised Statute (ORS) Chapter 92, Subdivisions and Partitions.

Applicant Response: The Sisters Development Code has been designed in conformance with ORS Chapter 92. The Tentative Subdivision Plan has been designed in conformance with the Development Code, and therefore will be in conformance with ORS Chapter 92. Future platting required by the City and the County will be followed, which further assures complies with ORS Chapter 92. Because this statute is carried out through local land use regulations, a specific review of ORS Chapter 92 is not required at this time.

Staff's Response: The applicant has provided an accurate analysis of this requirement.

B. Need for Adequate Utilities. All lots created through land division shall be served by public utilities and facilities such as sewer, gas, electrical, and water systems.

Applicant Response: The Tentative Plan identifies the locations of all utilities needed to serve the subdivision, including main line and service line locations. Furthermore, the Civil Engineer has provided documentation that each of the public facilities have adequate capacity to serve the development and each of the private utility providers have provided "Will Serve" letters indicating that capacity exists for the private utilities. The Tentative Subdivision Plan along with the supporting materials therefore document conformance with this General Requirement.

Staff's Response: The applicant has provided an accurate analysis of this requirement.

C. **Floodplain. Where land filling and/or development is allowed within or adjacent to the 100-year flood plain outside the zero-foot rise flood plain, and the Comprehensive Plan designates the subject flood plain for park, open space, or trail use, the City may require the dedication of sufficient open land area for a greenway adjoining or within the flood plain. When practicable, this area shall include portions at a suitable elevation for the construction of a pedestrian/bicycle pathway within the flood plain in accordance with the City's adopted trails plan or pedestrian and bikeway plans, as applicable. The City shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development's impact to the park and/or trail system, consistent with the Public Works Construction Standards, latest edition.**

Applicant Response: The property is not located in or near a floodplain, therefore this section is not applicable.

Staff's Response: The applicant has provided an accurate analysis of this requirement.

D. **Cul-de-sacs shall be "day-lighted" to provide pedestrian and bicycle access as allowed by neighboring properties as shown below. The Planning Commission, in conjunction with tentative subdivision plat applications, shall approve the design of all day-lighted cul-de-sacs (opening width, fencing, landscaping, hardscape, etc.).**

Applicant Response: The Tentative Subdivision Plan design does not include any Cul-de-sacs, therefore this section is not applicable.

Staff's Response: The applicant has provided an accurate analysis of this requirement.

E. **Easements for sewers, storm drainage and water quality facilities, water mains, electric lines or other public utilities shall be dedicated on a final plat, or provided for in the deed restrictions, prior to any connection to public infrastructure, in conformance to the Public Works Construction Standards, latest edition.**

Applicant Response: All existing and planned easements are shown on the Tentative Subdivision Plan and are planned to be recorded on the Final Plat in accordance with this General Requirement.

Staff's Response: The applicant has provided an accurate analysis of this requirement.

F. Public Improvements Required. Before City approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved in accordance with the City's Public Works Construction Standards, latest edition. Alternatively, the subdivider/partitioner shall provide a performance guarantee, in accordance with Section 4.3.800.

Applicant Response: The Tentative Subdivision Plan details all public improvements that are needed to serve all phases of the development. The submittal includes analyses prepared by the project's Civil Engineer that document the planned facilities are adequate to serve the development. Furthermore, the Tentative Subdivision Plan and the development schedule show how public facilities will be extended to serve each phase. In accordance with this section, the developer plans to install infrastructure needed to serve each phase, prior to platting or otherwise provide the needed guarantee.

Staff's Response: The applicant's tentative subdivision plans do not show the full details of all public improvements. Construction plans are required to be submitted and approved prior to construction of future infrastructure. However, the applicant has responded sufficiently to satisfy this requirement.

G. Underground Utilities. This standard applies only to proposed subdivisions. All utility lines including, but not limited to, those required for electric, communication, lighting and cable television services and related facilities shall be placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above. The following additional standards apply to all new subdivisions, in order to facilitate underground placement of utilities:

1. **The developer shall make all necessary arrangements with the serving utility to provide the underground services. Care shall be taken to ensure that above ground equipment does not obstruct vision clearance areas for vehicular traffic (Chapter 3.1);**

2. **The City reserves the right to approve the location of all surface mounted facilities;**

3. **All underground utilities, including sanitary sewers and storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets; and**

4. **Stubs for service connections shall be long enough to avoid disturbing the street improvements when service connections are made.**

5. **Exception to Under-Grounding Requirement. An exception to the undergrounding requirement may be granted due to physical constraints, such as steep topography, sensitive lands or refusal by utility companies.**

Applicant Response: The Tentative Subdivision Plan shows that all utilities will be provided underground. Also included as an exhibit are "Will Serve" letters which document that the private utility providers will provide service to the site in accordance with the plan and in conformance with this provision.

Staff Response: The applicant has satisfied the requirements of this Section.

H. Dedication Requirements.

1. **Where a proposed park, playground or other public use shown in a plan adopted by the City is located in whole or in part in a subdivision, the City shall require the dedication or reservation of this area on the final plat for the subdivision.**

2. **If determined by the Planning Commission to be in the public interest in accordance with adopted Comprehensive Plan policies and the City of Sisters Park Plan, and where an adopted plan of the City does not indicate proposed public use areas, the City shall require the dedication or reservation of areas within the subdivision of a character, extent and location suitable for the development of parks and other public uses.**

3. **All required dedications or reservations of public use areas shall conform to Section 4.3.200.K (Conditions of Approval).**

Applicant Response: A park is planned and shown on the Tentative Subdivision Plan. The park area will be reserved as such on the final plat in accordance with this section.

Staff Response: The applicant has satisfied the requirements of this Section.

I. Acquisition by Public Agency. If the developer is required to reserve land area for a publicly owned park, playground, or other public use, the land shall be acquired by the appropriate public agency within 24 months following final plat approval, at a price agreed upon prior to approval of the plat, or the reservation shall be released to the property owner.

Applicant Response: The proposal includes a centrally located park, along with a pocket park on the eastern boundary, and green space corridors adjacent to Lundgren Mill Drive. These areas are not identified on the Sisters Park Master Plan as planned or needed park areas. Furthermore, neither the Development Code nor the Comprehensive Plan require that the park be owed by a public agency. The developer plans to initially develop the park as a private park available for public use, but would be open to engaging in discussion about acquisition by a Public Agency, should one desire to acquire the park. Because a reservation for a publically owned park is not a requirement of this proposal, this section does not apply and negotiations could occur at any time.

Staff Response: The applicant has satisfied the requirements of this Section and Staff is willing to discuss this issue with the applicant regarding developing the proposed Park as a public facility.

J. System Development Charge Credit. Dedication of land to the City for public use areas shall be eligible as a credit toward any required system development charge for parks.

Applicant Response: The applicant understands that this section allows the City to provide a SDC credit, should the applicant dedicate land for public use, and such a credit would be negotiated though the dedication process.

Staff Responses: The applicant has satisfied the requirements of this Section.

K. Conditions of Development Approval. No development may occur unless required public facilities are in place or are guaranteed in conformance with the provisions of this Code and the Public Works Construction Standards, latest edition. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact.

Applicant Response: The proposal includes a Master Plan, along with a Tentative Subdivision Plan, and a Park Site Plan. The proposed Tentative Plan includes the installation of public facilities necessary to provide capacity for each phase of development, and the applicant plans to install the planned infrastructure prior to each final plat; thus the plan, as proposed, ensures that all required public facilities will be in place in accordance with the latest edition of the Public Works Construction Standards and the standards of this code. Given the planned improvements, it is not expected that the City will need additional public improvements to meet any Development Code standards. However, the applicant understands that should the City find the need for additional public improvements, constitutional law, and the standards of this section, establish that the City document a nexus to this project, and that any conditioned improvements be roughly proportional to the impact of the development. Also should that be the case, constitutional law establishes that the burden falls upon the City to document how such improvements are roughly proportional to the project's impact.

Staff Response: The applicant has provided an accurate analysis of this Section. The applicant has already contributed adequate funds toward mitigating traffic impacts and has also contributed funds toward supporting sewer service infrastructure.

L. When subdividing or partitioning tracts into large lots (i.e., greater than two times the minimum lot size allowed by the underlying land use district), the lots shall be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use district and this Code.

Applicant Response: Although the overall development will not retain "large lots", the interim phasing process will. The Tentative Subdivision Plan, along with the Phasing Plan, show that undivided areas will retain a size, shape, and orientation that will allow for future re-division both in accordance with 1) the planned development, or 2) the unlikely event that economic conditions limit completion, other re-division plans could occur.

Staff Responses: The applicant has provided an accurate analysis of this Section.

M. Streets shall be extended to the boundary lines of the parcel or tract to be developed, when the Hearings Body determines that the extension is necessary to give street access to or permit a satisfactory future division of, adjoining land. The point where the streets temporarily end shall conform to 1-3, below.

1. **These extended streets or street stubs to adjoining properties are not considered to be cul-de-sacs since they are intended to continue as through streets when the adjoining property is developed.**

2. **A barricade (e.g., fence, bollards, boulders or similar vehicle barrier) shall be constructed at the end of the street by the sub-divider and shall not be removed until authorized by the City or other applicable agency with jurisdiction over the street. The cost of the barricade shall be included in the street construction cost.**

3. **Temporary turnarounds (e.g., hammerhead or bulb-shaped configuration) shall be constructed for stub streets over 150 feet in length and in accordance to Oregon Fire Code.**

Applicant Response: The design at build-out connects to the existing street grid and will not need temporary treatment, however during the interim phasing, streets will be extended to the phase boundary, necessitating temporary treatments. The phasing plan may result in the need for temporary termination treatments and the applicant plans to consult with the Public Works Department and the Fire Department, to ensure sufficient temporary treatments are provided. Any required temporary treatments can be reviewed and be authorized through engineering plan review, prior to final plat approval for the associated phase.

Staff Responses: The City Engineer recommends that the applicant extend the Northern Street right of way to the western edge of the property. The USA/US Forest Service owns the adjoining parcel to the West and permission to extend the proposed street to intersect with N. Pine Street has not yet been secured. The Planning Commission should consider whether or not to require extension of this street and if the requirement is mandatory, the City will lead the discussion with the US Forest Service to obtain a public street easement across the property.

4.3.300 Infill Development Options
Some lots in existing neighborhood may have standard widths but may be unusually deep compared to other lots in the area. Infill candidate areas generally consist of unused space at the back of a lot that may provide room for one or more lots for infill housing. Infill lots may be developed as "flag lots" or "driveway courts" as defined herein.

Applicant Response: The proposal is not an infill development therefore the standards of these sections do not apply.

Staff Response: The applicant has provided an accurate analysis of the Section.

4.3.400 Approval Process

A. <u>Subdivision and Partition Approval through Two-step Process</u>. Applications for subdivision or partition approval shall be processed through a two-step process; the preliminary plat and the final plat.

1. **The preliminary plat shall be approved before the final plat can be submitted for consideration and approval; and**

2. **The final plat shall include all conditions of approval of the preliminary plat.**

Applicant Response: The applicant understand the subdivision review and approval process (including tentative/preliminary plan review and final platting process), and the applicant understands that the current subdivision proposal will be reviewed accordingly.

Staff Response: The applicant has acknowledged the commitment to comply with this Section.

B. <u>Review of Preliminary Plat</u>. Review of a preliminary plat with 2 or 3 lots (partition) shall be processed as a Type II procedure, as governed by Chapter 4.1.400. Preliminary plats with more than 3 lots (subdivision) shall be processed as a Type III procedure under 4.1.500. All preliminary plats shall be reviewed using approval criteria contained in Section 4.3.600.

Applicant Response: The proposal includes a Tentative Subdivision Plan for 78 total lots over 5 Phases, within a Master Planned Development. The applicant understand that the proposal is a subdivision and will be reviewed via the Type III procedure under 4.1.500 and in conformance with the approval criteria of 4.3.600.

Staff Response: The applicant has acknowledged the commitment to comply with this Section.

C. <u>Review of Final Plat</u>. Review of a final plat for a subdivision or partition shall be processed as a Type I procedure under Chapter 4.1.300, using the approval criteria in Section 4.3.700.

Applicant Response: Subsequent to preliminary Plat review, the applicant understands that final plats will be process as a Type I application, in accordance with the approval criteria of 4.3.700.

Staff Response: The applicant has acknowledged the commitment to comply with this Section.

D. <u>Preliminary Plat Approval Period – Single Phased Development</u>. Preliminary plat approval shall be effective for a period of two (2) years from the date of approval (the date it is mailed by the City) for single-phased land divisions. The preliminary plat shall lapse if a final plat has not been submitted within a 2-year period.

Applicant Response: The proposal includes a multi-phased development, therefore this section does not apply.

Staff Response: The applicant has provided an accurate analysis of this Section.

E. <u>Preliminary Plat Approval Period – Multi Phased Development</u>.

1. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be greater than two years for the first phase, and up to two additional years for all subsequent phases from the original approval date without reapplying for a preliminary plat. In no case however shall approval durations exceed six years from the original approval date (including extensions) for any phase of a multiple phase development.

Applicant Response: The proposal includes a 5 Phase development that is proposed to be built out over five years. The proposed development schedule and phasing plan conforms to the standards of this this section.

Staff Response: The applicant has provided an accurate analysis of this Section.

2. The criteria for approving a phased land division proposal are:

a. Public facilities shall be constructed in conjunction with or prior to each phase;

b. 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 permanent public improvements, in accordance with Section 4.3.800. A temporary public facility is any facility not constructed to the applicable City or district standard;

c. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal;

d. The application for phased development approval shall be reviewed concurrently with the preliminary plat application and the decision may be appealed in the same manner as the preliminary plat.

Applicant Response: The Tentative Subdivision Plan submittal includes both comprehensive engineered plans and a phasing plan. As detailed in the referenced submittal materials, all public facilities needed to serve each phase are planned to be constructed prior to or in conjunction with the phase and no temporary public facilities are proposed. The developer plans to construct all public facilities, thus the City or a third party is not being relied upon to construct facilities to serve the subdivision. Furthermore, the proposal includes a phasing plan that has been submitted with this application, thus can be reviewed concurrently. Based upon the submitted material the proposal complies with each of these phased land division approval criteria.

Staff Response: The applicant has provided an accurate analysis of this Section.

F. Extensions...
G. Additional Approval Time Extension...
H. Modifications...

Applicant Response: The applicant does not expect that an extension or modification will be needed, however should an extension or modification be needed, the applicant understands that it would be processed in accordance with the procedures in place at time of the request.

Staff Response: The applicant has acknowledged the requirements of this Section.

4.3.500 Preliminary Plat Submittal Requirements

A. General Submittal Requirements. The following information shall be submitted:

B. Preliminary Plat Information. In addition to the general information described in Subsection A above, the preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:

1. General Information:

a. Name of subdivision (not required for partitions). This name must not duplicate the name of another subdivision in the county in which it is located (please check with County Surveyor);

b. Date, north arrow, and scale of drawing;

c. Location of the development sufficient to define its location in the city, boundaries, and a legal description of the site;

d. Names, addresses and telephone numbers of the owners, designer, and engineer or surveyor if any, and the date of the survey; and

e. Identification of the drawing as a "preliminary plat".

2. Site analysis:

a. Streets: Location, name, present width of all streets, alleys and right-of way on and abutting the site;

b. Easements: Width, location and purpose of all existing public and private easements of record on and abutting the site;

c. Utilities: Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;

d. Ground elevations shown by contour lines at 5-foot vertical intervals for ground slopes exceeding 10 percent and at 2-foot intervals for ground slopes of less than 10 percent. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor. This requirement may be waived for partitions when grades, on average, are less than 6 percent;

e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);

f. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;

g. Sensitive lands, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection;

h. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;

i. Designated historic and cultural resources on the site and adjacent parcels or lots;

j. The location, size and species of trees having a caliper (diameter) of eight inches or greater measured at four feet above grade in conformance with Chapter 3.2, and, any tree with a historic designation regardless of size;

k. North arrow, scale, name and address of owner;

l. Name and address of project designer, if applicable; and

Applicant Response: The proposal includes a Tentative Subdivision Plan consisting of both the Existing Conditions and Site Analysis plan. The Tentative Subdivision Plan contains all of the items identified in the Submittal Requirements section above.

Staff Response: The applicant has complied with this requirement.

m. Other information, as deemed appropriate by the Community Development Director or designee. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.

Applicant Response: The Community Development Director has not indicated that any other studies or exhibits be provided.

Staff Response: Staff does not require any additional studies or exhibits beyond what is minimally required.

n. A Traffic Impact Statement or Study may be required at the discretion of the Community Development Director or designee for any development that will generate less than 200 vehicle trips per day. A Traffic Impact Study shall be required for any development that generates more than 200 vehicle trips per day.

Applicant Response: Prior to this property being annexed in the City of Sisters in 2001, David Evans and Associates completed a January 2000 Update to the Transportation Impact Study. A Development Agreement 2001-21130 between Deschutes County, City of Sisters, and Barclay Meadows Business Park LLC was signed on April 20, 2001. In this Agreement, the Applicant's property (known as the School District Property) in the Agreement, was allocated 210 PM Peak Hour trips to be used for future development, in exchange for substantial monetary payments by the Barclay ownership group. The 2001 Development Agreement remains in force, and provides the Applicant with a prepaid entitlement for a maximum amount of traffic generation on proposed development activity. Since 2001, two zone change applications have been approved by the City, both affecting the projected impacts of proposed development activity. In each case, the applicant submitted traffic analysis letters provided by Group Mackenzie of Portland, indicating the impact of development activity, and comparing it with the original allocation provided in the 2001 Development Agreement. Applicant has supplied a traffic analysis letter from Scott Ferguson, PE with this application, and is included as an Exhibit to the application. The proposed Masterplan and Subdivision project reduced traffic impacts compared with the original industrial usages envisioned at the time the property was annexed into the City. Since the applicant is proposing a development with fewer traffic impacts than the current agreement provides, the applicant is not required to provide a new Traffic Impact Study.

Staff Response: The applicant has provided an accurate analysis of the requirements in this Section. The City Engineer has determined that the subject traffic study and associated Development Agreement is sufficient and in still in effect for the purposes of evaluating this development proposal.

3. Proposed improvements:

a. Public and private streets, tracts, driveways, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts which are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;

b. Easements: location, width and purpose of all easements;

c. Lots and private tracts (e.g., private open space, common area, or street); approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all lots and tracts;

d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use; potential location of future buildings;

e. **Proposed improvements, as required by Chapter 3 (Design Standards), and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);**

f. **Preliminary location of development showing that future buildings can meet dimensional standards of base zone;**

g. **The proposed source and preliminary plans for of domestic water;**

h. **The proposed method and preliminary plans of sewage disposal and method and preliminary plans of surface water drainage and treatment, if required;**

a. **The approximate location and identity of utilities, including the locations of street lighting fixtures;**

i. **Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with Oregon Department of Transportation related to proposed railroad crossing(s);**

j. **Changes to navigable streams, or other water courses. Provision or closure of public access to these areas shall be shown on the preliminary plat, as applicable;**

k. **Identification of the base flood elevation for development of more than 3 lots may be required at the discretion of the Community Development Director or designee. If required, written evidence of initiation of a Federal Emergency Management Agency (FEMA) flood plain map amendment shall be required when development is proposed to modify a designated 100-year flood plain. FEMA approval of the amendment may be a condition of city land use approval;**

Applicant Response: The proposal includes a Tentative Subdivision Plan consisting of both the Existing Conditions and Site Analysis plan. The Tentative Plan contains all of the items identified in the Proposed Improvements section above.

Staff Responses: As previously discussed, the City Engineer recommends that the applicant extend the Northern Street right of way to the western edge of the property. The USA/US Forest Service owns the adjoining parcel to the West and permission to extend the proposed street to intersect with N. Pine Street has not yet been secured. The Planning Commission should specify whether this is a requirement as a condition of approval. Details are in the Draft Condition of Approval.

l. **Evidence of written notice to the Oregon Department of Transportation (ODOT) for any development requiring access to a highway under the State's jurisdiction; and**

Applicant Response: The proposed Tentative Subdivision Plan takes access off of Lundgren Mill Drive and Heising Drive, neither of which are a ODOT facility, therefore additional written notice from ODOT is not required.

Staff Response: The applicant has provided an accurate response to this Section.

m. Evidence of written notice to the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands and other sensitive lands.

Applicant Response: The property is neither within or near a wetland or other sensitive land, therefore additional written notice from other agencies are not required.

Staff Response: The applicant has provided an accurate response to this Section.

n. Phase development plan shall include the following;

1. Overall tentative plan, including phase or unit sequence, and the schedule of initiation of improvements and projected completion date.

2. Overall facility development phasing plan, including transportation and utility facility plans that specify the traffic pattern plan for motor vehicles, bicycles and pedestrian, water systems plans, sewer system plans and utility plans.

3. Development and phasing plans for any common elements or facilities.

Applicant Response: The proposal includes a Tentative Subdivision Plan, along with a phasing plan that documents how all needed public facilities will be provided for logically, sequentially, and in a manner that conforms to this section, along with Development Code standards and Public Works Standards and Specifications.

Staff Response: The City Engineer is recommending that the applicant extend the Northern Street to the edge of the property line as previously discussed. Notwithstanding the results of the Planning Commission decision to require this extension or not, the applicant has provided an accurate response to this Section.

4.3.600 Approval Criteria for Preliminary Plat

A. <u>General Approval Criteria</u>. The City may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:

1. All relevant provisions of the Comprehensive Plan are met.

Applicant Response: Generally, as it relates to development, the relevant provisions of the Comprehensive Plan are implemented through the Development Code. As detailed throughout this Burden of Proof narrative, the proposal complies with all applicable sections of the

Development Code, thus complies with the relevant provisions of the Comprehensive Plan. Furthermore, a detailed review of all potentially relevant components of the General Plan was included in Section III.A above. As noted therein the proposal, including the Master Plan, the Tentative Subdivision Plan, and the Park Site Plan are consistent with the relevant provisions of the Comprehensive Plan.

Staff Response: Notwithstanding the previously mentioned issue regarding extension of the Northern Street, the applicant has provided an accurate response to this Section.

2. **The proposed preliminary plat complies with all of the applicable Development Code sections and other applicable ordinances and regulations. At a minimum, the provisions of this Chapter, and the applicable sections of Chapter 2 (Land Use Districts) and Chapter 3 (Design Standards) shall apply;**

Applicant Response: A comprehensive review of the development standards of Chapters 2 and 3 is included in Section IV – Conformance with Development Standards below. As detailed therein, the proposal complies with all applicable sections of Chapter 2 and 3, and therefore complies with this Subdivision approval criterion.

3. **The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;**

Applicant Response: The applicant has coordinated with the County Surveyor and confirmed that the proposed subdivision name to be provided by April 1, has not been recorded for another subdivision in Deschutes County, therefore the proposal conforms to this subdivision approval criterion.

Staff's Response: The applicant has provided staff with the subdivision name: "Clearpine". Although the SDC does not have a requirement for the applicant to obtain approval from the City of Sisters for a subdivision name, the applicant should request Planning Commission feedback regarding the name.

4. **The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat; and**

Applicant Response: All of the surrounding properties are improved and/or subdivided. Lundgren Mill Drive is a principal street that provides access to the property. Additionally, Heising Drive provides access in the northeast corner of the property. The planned roads, sidewalks, pathways, utility connections, and surface water drainage elements are planned within right of way and have been designed to Public Works Standards. As detailed on the Tentative Subdivision Plan facilities are laid out to form a interconnected network of the facilities in conformance with this Subdivision Approval Criterion.

Staff Response: The City Engineer is recommending that the applicant extend the Northern Street to the edge of the property line as previously discussed. Notwithstanding the results of the Planning Commission decision to require this extension or not, the applicant has provided an accurate response to this Section.

5. All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat.

Applicant Response: All lots, parks, common areas tracts and easements are detailed on the Tentative Plan in conformance with this Subdivision Approval Criterion.

Staff's Response: General conformance to the quantity and arrangement of open space illustrated on the subdivision plat is required to conform to the Master Plan. However, it is appropriate to allow some future shifting of alignment in open space areas in response to final engineered plans being prepared. The applicant has satisfied the requirements of this Section.

B. <u>Housing Density</u>. The subdivision meets the City's housing density standards of Chapter 2.

Applicant Response: The property is 20.02 gross acres in size, consisting of 2.39 acres of MFR and 17.63 acres of R. Pursuant to the City's housing density standards of Chapter 2, the land should achieve densities in accordance with the following ranges:

MFR (2.39 acres) = 21.51 – 47.8
R (17.63 acres) = 52.89 – 141.04

As detailed on the Master Plan and the Tentative Plan, the proposal includes 77 R zoned lots that are planned for detached single family homes and one MFR zoned area that could accommodate 22-25 units, based upon the housing type (attached single family homes, duplexes, triplexes or multifamily dwellings). The proposed densities are consistent with those prescribed in the Comprehensive Plan and the Development Code, thus conform to this subdivision approval criterion.

Staff Response: The density standards for the Residential (R) District per 2.2.300.F Residential Density Standards state: The Density range for the Residential District shall be 3 units per gross acre minimum and 8 units per acre gross acre maximum. The applicant is proposing 77 units, which meets the requirements of the R District Section. The applicant has proposed a lot in the Multifamily (MFR) District that is adequately sized to provide 22 units either through a multifamily unit or via future land divisions, meeting the density standard of 9 units per acre gross minimum and 20 units per acre gross maximum. The applicant has accurately provided what density is possible when a future site plan is submitted.

C. <u>Conditions of Approval</u>. The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties.

Applicant Response: The proposal include a Master Plan, along with a Tentative Subdivision Plan, and a Park Site Plan. Given the planned improvements, it is not expected that the City will

need additional public improvements to meet or carry out any Development Code standards. Furthermore, given the layout and design, it is not anticipated that reserve strips will be needed to control access to adjoining properties. However, the applicant understands that should the City find the need for reserve strip takings, constitutional law establishes that the City document a nexus to this project, and that any conditioned taking be roughly proportional to the impact of the development. Also, should that be the case, constitutional law establishes that the burden falls upon the City to document how such a taking is roughly proportional to the project's impact.

Staff Response: The City Engineer is recommending that the applicant extend the Northern Street to the edge of the property line as previously discussed. Notwithstanding the results of the Planning Commission decision to require this extension or not, the applicant has provided an accurate response to this Section. This recommendation is reasonable, consistent with past practices and is within the authority of staff to submit. However, since the extension of the Northern Street to intersect with Pine Street crosses US Forest Service land, the City accepts responsibility to lead discussions with the Forest Service and the applicant to see if this is feasible. A reasonable condition of approval regarding this issue would be to require the applicant to place a right of way reservation to enable the street extension and require construction of that extension during Phase 4, if the Forest Service has given approval to construct the road extension prior to the commencement of Phase 4. If the Forest Service denies this request, the right of way reservation should be allowed to expire and be removed from the plat.

4.3.700 Final Plat Submission Requirements and Approval Criteria...

Applicant Response: The applicant understands that, after the preliminary plat is approved and the requisite conditions are addressed, a Final Plat may be submitted, reviewed, and approved via a Type I review and in accordance with the standards and criteria of this section.

4.3.800 Performance Guarantees

Applicant Response: The applicant understands that a performance guarantee may be allowed in-lieu of infrastructure improvements. Should a performance guarantee be pursued for any improvement associated with any phase, the provisions of this section will be followed.

Staff Response: The applicant has provided an accurate analysis of this Section.

4.3.900 Filing and Recording...

Applicant Response: These provisions apply to the filing and recording of a Final Plat, thus this section is not applicable at this time.

Staff Response: The applicant has provided an accurate analysis of this Section.

4.3.1000 Replatting and Vacation of Plats

A. **<u>Replatting and Vacations</u>. Any plat or portion thereof may be replatted or vacated upon receiving an application signed by all of the owners as appearing on the deed.**

Applicant Response: The proposal involves the replatting of Lots 9-19 along with Tract A of the Three Sisters Business Park, Phase I subdivision. The provisions of this section explain that a replat is permitted after receiving an application signed by all owners as appearing on the deed. The applicant owns all of the properties and has signed the application, thus pursuant to the standards of this section, the property may be replatted.

B. **Procedure. All applications for a replat or vacation shall be processed in accordance with the procedures and standards for a subdivision or partition (i.e., the same process used to create the plat shall be used to replat or vacate the plat). The same appeal rights provided through the subdivision and partition process shall be afforded to the plat vacation process. (See Chapter 4.1 – Types of Applications and Review Procedures).**

Applicant Response: The proposal has been submitted and is being reviewed in accordance with the procedures and standards of a subdivision and the applicant understands the appeal rights associated with this process.

C. **Basis for denial. A replat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys; or if it fails to meet any applicable criteria.**

Applicant Response: The proposal does not abridge or destroy any right of way or public use, improvement, street or alley. Additionally, as detailed throughout this burden of proof narrative the proposal complies with all criteria and standards that apply to the proposal; therefore there is not a basis to deny the replat, based upon this provision.

D. **Recording of vacations. All approved plat vacations shall be recorded in accordance with 4.3.900 and the following procedures:**

Applicant Response: The applicant plans to file and record the final plat in accordance with the provisions of Section 4.3.900.

1. **Once recorded, a replat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and**

Applicant Response: The applicant understands the functionality of recording the subdivision/replat.

2. **Vacation shall also divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described on the plat.**

Applicant Response: There are no existing public rights of way, streets, alleys or public grounds that need to be vacated on the area to be subdivided, therefore this section does not apply.

E. **After sale of lots. When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.**

Applicant Response: Lots of the Three Sisters Business Park Phase I have not been sold, furthermore the applicant to this submittal owns all of the existing lots and has signed the application form, therefore the submittal conforms to this provision to the extent that it is applicable.

F. Vacation of streets. All street vacations shall comply with the procedures and standards set forth in ORS Chapter 271.

G. Vacation of easements or rights-of-ways. The City may require accessways, paths or trails as a condition of the vacation of any public easement or right-ofway, in order to establish or maintain a safe, convenient, and direct pedestrian and bicycle circulation system.

Applicant Response: There are no existing public rights of way, easements, streets, alleys or public grounds that need to be vacated on the area to be subdivided, therefore this section does not apply.

Staff Response: The applicant has provided an accurate analysis of Section 4.3.1000 Sections A-G.

4.3.1100 Lot Line Adjustments....

Applicant Response: The proposal does not include a Lot Line Adjustment, therefore this section does not apply.

Staff Response: The applicant has provided an accurate analysis of this Section.

III.C. Chapter 4.2 - Site Plan Review

Site Plan review applies only to the proposed centrally located park improvements.

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.

Applicant Response: This item is a purpose statement and it does not contain any measurable development standards or approval criteria.

Staff Response: The applicant has provided an accurate analysis of this Section.

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

Applicant Response: The Park will establish a new use and include development as that term is defined in the code, therefore Site Plan Review for the park, in accordance with this section, applies.

> **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:...**

Applicant Response: The proposed park is a new use with a new structure and landscaping, it is not substantial alteration, therefore this section is not relevant.

Staff Response: The applicant has provided an accurate analysis of this Section.

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**

Applicant Response: The proposed improvements do not include any of the exempted items, therefore Site Plan review for the park applies.

Staff Response: The applicant has provided an accurate analysis of this Section.

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.

Applicant Response: This Site Plan proposal is being submitted as part of a Master Planned Development application, thus is being review via a Type III review procedure before the Planning Commission, as established in Chapter 4.5 and as permitted under these sections.

Staff Response: The applicant has provided an accurate analysis of this Section.

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.

Applicant Response: The Park Site plan will include basic amenities that could be constructed as the phased build out of the subdivision occurs. Examples of the types of amenities have been included with the park concept plan.

Staff Response: As mentioned previously, the City is willing to enter into discussions with the applicant regarding dedicating the proposed park as a public facility. The applicant has proposed to develop the park with Phase III of the development, and dedicate the Park to the City prior to the recording of Phase 4 lots. Staff does not support the provisions of portable toilets as a permanent sanitation solution regardless of the final status of ownership and maintenance. The Planning Commission should enable the submitted site plan to suffice for an interim solution until the status of the Park's ownership and maintenance is finally determined. Notwithstanding the issue mentioned above, the applicant has generally met the requirements of this Section.

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.

Applicant Response: A complete review of the Design Standards of both Chapter 2 and Chapter 3 are included in Section IV – Conformance with Applicable Development Standards

below. As detailed in that section the proposed park complies with all applicable standards of the referenced chapters, thus the proposed Park complies with this Site Plan approval criterion.

B. Adequacy of public and private facilities.

Applicant Response: The applicant will extend and install all necessary public facilities to the park, in association with subdivision construction. The construction plans will detail how services will be extended on the site, and given the expected impacts, needed infrastructure is being extended to the site in conformance with the Tentative Subdivision Plan submittal.

Staff's Response: Staff does not support the provision of portable toilets as a sanitation solution. Permanent water and sanitation facilities will be provided and appropriately planned once the determination has been made whether or not the facility will be a public park.

C. Traffic safety, internal circulation and parking, including pedestrian and bicycle safety;

Applicant Response: The park will have walkways, however it will not have any vehicular access or parking requirements. Therefore on-site pedestrian and bicycle facilities will remain safe from vehicular traffic. Furthermore, the on-site bicycle and pedestrian systems connect to public rights of way that are being designed to Public Works Standards, which sufficiently address traffic safety. The on-site systems, along with the public right of way interface adequately provide safety in accordance with this approval criterion.

Staff Response: The site plan meets the requirements of this Section. However, should the proposed Park be dedicated to the City, parking facilities may be constructed in coordination with the development.

D. Provision for adequate noise and/or visual buffering from non-compatible uses.

Applicant Response: Parks are a use that are permitted outright with both the R and MFR zones, thus the use is established as compatible with the surrounding zones. The park is separated from the surrounding R zoned properties by streets and right of way. Additionally, the park will be buffered from the MFR zoned properties through thoughtful landscape features. Based on the compatibility of the uses and the proposed park design, sufficient noise and visual buffering have been proposed.

Staff Response: The site plan meets the requirements of this Section.

E. Conformance with applicable public works, building and fire code standards.

Applicant Response: The park has been designed in conformance with Building, Fire, and Public Work standards. Prior to construction of any improvements on the park site, the applicant will submit for the required building permits, which will further ensure concordance with these standards.

Staff Response: During final design, the applicant will be required to follow these requirements.

F. Conformance with development requirements of the underlying zone.

Applicant Response: A comprehensive review of both the R and MFR zones (underlying zones) are included in Section IV – Conformance to Applicable Development Standards below. As documented therein, the proposal complies with all applicable requirements of those sections, therefore the proposed park complies with this Site Plan Approval Criterion.

4.2.600 Modifications...

Applicant Response: The proposal does not include a modification, therefore this section does not apply.

4.2.700 Approval Period, Expiration and Extension...

Applicant Response: The applicant understands the approval period, expiration and extension procedures of this section. The applicant anticipates timely construction after approval. If extensions are needed, such an extension request would follow the applicable extensions procedures.

4.2.800 Bonding and Assurances

A. <u>Performance Bonds for Public Improvements</u>. 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. <u>Release of Performance Bonds</u>. 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.

Applicant Response: All public improvements are being addressed as part of the Master Plan and/or Tentative Subdivision Plan. There will not be any public improvements (City water, sewer or transportation system) as part if the Park Site Plan, therefore these standards do not apply to the Site Plan review.

Staff Response: If the proposed Park is ultimately dedicated to the City, there is a strong likelihood that water and sewer service will be extended to the site. It is appropriate to enable the current site plan, with the exception of the proposed portable toilet, to provide an interim plan until the final status of ownership and maintenance is determined.

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.

Applicant Response: Applicant anticipates installing landscaping prior to usage of the park. In the event weather or other elements limit the ability to install the planned landscaping, the applicant understands that a security arrangement equal to the cost of landscaping may be required.

Staff's Response: It is appropriate to enable the current site plan, with the exception of the proposed portable toilet, to provide an interim plan until the final status of ownership and maintenance is determined.

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.

Applicant Response: The park will not have any business operating on the property, therefore this Site Plan Approval Criterion is not applicable.

IV. Conclusionary Findings – *Conformance to Applicable Development Standards*

***Note** – The narrative addressed the applicable Development Code development standards in the following manner:*

A. Chapter 2.2 Residential District (R)
B. Chapter 2.3 Multi-Family Residential District (MFR)
C. Chapter 2.11 Airport Overlay District
D. Chapter 2.15 Special Provisions
E. Chapter 3.1 Access and Circulation
F. Chapter 3.2 Landscaping
G. Chapter 3.3 Vehicle and Bicycle Parking
H. Chapter 3.4 Signs

Staff Response: As shown on the Tentative Plat, the Park is scheduled to be constructed in Phase 3. The applicant agrees to dedicate the Park to the City prior to the recording of Phase 4 lots. If the City ultimately accepts this dedication, agreements will be made between the City and developer to determine which party is responsible for certain improvements. Staff recommends that the current site plan submitted is approved, except the provision of portable toilets, with the condition that it is in an interim status until the final decision is made on its ownership. Final recommendations will be written at the end of this report.

IV.A Chapter 2.2 – Residential District (R)

2.2.100 Purpose

The Residential District is intended to promote the livability, stability and improvement of neighborhoods in the City of Sisters. This chapter provides standards for the orderly development and improvement of neighborhoods based on the following principles:

- **Make efficient use of land and public services, accommodate a range of housing types consistent with the Comprehensive Plan, and provide minimum and maximum density standards for land divisions.**
- **Provide for compatible building and site design at an appropriate neighborhood scale which includes public security and fire protection.**
- **Reduce reliance on the automobile for neighborhood travel and provide options for walking and bicycling. Provide direct and convenient access to schools, parks and neighborhood services.**
- **Maintain and enhance the City's historic and natural characteristics.**

Applicant Response: This section is a Purpose Statement and it does not contain any measureable development standards or approval criteria.

Staff's Response: The applicant has provided and accurate analysis of this Section.

2.2.200 Uses

A. <u>Permitted uses</u>. Uses permitted in the Residential District are listed in Table 2.2.1 with a "P". These uses are allowed if they comply with the development standards and other regulations of this Code.

B. <u>Special Provisions</u>. Uses that are either permitted or conditionally permitted in the Residential District subject to special provisions for that particular use are listed in Table 2.2.1 with an "SP". Uses subject to an SP shall comply with the applicable special use standards included in Chapter 2.15.

C. <u>Conditional uses</u>. Uses that are allowed in the Residential District with approval of a conditional use permit are listed in Table 2.2-1 with either a Minor Conditional Use "MCU" or a Conditional Use "CU". These uses must comply with the criteria and procedures for approval of a conditional use set forth in Chapter 4.4 of this Code.

D. <u>Similar uses</u>. Similar use determinations shall be made in conformance with the procedures in Chapter 4.8 – Interpretations.

Applicant Response: The R zoned properties of the Master Plan have been designed for detached single family homes, along with the open space areas. The planned uses are permitted outright within the R zone. There are other uses which the Development Code permits within an R zoned property, and although the other uses are not anticipated, the Master Plan proposes to follow the Development Code in terms of permitted uses.

Staff's Response: The applicant has provided and accurate analysis of this Section.

2.2.300 Development Standards

The following property development standards shall apply to all land, buildings and uses in the Residential District:

A. Lot Area, lot width, lot depth, setbacks, floor area ratio, lot coverage and building height. See Table 2.2.2.

Table 2.2.2 Development Standards in the Residential District

Development Standard	Residential District	Comments/Other Requirements
Minimum lot area		
Single family detached dwelling, manufactured dwelling on individual lot, zero lot line dwelling	6,000 square feet	
Duplex dwelling	11,000 square feet	
Attached dwelling (townhome)	5,500 square feet	
Child Care Center, Public and Institutional uses	None	
Lot width at front property line		
Single Family and manufactured dwelling	Minimum 45	Except for Flag Lots and Driveway Courts: See Land Divisions and Lot Line Adjustments; or as required by this Code to protect sensitive lands, significant trees, etc
Duplex	Minimum 65 feet	
Attached Dwelling	Minimum 45 feet	
Cul-de-sacs, all uses	Minimum 30 feet	
Child Care Center, Public and Institutional uses	No minimum lot sizes	
Lot depth		

All housing types	No maximum lot depth for child care center, public and institutional uses, For all other uses, maximum lot depth of three times the lot width	Except as required by this Code to protect sensitive lands, significant trees, etc.
Floor Area Ratio		
	Building construction may not exceed 50% of the total lot area for lots 10,000 square feet or larger.	The areas of a building subject to this development standard shall include the following: a. Areas within the building footprint considered to be habitable space. b. Garages exceeding 500 sq ft in size. Exceptions to FAR: - Accessorystructuresles s than 10 ft in height and 200 sq ft in area, child care center and public and institutional uses.
Lot Coverage		
	Maximum of 60 percent; except child care center and public and institutional uses shall be 80 percent	
Building Height		
		Maximum 30-feet for all residential uses; 35-feet maximum for all non- residential uses, also refer to exceptions.

Applicant Response: The Master Plan has been designed to allow density in the R zone to be achieved. Pursuant to Section 4.5.400.B of the Sisters Development Code, Master Planned Developments are allowed to modify development standards by up to 20%. As detailed in Section III.A above, this Master Plan requests to modify Lot Size, frontage and width requirements in the R zone. The Tentative Subdivision Plan includes 77 lots within the R Zone which range in area between 5003 sqft to 11,314 sqft, with frontages between 55-77 ft, and have lot depths between 90 and 135 ft. An explanation of how these development standards conform to theses or the Master Plan modification allowance is included below:

Lot Size

This section establishes a minimum 6,000 square foot lot size standard, Section 4.5.400.B of the Master Plan Chapter allows the underlying zone design standards to be reduced by 20%, thus permitting lot sizes within a Master Planned developments to be a minimum of 4,800. All lots that are proposed on the Tentative Plan exceed 4,800 therefore the Tentative Subdivision Plan meets the square footage requirements for the planned detached single family homes in the Master Planned R zone.

Staff's Response: Staff support's this modification request and recommends for Planning Commission approval.

Lot Width at Front Property Line

This section establishes a minimum width at the front property line of 45 feet (for interior lots, defined as the line abutting the street), Section 4.5.400.B of the Master Plan Chapter allows the underlying zone design standards to be reduced by 20%, thus code permits lot widths within a Master Planned development of 36 feet. All lots that are proposed on the Tentative Subdivision Plan exceed 36 feet in width, therefore the Tentative Plan meets the lot frontage requirements for the planned detached single family homes in the Master Planned R zone.

In addition to lots abutting a street, The Master Plan shows areas that will have frontage on open green spaces instead of a street, similar to what is currently permitted in the Cottage Code guidelines. The Tentative Subdivision Plan documents that 8 lots are proposed in these areas. Pursuant to a pending Development Code text amendment, the City intends to create an avenue whereby this green space design will be permissible through the Master Planning process. Once adopted, the text amendment will allow these 8 lots to have sufficient frontage to meet Development Code standards.

Staff's Response: The Text Amendment to allow lots to front open space was approved by Text Amendment TA-14-07 on 4/16/15, and awaits City Council approval at the public hearing scheduled for 5/14/15.. Staff supports this modification request and recommends for Planning Commission approval subject to approval of the aforementioned text amendment.

Lot Depth

Lot depths detailed on the Tentative Subdivision Plan do not exceed 3 times the lot widths, thus conform to the lot depth standards of this section.

Staff's Response: The applicant is required to comply with this standard regardless if the modification of lot widths are approved.

Floor Area Ratio

This standard applies to residential lots that are greater than 10,000 square feet in in size. As detailed on the Tentative Subdivision Plan other than the park, all lots in the R zone are proposed to be less than 10,000 square feet in size. The park property is on a mix of R and MFR zoned property and exceeds 10,0000 in size, thus this standard applies to the park. As detailed the Site Plan that has been included in this proposal the park will have minimal FAR, well below 50%, thus compliance with this will be easily meet in association with Site Plan.

Staff's Response: The applicant meets the requirements of this Section.

Lot Coverage

This sections established lot coverage of 60%. As detailed on the Park Site Plan, the planned park falls well below this standard. Beyond the park, additional vertical development is not proposed at this time, therefore future detached single family homes, will be reviewed for conformance to this standard in association with building permit applications.

Staff's Response: The applicant has provided an accurate analysis of this Section.

Building Height

With the exception of the Park, structures are not proposed at this time. The proposed park structure height will be less than 35 feet. This is below the standard of this section and it is anticipated that all structures will meet the building height standard. Review of building height for the planned detached single family homes will occur at time of building permit application.

Staff's Response: Prior land use development approvals and an active Development Agreement has placed a condition on the property that affect the heights of buildings along the northern property line (Lots 30-51). Although the Development Agreement was originally intended for industrial development, the conditions regarding building height still apply. The applicable terms within the development agreement require: '50' setback for buildings 20' or less in height' and '100' setback for buildings more than 20' high'. This would essentially restrict development of two story homes along the northern property line unless the development agreement is modified. The terms of the subject Development Agreement cannot be modified via this application. The Applicant may request a modification to the current setbacks on the northern property line in a future land use action. All other lots in the proposed development are required to meet the current standards or as modified herein.

Continued - Table 2.2.2 Development Standards in the Residential District

Front Yard Setbacks	
Porch	10 ft. min.
Primary Building/Living Space (Enclosed habitable area)/Accessory Building	10 ft. min.
Garage (front-loaded street accessed)	20 ft. min.
Garage (side-loaded street accessed)	10 ft. min.
Interior Side Yard Setbacks	
Primary Building/Living Space (Enclosed habitable area)/Accessory Building	5 ft. min.
Exterior Side Yard Setbacks	
Primary Building/Living Space (Enclosed habitable area)/Accessory Building	10 ft. min
Garage (front-loaded street accessed)	20 ft. min
Garage (side-loaded street accessed)	10 ft. min
Rear Yard Setbacks	
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.
Garage setbacks when accessed from an alley	20 ft. min.
Side loaded garages when accessed from alley	3 ft. min.

See also garage requirements 2.2.300.E

Accessory dwelling units shall comply with living space setbacks

B. General Exceptions to Setbacks and Building Height

1. Front and Rear Deck. An uncovered deck not exceeding 30 inches in height above grade may encroach into the front yard setback by no more than 6 feet and rear yard setback by no more than 8 feet, as long as it does not encroach into a public utility easement.

2. Acceptable Encroachments into Setbacks.

a. The following features are allowed to encroach into the required side setbacks by no more than two (2) feet: eaves, chimneys, overhangs, canopies, fire escapes, landing places, outside stairways, and similar architectural features.

b. The following features are allowed to encroach into the required rear setbacks by no more than two (2) feet: bay windows, chimneys, overhangs, canopies, fire escapes, balconies, landing places, outside stairways and similar architectural features.

c. The following feature is allowed to encroach into the front and rear setbacks no more than three (3) feet: eaves.

Applicant Response: The standards of this section relate to setbacks. Pursuant to the Master Plan, no exceptions to the setback standards have been requested in the R Zone. A portion of the park is situated within the R zone. As indicated in the Park Site Plan all structures will be situated over 10ft from any property line, thus in conformance with the setback standards of this section. Aside from the park, the Tentative Subdivision Plan proposes lots that range in size between 5005 and 11,314 sqft. The proposed lot sizes are sufficient to ensure that market demanded structures can be constructed thereupon in conformance with the setback requirements of this section. Further review of conformance to these standards will be reviewed in conformance with building permit review associate with the planned detached single family homes in the R zone.

3. <u>General Exceptions to Building Height</u>. Exceptions to the building height standard are available for certain types of affordable housing as set forth in Special Provisions. Chimneys, bell towers, steeples, roof equipment, flagpoles, and similar features that are not intended for human occupancy and which do not exceed 40 feet in height are not subject to building height limits.

Applicant Response: The park does not necessitate an exception to building height and additional vertical construction is not proposed at this time, thus exceptions to building height are not applicable at this time. Building heights will be reviewed in association with future building permit reviews for the planned detached single family homes in the R zone.

Staff's Response: The applicant has provided an accurate analysis of this Section.

C. Walls and Fences. Walls and fences may be placed on property lines, subject to the standards in Chapter 3.2 – Landscaping and Fences and Walls. Walls and fences within front yards shall also comply with the vision clearance standards in Special Provisions, Chapter 2.15.

D. Special Yards. Distance between buildings on the same lot. To provide usable yard area and allow air circulation and light, the distance between buildings on the same lot shall be a minimum of six feet.

E. Garage Requirements. In addition to Table 2.2.2, the following standards shall apply;

1. Minimum one car garage shall be required per unit for single-family detached dwelling, manufactured dwelling on individual lot, zero lot line dwelling, townhome and duplex dwelling

2. Garages and carports shall be accessed from alleys where available.

3. Side loaded street accessed garages. The street facing elevation of the garage shall include windows and landscaping shall be provided between the dwelling unit and the driveway and between the street facing elevation of the garage and front property line. The throat of the driveway shall be a maximum of 12 feet in width.

Applicant Response: The park is proposed with sufficient distance between structures and the proposal does not include fences, walls, or garages at this time. Exceptions to the standards of this section have not been proposed in association with the Master Plan, therefore, in association with future detached single family home construction, review of the these standards will occur with building permits.

Staff's Response: The applicant has provided an accurate response to these Sections.

F. Residential Density Standards. The following residential density standards apply to all land divisions in the Residential District.

1. The density range for the Residential District shall be 3 units per gross acre minimum and 8 units per gross acre maximum.

2. Minimum and maximum residential densities are calculated by multiplying the gross acres by the applicable density standard. For example, if the parcel size is 5 acres, the minimum density is 15 units and the maximum density is 40 units. When calculating minimum and maximum densities, figures are rounded down to the closest whole number.

3. The following types of housing are exempt from the density standards:

a. Accessory dwelling units
b. Bed and breakfast inns

Applicant Response: The R zoned property consists of 17.63 gross acres. Pursuant to the standards of this section along with the Comprehensive Plan, the R zone of the property has a required density range of 52.89-141.04 units. The Tentative Plan provides 77 lots, each of which is expected to provide one dwelling unit, thus the Master Plan, as implemented by the Tentative Subdivision Plan will achieve the required density, pursuant to this section.

Staff's Response: The applicant has provided an accurate response to these Sections.

G. Design Standards

1. Applicability. The design standards are applicable to the following types of uses and buildings in the Residential District:

a. Single-Family Detached Dwelling Units
b. Duplexes and triplex dwellings
c. Attached dwelling (townhome)
d. Public and institutional buildings
e. Manufactured dwellings

Applicant Response: Structures within the R zoned property are planned to be detached single family homes. These design standards will apply when structures are proposed, thus will be reviewed according the City's standards review procedure in association with a building permit application.

Staff's Response: The applicant has provided an accurate response to this Section.

IV.B. Chapter 2.3 –Multi-Family Residential District (MFR)

2.3.100 Purpose

The Multi-Family Residential District is intended to accommodate a range of housing types and lot sizes and to make efficient use of land and public facilities by establishing minimum and maximum density standards for housing. Multi-Family Residential District design standards ensure compatible building and site design at an appropriate neighborhood scale.

Applicant Response: The property contains 2.39 acres of MFR zoned property in the northeast quadrant. This section addresses the intent of development standards related to that portion of the property. The Purpose statement does not contain and measureable development standards or approval criteria, thus is only used as a guide in interpreting language of this chapter.

The MFR zoned area totals 2.39 acres (104,108.4 square feet). The park is planned on a portion of the MFR zoned area. No other development is proposed at this time. As detailed on the Tentative Subdivision Plan this area the park will be one unit of land and the remainder of the MFR area is being retained as one 2.13 acre lot. Retaining the area as one lot will allow for flexibility for future phases of development, with accompanying Site Plan(s).

Regarding the park, this section does not establish a minimum lot size, lot width or lot depth. The park plan is detailed on a Site Plan and as detailed thereupon, FAR is less than 60%, Lot

coverage is less than 60% and the structures are proposed to be less than 35 feet, therefore the design of the park conforms to these development standards.

Aside from the park, there are a number of options for development. At this point it is necessary to document that density, in conformance with the standards of this section can be met. Given that the lot is 92,757 square feet in size, it could be developed as a multi-family complex, providing up to 48 units, according to the lot area, lot width, lot depth, FAR, Lot coverage and building height standards. Also, if it were to be subdivided, it could be developed as 22-25 attached or detached single- family homes. Additionally, as detailed in Section III.A – the Master Plan has requested modifications of up to 20% for all of the development standards of this section, to ensure the greatest flexibility.

Ultimately, conformance with development standards will be reviewed upon future Site Plan review. However at this point, the applicant has adequately document that the proposed Master Plan and Tentative Subdivision Plan do not prevent development from occurring in accordance with the applicable development standards.

Staff's Response: The applicant has provided an accurate analysis of MFR District requirements. The applicant is not proposing a specific site plan for this section of the property via this application, therefore the following analysis will apply to specific modification requests presented herein. A site plan will be required when a specific development is proposed in the MFR zoned portion of the property.

Continued - Table 2.3.2 Development Standards in the Multi-Family Residential District

Setbacks	
Front Yard Setbacks	
Porch	10 ft. min.
Primary Building/Living Space (Enclosed habitable area)/Accessory Building	10 ft. min.
Garage (front-loaded street accessed)	20 ft. min.
Garage (side-loaded street accessed)	10 ft. min.
Interior Side Yard Setbacks	
Primary Building/Living Space (Enclosed habitable area)/Accessory Building	5 ft. min.
Exterior Side Yard Setbacks	
Primary Building/Living Space (Enclosed habitable area)/Accessory Building	10 ft. min

Garage (front-loaded street accessed)	20 ft. min
Garage (side-loaded street accessed)	10 ft. min
Rear Yard Setbacks	
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.
Garage setbacks when accessed from an alley	20 ft. min.
Side loaded garages when accessed from alley	3 ft. min.
See also garage requirements 2.3.300.E	
Accessory dwelling units shall comply with living space setbacks	

Applicant Response: The standards of this section relate to setbacks. Pursuant to the Master Plan, the applicant has requested that these setbacks be reduced by 20% to allow for the greatest amount of flexibility. A portion of the park is situated within the MFR zone. As indicted in the Park Site Plan all structures will be situated over 10ft from any property line, thus in conformance with the setback standards of this section. Aside from the park, the Tentative Subdivision Plan includes a lot that is sufficiently sized to ensure that market demanded structures can be constructed thereupon in conformance with the setback requirements of the Master Plan. Further review of conformance to these standards will be reviewed in conformance with a Site Plan review.

Staff's Response: Staff support's this modification request and recommends for Planning Commission approval.

B. General Exceptions to Setbacks and Building Height…

Applicant Response: With the exception of the Park, the proposal does not include any site development. The park does not propose and encroachments into setback standards or need any height exceptions, therefore the development standards of this section do not apply.

C. Fences and walls. Fences and walls may be placed on property lines, subject to

the standards in Chapter 3.2 – Landscaping and Fences and Walls. Fences and walls within front yards shall also comply with the vision clearance standards in Special Provisions, Chapter 2.15.

D. Special Yards. Distance Between Buildings on the Same Lot
Distance between buildings on the same lot. To provide usable yard area and allow air circulation and light, the distance between buildings on the same lot shall be a minimum of six feet.

E. Garage Requirements. In addition to Table 2.3.2, the following standards shall apply;

1. **Minimum one car garage shall be required per unit for single-family detached dwelling, manufactured dwelling on individual lot, zero lot line dwelling, town home, duplex and triplex dwelling.**

2. **Garages and carports shall be accessed from alleys where available.**

3. **Side loaded street accessed garages. The street facing elevation of the garage shall include windows and landscaping shall be provided between the dwelling unit and the driveway and between the street facing elevation of the garage and front property line. The throat of the driveway shall be a maximum of 12 feet in width.**

4. **Garage and Carport Requirements for Multi-Family. Minimum one car garage or carport shall be required for 50 percent of the units provided. Garage and carport design shall use the same architectural features as the multi-family dwelling units. Affordable multi-family dwelling units are exempt from the garage and carport requirements.**

F. Gated Communities. Gated communities are prohibited except as may be permitted by Chapter 4.5 Master Plans.

Applicant Response: The park is proposed with sufficient distance between structures and the proposal does not include fences, walls, garages or a gated community at this time. Exceptions to the standards of this section have not been proposed in association with the Master Plan, therefore, Site Pan review in association with future development, will assess compliance with these standards.

Staff's Response: The applicant has provided an accurate analysis of this Section.

G. Residential Density Standards. The following residential density standards apply to all land divisions in the Multi-Family Residential District and to multi-family housing on individual lots.

1. **The density range for the Multi-Family Residential District shall be 9 units per gross acre minimum and 20 units per gross acre maximum.**

2. **Minimum and maximum residential densities are calculated by multiplying the gross acres by the applicable density standard. For example, if the**

parcel size is 5 acres, the minimum density is 45 units and the maximum is 100 units. When calculating minimum and maximum densities, figures are rounded down to the closest whole number.

3. Accessory dwelling units are exempt from the minimum density standards.

Applicant Response: The MFR zoned property consists of 2.39 gross acres. Pursuant to the standards of this section along with the Comprehensive Plan, the MFR zone of the property has a required density range of 21.51-47.8 units. The Tentative Plan provides one lot that is expected to provide the required dwelling units, thus the Master Plan, as implemented by the Tentative Subdivision Plan, will achieve the required density, pursuant to this section.

Staff's Response: The applicant has provided an accurate analysis of this Section.

H. Design Standards. The following design standards are intended to provide detailed, pedestrian-oriented design, while affording flexibility to use a variety of building styles.

1. Applicability. The design standards are applicable to the following types of uses and buildings in the Multi-Family Residential District.

a. Single-Family Detached Dwelling Units
b. Duplex and triplex dwellings
c. Town home
d. Multi-family dwellings
e. Public and institutional buildings
f. Manufactured dwellings

2. Base standards. The figures in this section are intended to show examples of how to comply with the design standards. Other building styles and design can be used to comply, so long as they are consistent with the text of the standard. An architectural feature may be used to comply with more than one standard.

a. Building orientation. All buildings shall have their primary entrance oriented to the street or a common area (private street, courtyard, or open space). If oriented to a common area, the development shall provide a pedestrian sidewalk or pathway connecting the building entrance to the street.

b. Location of off-street parking. Off-street parking areas shall not be placed between the primary building facades and streets for multi-family, public and institutional and neighborhood commercial buildings. Alley access is required where existing alleys are available or can be extended to serve new development. Alley access is recommended for all uses unless it is not feasible because of existing development patterns or topography.

Applicant Response: With the exception of the Park, no structures are proposed at this time, therefore the standards of this section do not apply to the non-park area of the current proposal, but rather will be reviewed in association with future Site Plan review(s). Regarding the park, as detailed on the Site Plan, the site may have a structure, thus this section applies to that

structure and the site. Being an open air structure, there will be no primary entrance, however it is well oriented toward the street and the park area. Also, pursuant to Chapter 3.3, the park does not require any off-street parking and no off street parking is proposed, therefore the proposal complies with these design standards.

Staff's Response: Conditions regarding the development, ownership and subsequent maintenance responsibilities of the Park may change as previously discussed.

3. **Eyes on the street. All building elevations visible from a street right-of-way shall provide doors, porches, balconies, and/or windows. The standard applies to each full and partial building story.**

4. **Detailed design. All buildings included in the applicability section shall provide detailed design along all elevations (e.g., front, rear and sides). Detailed design requires use of at least five of the following architectural features on all front and exterior side (corner lot) elevations and at least three of the following architectural features on all interior and rear yard elevations, as appropriate for the building type and style. Architectural features shall be varied on the different building elevations.**

   a. Dormers
   b. Gables
   c. Recessed entries
   d. Covered porch entries
   e. Cupolas or towers
   f. Pillars or posts
   g. Eaves (minimum 6-inch projection)
   h. Off-sets in building face or roof (minimum 16 inches)
   i. Window trim
   j. Bay or oriel windows
   k. Balconies
   l. Decorative patterns on exterior finishes (e.g., scales/shingles, wainscoting, ornamentation, and similar features)
   m. Decorative cornices and roof lines (e.g., for flat roofs)
   n. An alternative feature providing visual relief and detail, similar to options a-m above.

Applicant Response: With the exception of the park, no structures are proposed at this time, therefore the standards of this section do not apply to the non-park area of the current proposal, but rather those areas will be reviewed in association with future site plan review(s). Regarding the park, an open air structure to be constructed will provide adequate "eyes on the street". Regarding the detailed design, the structure has a number of design features which provide sufficient relief in accordance with the intent of these standards. See Park Site Plan exhibit.

Staff's Response: The applicant has provided an accurate analysis of this Section.

I. **Garbage and Recycling Collection Areas. An exterior garbage and recycling collection area is required and shall be oriented away from the street.**

J. Mechanical Equipment. Mechanical equipment located on the ground, such as heating or cooling equipment, pumps or generators, must be screened from the street by walls, fences, or vegetation. Landscaping and screening shall be tall enough to screen the equipment. Mechanical equipment is not permitted to be placed on roofs. Screening shall be compliant with all applicable fire codes.

Applicant Response: The park does not require any garbage or recycling area and it does not necessitate and mechanical equipment. Also, the non-park area of the MFR zoned property is not planned for vertical development at this time. Garbage and Mechanical Equipment review is therefore not applicable at this time.

Staff's Response: Conditions regarding the development, ownership and subsequent maintenance responsibilities of the Park may change as previously discussed.

K. Additional Design Standards for Multi-Family Housing....

Applicant Response: It is planned that the MFR zoned area of the property will be developed at a later date, in association with Phase 5. Multi-family dwellings proposed at that time will be reviewed for conformance with this standard.

Staff's Response: The applicant has provided an accurate analysis of this Section.

IV.C. Chapter 2.11 — Airport Overlay District (AO):

A. Purpose

This overlay zone is intended to prevent the establishment of airspace obstructions within the Sisters Eagle Air Airport approach surfaces that are located within the City of Sisters city limits. The protection of the Airport Imaginary Surfaces will be accomplished through height restrictions and other land use controls as deemed essential to protect the health, safety and welfare of the people of the City of Sisters.

1. **In order to carry out the provisions of this overlay zone there is hereby created an Airport Imaginary Surfaces Map that pertains to the Sisters Eagle Air Airport Imaginary Surfaces that are located within the City of Sisters city limits.**

2. **The airport overlay zone requirements have been designed to comply with the provisions of the following legislation:**

   a. **Federal Aviation Regulations, Part 77 – Objects Affecting Navigable Airspace**

   b. **Oregon Administrative Rules, Chapter 738, Division 70, Physical Hazards to Air Navigation**

   c. **Oregon Revised Statutes Section 836.310, Airports and Landing Fields**

   d. **The Land Conservation and Development Commission Transportation Planning Rule**

e. **Goal 12 - Transportation, of the Oregon Land Conservation and Development Commission Statewide Planning Goals and Guidelines, Planning Guideline 2 and Implementation Guideline 3.**

f. **Policy 12 and 13 from the Transportation section of the Sisters Urban Area Comprehensive Plan. City of Sisters Development Code Chapter 2.11 Page 1City of Sisters May 12, 2012**

Applicant Response: As evidenced by the City Airport Overlay Zone Map, the entirety of the City of Sisters (with the exception of a portion of land along the western boundary) falls within the Airport Overlay Zone. This zone has been developed to comply with Aviation related legislation, including all regulations referenced by the ODA representative. Pursuant to this section of the Development Code, conformance with the referenced provisions will be addressed by implementing the standards of the Sisters Development Code.

2.11.200 Compliance
In addition to complying with the provisions of the primary zoning district, all uses and activities shall comply with the provisions of this Airport Overlay Zone. In the event of conflict between any provisions of this overlay zone and the primary zoning district, the more restrictive provision shall apply.

Applicant Response: This is a procedural standard and does not contain any review provisions.

2.11.300 Definitions...

Applicant Response: The definitions are for reference only and this section does not contain any development standards or approval criteria.

2.11.400 Permitted Uses

1. **Uses permitted in underlying zone district. Uses listed as permitted or conditional in the underlying zone are allowed within the Airport Overlay District unless prohibited in Section 2.11.500 or the development limitations of Section 2.11.600.**

2. **Determination of Similar Land Uses. Similar use determinations shall be made in conformance with the procedures in Chapter 4.8 - Interpretations.**

2.11.500 Prohibited Uses

1. **New structures or buildings are not allowed within the Runway Protection Zone.**

2. **New places of public assembly designed to accommodate 50 people or more are not allowed on land zoned Urban Reserve District (UR) within the first 1,500 feet of the Approach Safety Zone. Please see Chapter 2.9 Urban Reserve District (UR) for the specific regulations regarding this zone.**

3. **New wetland enhancements including migratory bird refuges, water impoundment(s), landfills, waste disposal sites, commercial bird farms or similar uses individually exceeding two (2) acres in size that attract and sustains flocks of**

birds are not allowed on land beneath the Horizontal Surface.

4. **New uses that interfere with aviation due to height of structures, glare from buildings, smoke, or safety considerations are not allowed. Specific evidence of aviation interference must be demonstrated before a use (not listed above) is prohibited. The evidence must show that the use will regularly produce an interference listed above, based on its normal operating characteristics.**

2.11.600 Use and Development Limitations

1. **No new structure, except one customarily used for aeronautical purposes, shall penetrate into the Airport Imaginary Surfaces as defined in section 2.11.300.**

2. **No glare producing material (unpainted metal, reflective glass, and similar materials, etc.) shall be used on the exterior of structures within the Airport Approach Safety Zone.**

3. **In noise sensitive areas (within 1,500 feet of the airport runway) a Declaration of anticipated noise from aircraft shall be recorded against the property in the deed records of Deschutes County. Property owners or their representatives are responsible for providing the recorded instrument prior to issuance of building permits or final plat approval for land divisions.**

4. **Within the first 1500 feet of the Airport Approach Safety Zone, a Hold Harmless Agreement and Aviation and Hazard Easement shall be attached to any building permit for residential or places of public assembly, and shall be recorded against the property in the deed records of Deschutes County. Property owners or their representatives are responsible for providing the recorded instrument prior to issuance of building permits.**

Applicant Response: The Development standards of these sections address uses. The current proposal includes a Master Plan, along with a Tentative Subdivision Plan, and Park Site Plan. In addition to the park, future development is planned for residential development, however specific development is not proposed at this time. As detailed in a review of Chapters 2.2 and 2.3 above, only uses permitted within the underlying district are planned. Also the park is not within the runway protection zone, within 1500 feet of the Approach Safety Zone, include wetland enhancements, or include uses or structures that could interfere with aviation, thus the park is not one of the explicitly prohibited uses, or one of the limited uses. When additional development occurs on the site, all applicable development standards, including this section, will apply to such development. Development within the horizontal and transitional surface zones is not uncommon in the City of Sisters, as there are a number of areas throughout the City that fall within the various subzones of Airport Overlay Zone segments, including residential zones in the transitional surface zone.

Staff Responses: The applicant has provided an accurate analysis of this Section.

2.11.700 Non Conforming Uses (See also Chapter 5.2)...

Applicant Response: The property is vacant and there are no existing uses on the site, therefore this sections does not apply.

2.11.800 Procedures (See also Chapter 4.1 for Applications and Review Procedures that are also applicable to this Overlay District.)

1. **All proposed development and uses within the overlay zone are subject to site plan review to determine compliance with the provisions of this district. All land use and building permit applications shall provide a site plan showing:**
   a. Property boundary lines and elevations as they relate to the Airport Imaginary Surfaces.
   b. Location and height of all existing and proposed structures, utility lines and roads.

2. **All applications requiring site plan approval within the Airport Imaginary Surfaces and noise corridors shall be submitted to the Aeronautics section of the Oregon Department of Transportation for review. The Oregon Aeronautics has 10 days from date of receipt of an application to review and return comments to the Planning Department.**

Applicant Response: At this time the park is proposed, however other development will be reviewed in association with the subsequent Site Plan Review and/or Building Permit Review. The submitted materials sufficiently document the items required under this section. The Applicant understands that the City will forward the proposal to the required agencies for review.

Staff's Response: Sisters Airport reviewer Benny Benson stated: "Thanks for passing this along. My request is that you take a close look with respect to Airport Overlay Areas and the Airport Safety Combining Zone and apply sufficient wording so that developers and future land owners acknowledge these areas and the potential for air traffic/activities and associated noise. If I remember the regulation correctly, the acknowledgement puts the responsibility on the developer/land owner to provide for building around noise mitigation and the inability to file complaints against the airport. (Reference 18.80.044.A). In the interest of future encroachment in and around the airport this needs to be a highlighted/recorded point/document.

I see there is reference to not being within 1500 feet of the runway an thus potentially not part of the noise sensitive area. Since the runway primary surface actually extends 200 feet past the end of the pavement, I think they may need to remeasure for confirmation. Either way the critical item is record of acknowledgement of potential airport activities and associated noise for long term encroachment protection.

For reference, typical flying patterns when approaching a runway to land are with left turns. For the Sisters Airport that will put landing traffic N & NW of the airport at altitudes at and below 1,000. If I read the development map right, this air traffic pattern will at times be directly over the proposed development. Otherwise, I am completely supportive of the development and hope we can get more housing access in the city sooner than later."

Add conditions of Zone Change affecting only those lots in the SE corner of the proposed development, directly in the Airport Transition Zone.

2.11.900 Variances (See also Chapter 5.1)...
Applicant Response: No variances are proposed and therefore the standards of this section do not apply.

IV.D. Chapter 2.14 – North Sisters Business Park (NSBP) District

2.14.200 Applicability

The standards of the North Sisters Business Park district, as provided for in this section, shall apply to those areas designated North Sisters Business Park district on the City's Zoning Map. All structures within the North Sisters Business Park district shall meet the design requirements contained in the Special/Limited Use Standards in this chapter.

Applicant Response: Although a portion of the property was previously situated within the NSBP District (Lots 9-19), the City has approved a Comprehensive Plan Map Amendments and Zone Changes that changed both the Comprehensive Plan and the Zoning Map to Residential. Therefore the portion of the property subject to this proposal is no longer situated within the NSBP and this section does not apply.

Staff's Response: The applicant has provide an accurate analysis of this Section.

IV.E - Chapter 2.15 – Special Provisions

2.15.100 – Purpose of Special Provisions

This Chapter supplements the standards contained in this ordinance. It also provides standards for certain land uses to ensure compatibility of those uses within all the zoning Districts.

2.15.200 Applicability

The regulations in this Section shall apply in all zoning districts. Where conflict between regulations occurs, the regulations in this Section shall apply.

2.15.800 Affordable Housing

A. Purpose. The purpose of this Section is to encourage the development of affordable housing for low-income residents, as defined in this section.

B. Definitions. Affordable housing is defined as housing in which low income residents spend no more than 30 percent of their gross household incomes on housing- related expenses. Households are considered "cost-burdened" if they pay more than 30 percent of total household income on housing costs. Housing-related expenses are defined by HUD as follows: • For homebuyers, housing-related expenses include mortgage principle and interest, taxes, property insurance, mortgage insurance, and essential utilities; • For renters, housing-related expenses include rent and utilities.

C. Applicability.ExceptwhereexplicitlystatedotherwiseinthisSection,Affordable Housing must comply with the standards of this Code as they apply to all other residential

development.

D. Eligibility.

1. Residential portions of proposals using this bonus shall include one of the following:

a. At least 10 percent of units must be affordable to those earning no more than 30 percent of the area median family income;

b. At least 20 percent of units must be affordable to those earning no more than 60 percent of the area median family income; or

c. At least 40 percent of units must be affordable to those earning no more than 80 percent of the area median family income.

2. In addition, the bonus provisions of this Section are exclusively available for development that meets one of the three following criteria:

a. The development will use funding or loans from State or Federal agencies designated for the purpose of developing low-income affordable housing. As determined by the City Community Development Director, developers utilizing the provisions of this Section may be required to enter into covenants stating that they have or will enter into Use and Regulatory Agreements with one of the following entities: Oregon Department of Housing and Community Services, Federal Department of Housing and Urban Development (HUD), and/or the USDA Rural Development Project.

b. The development will create low-income affordable housing and the developer agrees to enter into a covenant with the City, that must be reviewed by the City Attorney, approved by the City Community Development Director, and ratified by the planning commission. The covenant shall do all of the following as a minimum condition of approval with the exception of income monitoring for home ownership programs such as Habitat for Humanity:

i. State the percentage of the housing units that will be rented or sold at a rate that is affordable to low-income residents.

ii. Delineate a system that enables the City to easily monitor the specified percentage of units is in the fact rented affordably to low-income residents, who qualify under Section 8 HUD guidelines.

iii. Guarantee that the developer or any successor will maintain rent/payments and income controls for a period of 20 years.

iv. Stipulate that if the developer or any successors do not charge affordable rents as provided for in the covenant or do not make a good faith effort to monitor the income level of residents to ensure that they meet the definition of low income at the start of their occupancy, the City is entitled to significant recompense. The amount of recompense shall be specifically stated in the covenant and determined jointly by the developer and the City.

c. The development will be built by a recognized non-profit organization (such as Habitat for Humanity) whose mission is to provide affordable housing. The organization will be required to provide the following documentation:

1. 501c3 Status

2. Mission Statement

3. Family Selection Criteria (including family income less than 60% of area median income).

4. Trust Deed or Sales document used by the organization which ensures long-term affordability (such as a shared appreciation agreement or other deed restriction).

E. DensityBonus.Housingdevelopmentsthatmeettheeligibilityrequirementsofthis section may be up to 125% as dense as is otherwise allowed within the applicable district. This density bonus may be translated into the creation of new lots that are no smaller than 80% of the permissible lot size in any residential zone.

F. Height Bonus. Housing developments that meet the eligibility requirements of this section may be up to 5 feet taller and multi-family housing may be up to 7 feet taller than is normally allowed within the applicable district.

Applicant Response: Although not proposed at this time, pursuant to a 2007 Conditions of Approval letter for North Park Commons, the applicant may be required to provide affordable housing within the proposed subdivision. These units would be located in the MFR zone, and when said development occurs the applicant understands that the provision of this section may be applied.

Staff's Response: The applicant is required to provide Affordable Housing units per CP and ZC amendments Condition #5. The applicant has indicated that the required affordable housing will be provided in association with development of the MFR zoned portion of the property, which will insure conformance to the affordable housing requirement.

2.15.2300 Vision Clearance.

Vision clearance is defined by a triangle created as follows: starting at the intersection of the projections along the edge of the pavement or along curb lines into the intersection of two vehicular ways, measure out from this point along each way for the specified distance to create two legs of a triangle and connect these two legs across the corner of

the intersection (as shown in Figure 2.15.2300.A.). The clear vision space is defined by this triangle between 3' and 8' in height from the ground; within this space, the line of sight must remain unobstructed.

The legs of the triangles shall be determined as follows:

1. **At the intersection of a street (public or private) and a driveway, alley, lane, or other vehicle way that is not a street, the minimum distance along each vehicular way as defined above shall be 15'.**

2. **At an intersection of two streets (public or private) having 90 degree angles at the intersection, the minimum distance along each vehicular way as defined above shall be 30 feet.**

3. **At traffic circles, acute or obtuse angles, and other non-conventional intersections of two streets, the vision clearance area may be determined by the Public Works Director. However, the every attempt shall be made to ensure that the minimum distance measured along each vehicular way as defined above is 30 feet.**

Except as exempted below, no signs, structures or vegetation in excess of three feet in height shall be placed in "vision clearance areas," as shown in Figure 2.15.2300 A. This standard applies to the following types of roadways: streets, alleyways and railways. The minimum vision clearance area may be increased by the City Engineer upon finding that more sight distance is required (i.e., due to traffic speeds, roadway alignment, etc.).

The clear vision area provisions do not apply to the following;

1. **Any sign, post, pole or similar structure installed and maintained by a public entity; or,**

2. **Any private post or pole eight inches or less in diameter (width or length).**

Applicant Response: The Tentative Subdivision Plan includes a number of street and alley intersections. Clear vision areas are shown on the plans and the applicant proposes to keep the clear vision areas free of visual obstructions.

Staff's Response: The applicant has provided and accurate analysis of this Section.

2.15.2400 Dark Skies Standards…

Applicant Response: The applicant is not proposing any lighting in association with the Masterplan, the Tentative Subdivision, or Park Site plan. Future development will be reviewed in accordance with the standards of this section.

Staff's Response: The applicant is required to comply with this Section. Future detailed lighting plans will be reviewed for compliance.

2.15.2500 Solar Access Standards

Building Setbacks for the Protection of Solar Access.

A. Purpose. The purpose of this Section is to provide as much solar access as feasible during the winter solar heating hours to existing or potential buildings by requiring all new structures to be constructed as far south on their lots as is necessary and feasible.

B. Standards.

1. All new structures or addition to existing residential structures shall meet the following standards except those mentioned in (C) (2) below:

a. South Wall Protection Standard. The south wall protection standard is established in Figure 2.15.2500.A, and all new structures or additions shall meet this standard if feasible. If it is not feasible due to physical constraints of the lot, including but not limited to rock outcroppings, septic systems, existing legal restrictions, or lot dimensions as determined by the Community Development Director, then the structure or addition must be located as far to the south on the lot as feasible and must meet the standards set forth in (b) below.

b. South Roof Protection Standard. All new structures or additions to existing structures shall meet the standard for south roof protection set forth in Figure 2.15.2500.B.

c. Exceptions. The south roof protection standard shall not apply only if the applicant establishes:

i. that the structure cannot be located on the lot without violating the requirements contained in Figure 2.15.2500.B; and

ii. that the structure is built with its highest point as far to the south as feasible; and

iii. that the structure is a single family residence with its highest point less than or equal to 16 feet in heights; or, if not a single family residence;

iv. that it is a permitted use for the lot.

d. Exemptions:

1. Property which is zoned commercial or industrial shall be exempt from meeting the solar setback. That portion of residential property abutting commercial or industrial property shall be exempt from meeting the solar setback requirements.

2. **All new residential lots, when approved through the subdivision, Master Plan or partition process, shall be exempt except when along the northern property line of the fully phased master plan.**
3. **The governing body may exempt from the provisions of this Section any area in which it determines that solar uses are not feasible because the area is already substantially shaded due to heavy vegetation, steep north facing slopes, and any area or zone in which taller buildings are planned.**

4. **The Community Development Director shall exempt a structure from the provisions of this Section if the structure will shade only a protected area in which solar uses are not feasible because the protected area is already substantially shaded at the time a request for exemption is made and approved by the Community Development Director. Notice of the proposed exemption shall be sent to the affected property owner(s). Any exemption may be appealed by the affected property owner(s) in accordance with Chapter 4.1**

Applicant Response: As noted in Section B.1.d.2, because the lots of the development are within a Master Plan and subdivision, with the exception of the lots along the northern boundary, all lots are excepted from the solar setback standards of this section. Regarding the lots along the northern property line, structures will be required to be built in conformance with these solar setback standards, which will be reviewed at time of building permit submittal.

Staff's Response: The applicant has provided and accurate analysis of this Section.

IV.F. Chapter 3.1 – Access and Circulation:

3.1.100 Purpose

The purpose of this Chapter is to ensure that developments provide safe and efficient access and circulation for pedestrians, bicycles (including ADA and transit accessibility) and motorized vehicles including emergency vehicles and to preserve the transportation system in terms of safety, capacity, and function.

Applicant Response: This section includes a purpose statement, but does not have any measurable standards or criteria, thus is used in interpreting the standards of this section.

3.1.200 Applicability

A. **Applicability. This Chapter applies to all rights-of-way within the City and to all properties that abut these rights-of-way. The standards apply when lots are created, consolidated, or modified through a land division, partition, or street vacation; and when properties are subject to Site Plan Review. These standards also may be applied at the City's discretion during Conditional Use permit.**

Applicant Response: The proposal includes the creation of right of way through a subdivision in addition to Site Plan review, thus the standards of this section apply.

3.1.300 Vehicular Access and Circulation

A. Traffic Study and Control Requirements

1. The City or other agency with access jurisdiction may require a traffic study prepared at applicant/developers expense by a qualified professional to determine access, circulation and other transportation requirements. A Traffic Impact Study shall be required for all development applications that will result in a traffic impact or increase in traffic impact of 200 or more average daily trips (ADT).

Applicant Response: A traffic letter has been included in the Exhibit section.

2. Traffic control devices, subject to the approval of the Hearings Body, shall be required with development when traffic signal warrants are met, in conformance with the Oregon State Highway Capacity Manual, and Manual of Uniform Traffic Control Devices. The location of traffic control devices shall be noted on approved street plans. Where a proposed street intersection will result in an immediate need for a traffic signal or other traffic control device, a device meeting approved specifications shall be installed. The developer's cost and the timing of improvements shall be included as a condition of development approval.

3. Traffic-calming features, such as curb extensions, narrow residential streets, and special paving shall be required where appropriate and in accordance with the Transportation System Plan and Public Works' Standards and Specifications, latest edition, in order to slow traffic in neighborhoods and areas with high pedestrian traffic and to maximize a pedestrian friendly environment.

Applicant Response: The applicant has made significant traffic improvements to the site to accommodate the Three Sisters Business Park development, including improvements to Pine Street and the development of Lundgren Mill Drive. As detailed in the traffic information attached to the submittal, traffic control devices are not warranted.

With regards to the new street construction internal to the Master Planned area and Subdivision, these streets have been designed in accordance with the TSP and Public Works standards. The street design includes curb extensions and other features as detailed on the Tentative Subdivision plan. The tentative plat designs conform to the standards of these sections.

B. Access Management. The City or other agency with access permit jurisdiction may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways), development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting an access permit, to ensure the safe and efficient operation of the street and highway system.

Applicant Response: Although permitted under this standard, there is no need to close or consolidate any existing access points in association with this proposal.

C. **Fire Access and Turnarounds. When required under the Oregon Fire Code, fire access lanes with turnarounds shall be provided. Except as waived in writing by the Fire Marshal, a fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or approved fire equipment access drive. The drive shall contain unobstructed adequate aisle width (20 feet) and turn-around area for emergency vehicles. The Fire Marshal may require that fire lanes be marked as "No Stopping/No Parking."**

Applicant Response: Upon build-out, the Master Planned area will have complete streets that will be sufficient to serve all lots. However in the interim, through phasing, temporary turnarounds will be needed. The complete phasing plan is included on the Tentative Subdivision Plan. As detailed thereupon, the access requirements of the Fire Code have adequately been addressed.

D. **Vertical Clearances. Except for drive-through windows, all driveways, private streets, aisles, turn-around areas and ramps shall have a minimum vertical clearance of 13' 6" for their entire length and width.**

Applicant Response: The Master Plan, Tentative Subdivision Plan, and Site Plan do not propose any encroachment into any vertical clearance areas, therefore the proposal complies with this section.

E. **Vision Clearance. Visual obstructions between three (3) feet and eight (8) feet in height are subject to Special Provisions, Vision Clearance.**

Applicant Response: A review of the Vision Clearance provision was included above, and as detailed therein, Vision Clearance areas have been identified on the Tentative Plan and these areas are proposed to remain free of encroachments.

F. **Surface Options. Required driveways, aprons, parking areas, aisles, and turn-arounds shall be paved with asphalt, concrete or comparable durable surfacing, subject to review and approval by the Community Development Director. Properties located in the Light Industrial (LI) District shall refer to Chapter 2.6.**

Applicant Response: The Tentative Subdivision Plan includes right of way improvements, roadways and alleys, however driveways are not proposed at this time. All surfaces are proposed in conformance with Public Works Standards, which conform to this section. Future site development will also be required to conform to this section, which will be reviewed with the subsequent development applications.

G. **Surface Water Management. All driveways, parking areas, aisles and turn-arounds shall have on-site collection or infiltration of surface waters to eliminate sheet flow of such waters onto public rights-of-way and abutting property. Surface water facilities shall be constructed in conformance with City standards. Swales may be considered to control surface water.**

Applicant Response: Public improvements have been proposed, however on-site improvements including driveways, parking areas or turnarounds have not been proposed (these features are not needed with the park). The lots have been designed with sufficient size so that surface water can be maintained on site. This standards will be further reviewed in association with subsequent Site Plan reviews, or building permit reviews, as required.

H. Private Streets and Alleys. Public and private streets and alleys shall conform to the standards in the City of Sisters Public Works Construction Standards, latest edition. While alley intersections and sharp changes in alignment shall be avoided, the corners of necessary alley intersections shall have a radius of not less than 20 feet.

Applicant Response: Private streets or alleys have not been proposed, and all public improvements have been designed in conformance with the City of Sister Public Works Construction Standards document, as detailed on the Tentative Subdivision Plan.

I. Access Standards

1. Access spacing standards. Street intersection and driveway spacing shall comply with the table below (Figure 3.1.300.A):

Figure 3.1.300.A. Access Spacing Standards

Street Facility	Maximum spacing* of roadways	Minimum spacing* of roadways	Minimum spacing*of roadway to driveway	Minimum Spacing* driveway to driveway
Arterial	1,000 feet	660 feet	330 feet	330 feet or combine
Collector:	600 feet	330 feet	100 feet	100 feet or combine
Neighborhood/Local	600 feet	150 feet	50 feet	10 feet

Notes: *Measured centerline to centerline
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Applicant Response: The abutting Lundgren Mill Drive is a Local Neighborhood Route. The Master Plan indicates three connections to this roadway and the Tentative Plan indicates that these connections are spaced between 400-500 feet apart. Internally, all roadways will be local streets and as detailed on the Tentative Plan. As documented on the Tentative Plan, the roadways conform to the spacing standards of this section. In addition to the roadways, the proposal includes alleys and after conversations with City Public Works staff, because there is no specific standard for alley spacing, it has been determined that alleys would fall under the driveway spacing standards. As detailed on the Tentative Plan, all of the planned alleys are spaced at least 50 feet from centerline of existing or proposed streets. Lastly, in regards to driveway locations, driveways have not been proposed at this time, however upon development, driveways will be designed to be at least 10 feet from another driveway, and 50 feet away from

the centerline of local streets. The proposal in addition to future review procedures will ensure conformance with this section.

2. **Properties with Multiple Frontages. Where a property has frontage on more than one street, access shall be limited to the street with lesser classification.**

3. **Alley Access. If a property has access to an alley or lane, direct access to a public street is not permitted.**

Applicant Response: All access within the Master Planned Development and the Subdivision is planned to be taken from abutting alleys or internal streets, always from the street with the lesser classification, in conformance with these standards.

4. **Closure of Existing Accesses. Existing accesses that are not used as part of development or redevelopment of a property shall be closed and replaced with curbing, sidewalks/pathways, and landscaping, as appropriate.**

Applicant Response: There are no existing accesses that will not be used with this development, therefore the closure of existing access is not warranted.

5. **Shared Driveways on Arterial Streets....**

Applicant Response: No access is proposed onto an arterial street, therefore this section is not applicable.

6. **Frontage Streets and Alleys. The hearing body for a design review or subdivision may require construction of a frontage street to provide access to properties fronting an arterial or collector street.**

Applicant Response: The proposal does not front an Arterial or Collector Street and all access is via internal local streets and alleys, thus there is no need for a frontage street.

7. **Exceptions**

a. **The Community Development Director or designee may allow exceptions to the access standards above in any of the following circumstances:**
   1. **Where existing and planned future development patterns or physical constraints, such as topography, parcel configuration, and similar conditions, prevent access in accordance with the above standards.**
   2. **Where the proposal is to relocate an existing access for existing development, where the relocated access is closer to conformance with the standards above and does not increase the type or volume of access.**
   3. **Where the proposed access results in safer access, less congestion, a better level of service, and more functional circulation, both on-street and on-site, than access otherwise allowed under these standards.**
   4. **When access requirements are divided by one or more multi-use pathway(s), in conformance with the provisions of Section 3.1.400. Multi-use pathways shall be located to minimize out-of-direction**

travel by pedestrians and bicycles and shall be 10-feet wide and located within an easement whose width is specified by the Fire Marshal.

b. Where an exception is approved, the access shall be as safe and functional as practical in the particular circumstance. The City may allow construction of an access connection at a distance less than required from an intersection, provided the access is as far away from the intersection as possible. In such cases, the City may impose turning restrictions (i.e., right in/out, right in only, or right out only) and may also require that the applicant submit a traffic study by a registered engineer to show the proposed access meets these criteria.

8. Access Management Plan. In addition, all requests for an access spacing exception shall be required to complete an access management plan for review and approval by the Public Works Director or City Engineer, which should include at a minimum the following items:...

Applicant Response: Although this section allows for exceptions to access spacing, the proposal does not request any exceptions to these standards.

J. Driveways, Access Connections and Driveway Design

1. Driveway Openings. Driveway openings (or curb cuts) shall be the minimum width necessary to provide the required number of vehicle travel lanes (10 feet minimum width for each travel lane). The following standards are required to provide adequate site access, minimize surface water runoff, and avoid conflicts between vehicles and pedestrians (as measured where the front property line meets the sidewalk or right- of-way):

a. Single family, two-family, and three-family residential uses shall have a minimum driveway opening width of 10 feet, and a maximum width of 24 feet. Wider driveways may be necessary to accommodate approved paved recreational vehicle pads, but the driveway opening or connection to the street shall not be allowed to be wider.

b. Multi-family developments shall have a minimum driveway opening width of 20 feet, and a maximum width of 26 feet. These dimensions may be increased subject to the City Engineer approval.

c. Other Uses. Access widths for all other uses shall be based on 10 feet of width for every travel lane. These dimensions may be increased subject to the City Engineer approval. Driveways providing direct access to parking spaces shall conform to the parking area standards in Chapter 3.3, Vehicle and Bicycle Parking. Properties located in the Light Industrial (LI) District shall refer to Chapter 2.6.

2. Driveway Approaches. Driveway approaches shall be designed and located

to provide exiting vehicles with an unobstructed view of other vehicles and pedestrians, and to prevent vehicles from backing into the flow of traffic on the public street or causing conflicts with on-site circulation. Construction of driveway accesses along acceleration or deceleration lanes or tapers should be avoided due to the potential for vehicular conflicts. Driveways should be located to allow for safe maneuvering in and around loading areas.

3. **Driveway Construction. Driveway aprons (when required) shall be installed between the street right-of-way and the private drive, as shown in Figure 3.1.300.B. Driveway aprons shall conform to ADA requirements for sidewalks and pathways,**

Applicant Response: Driveways are not proposed at this time, however when constructed, they are planned to be designed in conformance with the standards of these sections.

K. **No development may occur unless required public facilities are in place or are guaranteed in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact. All public improvements shall be in conformance with the City of Sisters Public Works Construction Standards, latest edition.**

Applicant Response: The proposal includes a Master Plan, along with a Tentative Subdivision Plan, and a Park Site Plan. The proposal includes the installation of public facilities necessary to provide capacity for each phase of development and the applicant plans to install the planned infrastructure prior to the final plat for any phase. Thus the plan, as proposed, ensures that all required public facilities will be in place in accordance with the latest edition of the Public Works Construction Standards and the standards of this code. Given the planned improvements, it is not expected that the City will need additional public improvements to meet any development code standards. However, the applicant understands that should the City find the need for additional public improvements, constitutional law and the standards of this section establish that the City document a nexus to this project, and that any conditioned improvements be roughly proportional to the impact of the required development. Also should additional improvements be required, constitutional law establishes that the burden falls upon the City to document how such improvements are roughly proportional to the projects impact.

Staff's Responses: 3.1.300 Sections A-K: The City has provided a review letter and is attached to this staff report. The summary of the comments from City Engineers and planning staff responses to those comments are as follows. As mentioned previously, the applicant is being requested to extend the Northern Street, westerly, to provide a connection to Pine Street. However, the adjoining property owner to the west is owned by the USA/US Forest Service which causes unique challenges in extending the street across federal lands. A potential solution to consider is to provide a right of way reservation to the edge of the property, suitable in width to accommodate the road extension. City staff will lead the discussion with the Forest Service in an attempt to secure the rights to extend the street. If the Forest Service denies the request prior to the commencement of Phase IV, then the right of way reservation can be terminated.

The applicant has provided an adequate traffic impact analysis from a previous study and also an update which is attached to this report. The traffic circulation plan is adequate for the proposed use and depending upon which Option is ultimately approved, street standards applicable to alley access will be enforced.

Construction plans for each phase shall comply with the latest City construction and accessibility standards and are required to be submitted and approved by City staff prior to commencement of construction.

Notwithstanding resolution of the issue regarding extension of the Northern Street, the applicant meets the requirements of these Sections.

3.1.400 Pedestrian/Bicyclist Access and Circulation

A. Site Layout and Design. To ensure safe, direct, and convenient pedestrian circulation, all developments shall provide a continuous pedestrian system. The pedestrian system shall be based on the standards in subsections 1-3, below:

1. Continuous Access and Circulation System. The pedestrian/bicycle circulation system shall extend throughout the development site and connect to all future phases of development, and to existing or planned off-site adjacent trails, public parks, and open space areas to the greatest extent practicable. The developer may also be required to connect or stub pathways or multi-use paths to adjacent streets and to private property with a previously reserved public access easement for this purpose.

2. Safe, Direct, and Convenient. Pathways and multi-use paths within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent streets

3. Pathway Connections within Development. Connections within developments shall conform to the following standards:

a. Pathways shall connect all building entrances to one another to the extent feasible;

b. Pathways shall connect all on-site parking areas, storage areas, recreational facilities and common areas, and shall connect off-site adjacent uses to the site to the extent feasible. Topographic or existing development constraints may be cause for not making certain pathway connections, as generally shown in Figure 3.1.400A; and

Applicant Response: The pedestrian/bicycle access and circulation for the Master Plan is accomplished via public rights of way (and the required access improvements therein), along with park areas, common green spaces, and a connection to the forest service trails to the northwest. As detailed on the Master Plan, the proposed public access is continuous and circulates the entire site, it is also safe, direct, and convenient, connecting the Master Planned Area to the greater Sisters Community.

In addition to public improvement, the proposal includes a park that effectively connects to the public right of way, and provides on site paths that connect all areas of the site to one another.

The proposed public and site pedestrian/bicycle improvements, therefore comply with the standards of these sections.

B. Pathways Design and Construction. Pathways and multi-use paths shall conform to the following standards:

1. Vehicle/ Pathway and Multi-use Path Separation. Except for crosswalks (subsection 2) and for properties in the Light Industrial Zone, where a pathway or multi-use path abuts a driveway or street, it shall be raised 6 inches and curbed along the edge of the driveway/street. Alternatively, the decision body may approve a pathway or multi-use path abutting a driveway at the same grade as the driveway if the pathway or multi-use path is protected from all vehicle maneuvering areas. An example of such protection is a row of decorative metal or concrete bollards designed to withstand a vehicle's impact, with adequate minimum spacing between them to protect pedestrians and bicyclists.

Applicant Response: As detailed on the Tentative Subdivision Plan, all sidewalks within the right of way have been proposed to be constructed to Public Works Standards, which provide the needed separation. In addition to public improvements, the proposal includes walkways across the park, through the common green corridors, and at the northwest corner of the property, connecting to the forest service property. The planned non-right of way improvements do not abut streets or driveways, therefore the standards of this section don not apply.

2. <u>Crosswalks</u>. Where pathways and multi-use paths cross a parking area, driveway, or street ("crosswalk"), they shall be clearly marked with contrasting paving materials (e.g., light-color concrete inlay between asphalt), which may be part of a raised/hump crossing area. Painted or thermo-plastic striping and similar types of non-permanent applications may be approved for crosswalks not exceeding 24 feet in length.

Applicant Response: The only needed cross walks are those located within the public right of way. The right of way improvements, including the crosswalks, conform to Public Works Standards and the standards of this section.

3. <u>Pathway and Multi-use Path Width and Surface</u>. Pathway surfaces shall be concrete, asphalt, brick/masonry pavers, or other durable surface, as approved by the Public Works Director or designee, at least 6 feet wide, and shall conform to ADA requirements. Multi-use paths (i.e., for bicycles and pedestrians) shall be the same materials, at least 10 feet wide and shall conform to ADA requirements.

Applicant Response: The pathways in the park, through the common green corridors and at the northwest portion of the property (connecting the to the forest Service trails) are proposed to

be about 6-10 feet wide and constructed of compacted gravel fines, pavers or asphalt, in conformance with this section.

Staff's Response: The applicant meets the requirements of Section 3.1.400A. However, depending upon the final status of the proposed Park, conditions of development may change. All design details will be illustrated on construction plans for each phase.

IV.G. Chapter 3.2 - Landscaping and Screening

3.2.100 Purpose

The purpose of this chapter is to promote community health, safety and welfare by protecting existing trees and setting development standards for landscaping, street trees, fences and walls. Landscaped areas should help to control surface water drainage and can improve water quality.

Applicant Response: This section establishes the purpose of this chapter, but does not contain any specific measureable standards or criteria.

3.2.200 Landscape Requirements

A. Requirements by Zone. In the following designated districts, not less than the stipulated percent of gross site area shall be occupied by landscaping.

1. Residential (R), twenty (20%) percent.
2. Residential Multiple Family (RMF), twenty (20%) percent...

Applicant Response: The property has a mixed zone, R and MFR and is currently vacant. The standards of this section establishes that developed sites are required to include a minimum 20% landscaping. The only portion of the proposal that includes a development plan is the proposes park. As detailed on the Park Site Plan, well over 20% of the park will be landscaped. Landscaping on other properties will be reviewed in association with future development plans.

B. Determination of Landscaped Area. In determining landscaped area setbacks, private patios and all other areas not occupied by buildings, parking lots, vehicle storage areas, or driveways may be included.

Applicant Response: Only allowable areas will be proposed as landscape areas as defined by this section.

C. Development Standards

1. All landscaping within the City shall comply with the requirements of the Oregon Forestland-Urban Interface Fire Protection Act, also known as Senate Bill 360.

Applicant Response: The Sisters Development Code has been written to conform to Senate Bill 360, thus development in conformance with the Development Code standards will ensure with the referenced legislation.

2. **Areas occupied by clubhouses, recreation buildings, pools, saunas, interior walkways and similar amenities may be also included as landscaped areas, up to fifty (50) percent of the required landscape area.**

3. **A hard surface pedestrian plaza or combined hard surface and soft surface pedestrian plaza, if proposed shall be counted towards meeting the minimum landscaping requirement, provided that the hard-surface portion of the plaza shall not exceed twenty-five (25) percent of the minimum landscaping requirement, and shall be comprised of the following:....**

4. **Bark dust, chips, aggregate and other non-plant ground covers may be used, but shall cover no more than 25 percent of the area to be landscaped...**

Applicant Response: The only areas that are proposed to be developed and landscaped at this time are the open spaces. Counting recreation area, hard surfaces or non-plant ground cover as landscaped areas will not be needed to ensure required landscaping requirements are met in these areas.

5. **Street trees shall be planted in accordance with the provisions of Street Tree Section 3.2.600 of this Code.**

Applicant Response: A complete review of Section 3.2.600 is included below and as detailed therein, the proposal complies with the applicable street tree requirements.

6. **Any landscaping area provided in front of building(s) in the Downtown Commercial or Light Industrial zoning district shall be counted as double toward meeting the total landscape requirements.**

Applicant Response: The property is not located in the DC or IL zone, therefore this section does not apply.

7. **A landscape strip, a decorative wall (masonry or similar quality material), arcade, trellis, evergreen hedge, or similar screen shall screen parking lots from adjacent streets to a height of three (3') feet. The required wall or screening shall provide breaks, as necessary, to allow for access to the site and sidewalk by pedestrians via pathways. Any areas between the wall/hedge and the street/driveway line shall be landscaped with plants or other ground cover.**

8. **All mechanical equipment, refuse area, outdoor storage and manufacturing, and service and delivery areas, shall be screened from view from all public streets and Residential districts. Properties located in the Light Industrial (LI) District shall refer to Chapter 2.6 for screening requirements.**

9. **Landscaping shall also be provided where practical in areas within a parking lot not used for the parking of vehicles, drives or turning area.**

10. **Parking Areas....**

11. **Buffering is required for parking areas containing four or more spaces, loading areas, and vehicle maneuvering areas....**

Applicant Response: The proposal does not include site development that will contain parking areas, mechanical equipment, refuse areas, outdoor storage, manufacturing, sales, or service areas, therefore these standards do not apply to the current proposal.

12. **When a commercial or industrial site adjoins a Residential District, where fences are required, such fencing shall be landscaped as appropriate.**

Applicant Response: The property is sufficiently buffered from the neighboring commercially zoned properties by a public street, therefore fences are not required and the standards of this section do not apply.

13. **All required building setbacks shall be incorporated in the landscape design, unless these areas are utilized in driveways, etc.**

Applicant Response: As detailed in the park Site Plan, setbacks on the park property have been incorporated into the landscape design.

14. **A combination of trees, shrubs and ground covers shall be used for all planted areas, the selection of which shall be based on local climate, exposure, drought-tolerance, water availability, and drainage conditions; ground covers alone are not acceptable. As necessary, soils shall be amended to allow for healthy plant growth. The Community Development Director or designee may require the substitution of any plant material which they have reason to believe will not survive successfully under the particular conditions of the site in question.**

Applicant Response: The park site plan utilizes a combination of trees, shrubs and ground cover that are based on our local climate, in accordance with this section.

15. **Planted trees shall have a minimum caliper size of two (2) inches and shall conform to the standards described by the ANSI A300 standards for nursery stock, latest edition.**

Applicant Response: As detailed on the Park Site Plan, all trees are proposed to be planted with at least a 2 inch caliper size, in accordance with this section.

16. **Detention facilities, such as ponds, shall be graded so that the sides of the facilities are no steeper than 3:1. Additionally, the facilities shall be landscaped with plant materials that provide erosion control and biofiltration.**

Applicant Response: The Park Site Plan does not include a large amount of impervious surface. All of the drainage is planned to be accommodated on site. No drainage facilities are proposed, therefore this section does not apply to current development.

17. **Plans for the development of required landscaping shall be submitted to the Community Development Department for review and approval prior to the issuance of any building permit. When special conditions of design warrant, changes may be submitted for consideration.**

Applicant Response: The applicant plans on submitting all required plans to CDD for review prior to the issuance of a building permit is issued, in accordance with this section.

18. **All required landscaping shall be installed by the developer and approved by Community Development Department, prior to occupancy of any building, unless other arrangements are agreed to by the Community Development Director.**

Applicant Response: The applicant intends to install the landscaping in the park as proposed and will do so prior to the use of the park, unless otherwise approved by the City.

19. **The use of drought-tolerant plant species is encouraged, and may be required when irrigation is not available. If the plantings fail to survive, the property owner shall replace them in kind or in consultation with the Community Development Director or designee. All other landscape features required by this Code shall be maintained in good condition, or otherwise replaced by the owner. Irrigation systems connected to the City water system shall have a back-flow prevention device installed as required by Public Works' Standards and Specifications, latest edition.**

Applicant Response: As detailed on the park site plan, the area will be landscaped with pine, aspen, and shrubs, most of which are drought tolerant species. If any plantings fail to survive, the HOA will be responsible for their replacement.

D. Landscaping in Right-of-Way

1. **Landscaping in Right-of-Way -- Any landscaped area within the public right-of way shall not be used when determining required percentage of landscaping provided on-site.**

Applicant Response: Landscaping within the right of way has not been used in determining the required landscaping for the park, nor will it be used for requirements with subsequent residential development.

2. **Design -- The design of the landscaping of the public right-of-way shall be included in the Landscape Plan and meet the requirements as specified in this section. Adequate space shall be provided in the landscape area to allow free, unrestricted growth and development of the landscaping and street trees.**

Applicant Response: The applicant plans to install street trees within the right of way landscape strips as required by this section.

E. **All planting shall be maintained in good growing condition. Such maintenance shall include, where appropriate, pruning, mowing, weeding, cleaning, fertilizing, and regular watering. Whenever necessary, planting shall be replaced with other plant materials to insure continued compliance with applicable landscaping requirements.**

Applicant Response: The common landscaping areas will be maintained by an HOA, which will ensure compliance with this section.

Staff's Response: As mentioned previously, the status of the proposed Park will be determined per future discussions between the applicant and the City. Staff recommends that the site plan for the proposed Park suffice as an interim plan until the final status of ownership and maintenance of the Park is determined. Otherwise, the applicant meets the requirement of Section 3.2.200.

3.2.300 Screening

Screening refers to a wall, fence, hedge, informal planting, or berm, provided for the purpose of buffering a building or activity from neighboring areas or from the street. When required, screening may be provided by one or more of the following means:

A. **A solid masonry wall, board fence, or equivalent meeting the standards of the applicable building code.**

B. **An evergreen hedge.**

C. **An earth berm may be used in combination with any of the above types of screening, but not more than two-thirds (2/3) of the required height of such screening may be provided by the berm. The slope of a berm may not exceed 3:1. The faces of a berm's slope shall be planted with ground cover, shrubs, and trees.**

D. **Prescribed screening need not be placed along a lot line so long as a building wall, solid fence, or freestanding wall of the required height exists immediately abutting and on the other side of the lot line.**

E. **Screening shall comply with the vision clearance standards in Chapter 2.15 Special Provisions.**

F. **In the areas within the Western Frontier Architectural Design Theme, wood, stone or iron or their visual equivalent shall be used consistent with Chapter 2.15 Special Provisions.**

G. **Screening walls and fences shall be maintained in good repair including painting, if required, and shall be kept free of litter or advertising.**

H. **Height and Location of Screening. Unless otherwise specified, screening required by this Section shall be a minimum six (6) feet in height. In the front yard or street-side yards in R or C Zoning District such screening shall not be more than four (4)**

feet in height, unless otherwise specified. All screening shall follow the lot line of the lot to be screened, or the inside edge of the sidewalks, or shall be so arranged within the boundaries of the lot as to substantially hide from adjoining properties the building, facility or activity required to be screened.

I. Heights of plant screens or hedges specified herein indicate the height which may be expected within three (3) years of planting. The height at the time of planting shall be such that in accordance with good landscape practice the fully required height may be achieved within a three (3) year period.

J. The standards set forth herein for location and height of landscaping or screening may be modified as directed by the Community Development Director whenever it appears that such landscaping or screening would constitute a danger to traffic by reasons of impairment of vision at a street or driveway intersection.

Applicant Response: Prior to submittal, the applicant had not been informed of any need for screening, thus the standards of this section have not been reviewed. In the event screening is desired or required, the applicant understands the City would need to be in conformance with this section.

Staff's Response: The applicant has provided and accurate analysis of the Section.

3.2.400 Nonconforming

For sites that do not conform to these requirements, an equal percentage of the site must be made to comply with these standards as the percentage of building or parking lot expands, e.g. if the building or parking lot area is to expand by twenty-five percent (25%), then twenty-five percent (25%) of the site must be brought up to the standards required by this ordinance.

Applicant Response: The property is not a developed site, thus is not a nonconforming site to which the standards of this section could apply.

3.2.500 Existing Trees

A. Applicability All development sites containing Significant Trees, shall comply with the standards of this Section. The purpose of this Section is to preserve significant trees within the city limits. The preservation of mature, native vegetation within developments is a preferred alternative to removal of vegetation and re-planting. Mature trees reduce air and water pollution, provides summer shade and wind breaks, and require less water than new landscaping plants having established root systems.

B. Significant Trees - Individual trees with a trunk diameter of eight (8) inches or greater as measured 4.5 feet above the ground (DBH), shall be identified as significant. Other trees may be deemed significant, when nominated by the property owner and designated by the City Council as "Heritage Trees" (i.e., by virtue of site, rarity, historical significance, etc.).

C. Mapping Required Existing significant trees shall be identified on all site plans, partitions and subdivisions and shall be retained whenever possible. Trees to be retained must be identified prior to the commencement of any construction activity and shall be protected during construction pursuant to D below.

Applicant Response: The site contains significant trees as defined by this section and all of the significant trees are included on the Existing Conditions map of the Tentative Subdivision Plan as required by this section.

Staff's Response: The applicant has provided said Map.

D. Protection Standards All of the following protection standards shall apply to significant vegetation areas:

1. Significant trees shall be retained whenever practical. Preservation may become impractical when it would prevent reasonable development of public streets, utilities, or land uses permitted by the applicable land use district.

Applicant Response: At this time, the only significant trees that are proposed to be removed are those that are situated within the planned rights of way. Remaining trees will be left on site and only be removed if site specific development establishes that retaining trees would be impractical to achieve required development density.

Staff's Response: The applicant has committed to clearing only the trees existing in the proposed right of way during construction of infrastructure. During development of individual homes, some trees may have to be cleared but every attempt should be made to preserve existing significant trees when designing house models. All existing tees within the proposed Park should not be cleared at all until the final status of its ownership is determined.

2. Significant trees removed shall be replaced at a 3:1 ratio of trees removed to trees planted. Replacement trees of an appropriate species shall have a minimum two (2) inch caliper size and shall be planted in a suitable location as substitutes for removed trees, at the sole expense of the applicant. Ponderosa pines may be planted as replacement trees where appropriate.

a. The Community Development Director or designee shall review tree relocation or replacement plans in order to provide optimum enhancement, preservation and protection of wooded areas. To the extent feasible and desirable, trees shall be relocated or replaced onsite and within the same general area as trees removed.

b. When it is not feasible or desirable to relocate or replace trees on-site, relocation or replacement may be made at another location approved by the Community Development Director or designee.

c. Where it is not feasible to relocate or replace trees on site or at another approved location in the City, the applicant shall pay into

the City Tree Fund, which fund is hereby created, an amount, to be set by the City Council and incorporated into the City of Sisters Master Fee Schedule, for each of the replacement trees that would otherwise be required by this section. This amount shall reflect both the cost of purchasing and the cost of installing a replacement tree. The City shall use the City Tree Fund for the purpose of producing, maintaining and preserving wooded areas and heritage trees, and for planting trees within the City. In addition, and as funds allow, the City Tree Fund may provide educational materials to assist with tree planting, mitigation, and relocation.

Applicant Response: Very few trees are planned to be removed in association with the planned right of way improvements. These trees are planned to be replaced as street trees and trees within the planned park and open spaces. The Tentative Subdivision Plat will show the exact number and location of trees, to be removed.

Staff's Response: The applicant has provided said Map. The applicant has committed to following the requirements of this Section.

3. **Significant trees that are identified to be retained prior to any construction activity, as required by C, above, shall be removed only with the prior approval of the Community Development Director or designee.**

4. **Significant trees that are identified to be retained shall be protected before and during all construction and site preparation activity. Protection measures shall include, but not be limited to, installation of a high visibility tree protection fence [minimum three (3) foot high fence with metal stakes/posts at eight (8) to ten (10) foot intervals] around the dripline(s) of a tree or trees to be preserved.**

5. **Grading, operation of vehicles and heavy equipment, and storage of construction materials are prohibited within the dripline of significant trees to be preserved, except as approved by the City for installation of utilities or streets. Such approval shall only be granted after finding that there is no other reasonable alternative to avoid the protected area.**

6. **When proposed developments encroach into the dripline area of significant trees, special construction techniques to allow the roots to breathe and obtain water may be required by the Director with respect to any application for a building, grading or development permit.**

7. **The City also may require an inventory, survey, or assessment prepared by a qualified professional when necessary to determine vegetation boundaries, building setbacks, and other protection or mitigation requirements.**

8. **Conservation Easements and Dedications. When necessary to implement the Comprehensive Plan, the City may require dedication of land or**

recordation of a conservation easement to protect sensitive lands, including groves of significant trees and natural rock outcroppings.

Applicant Response: The Tentative Subdivision plan identifies all trees that have been proposed to be retained. During construction, trees will be protected with tree protection fencing and proper protection measures to ensure preservation. Tree protection standards are detailed on the Engineering plans associated with the Subdivision Tentative Plan.

Staff's Response: The applicant has provided said Map.

E. Exemptions. The protection standards in "D" shall not apply in the following situations:

1. **Dead, Diseased, and/or Hazardous Vegetation. Vegetation that is dead or diseased, or poses a hazard to personal safety, property or the health of other trees, may be removed. Prior to tree removal, the applicant shall provide a report from a certified arborist or other qualified professional to determine whether the subject tree is diseased or poses a hazard, and any possible treatment to avoid removal, except as provided by subsection 2, below.**

2. **Emergencies. Significant vegetation may be removed in the event of an emergency without land use approval pursuant to Chapter 4, when the vegetation poses an immediate threat to life or safety, as determined by the Community Development Director or designee. The Community Development Director shall prepare a notice or letter of decision within 7 days of the tree(s) being removed. The decision letter or notice shall explain the nature of the emergency and be on file and available for public review at City Hall.**

Applicant Response: Neither of the exempted tree types have been identified as a reason for removal at this time.

3.2.600 Street Trees

Street trees shall be planted for all developments that are subject to Land Division or Site Design Review. Planting on unimproved streets shall be deferred until the construction of curbs and sidewalks. Street trees shall conform to the following standards and guidelines:

A. Street Tree Standards. Trees shall be selected based on growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and desired color and appearance. The following applies to street tree planting and selection:

1. **Street trees shall be planted between 5' and 15' of the curb, wherever possible.**
2. **Street trees shall be placed at an average of 35' maximum distance apart from one another. Reduced separation may be required for smaller species**

of trees. Variety in tree placement using clusters of trees and uneven spacing is encouraged.

3. An approved tree grate or other surface treatment acceptable to the Community Development Director or designee shall be used for street trees planted in paved or concrete areas.
4. Except for immature trees of insufficient height to prune and retain a crown that is at least 2/3 the height of the tree, street trees that overhang city property and public rights-of-way shall be pruned to maintain at a minimum a clearance height of 8' over sidewalks and a clearance height of 14' over streets.
5. Existing trees may be used to meet minimum street trees requirements if they are not killed or damaged during or as a result of development. Sidewalks of variable width and elevation may be used to save existing street trees.
6. Existing street trees removed as the result of development shall be replaced by the developer with trees of a species appropriate to the site, as determined by the Community Development Director or designee.
7. Low-growing trees shall be required for spaces under utility wires.
8. Narrow or "columnar" trees may be used where awnings or other building features limit growth, or where greater visibility is desired between buildings and the street.
9. Trees that are extremely susceptible to insect damage shall be avoided.
10. Trees that produce excessive seeds or fruit are prohibited as street trees.
11. Street trees shall be those species suitable for the location in which they are placed. Recommended tree species include the following tree types, and within these, consideration should be given to those that are most drought-resistant. Drought resistant trees are marked with an asterisk (*):

Small trees (under 25 feet at maturity)

a. Canada Red Cherry (Prunus virginiana)*
b. Flowering Crabapple (Malus spp.)*
c. Hawthorn (Crataegus spp.)*
d. Japanese Tree Lilac (Syringa reticulata)
e. Serviceberry (Amelanchier spp.)

Medium trees (30 to 45 feet at maturity)

f. Flowering Plum (Prunus cerasifera)
g. American Hornbeam (Carpinus caroliniana)
h. Callery Pear (Pyrus calleryana)
i. Hedge Maple (Acer campestre)
j. Mountain Ash (Sorbus aucuparia)*

Tall trees (over 50 feet at maturity)

k. Birch (Betula spp.)
l. Green Ash (Fraxinus pennsylvanica)*
m. Honey Locust (Gleditsia triacanthos 'inermis')*
n. Littleleaf Linden (Tilia cordata)

o. Norway Maple (Acer platanoides)
p. Pin Oak (Quercus palustris)*
q. Red Maple (Acer rubrum)*
r. Red Oak (Quercus rubra)*

B. Prohibited Street Tree Species. Use of the following tree species as street trees is prohibited for one or more of the following reasons: 1) their roots cause injury to sewers or pavements; 2) they are particularly subject to insects or diseases; 3) they cause safety and visibility problems along streets and at intersections; 4) they create messy sidewalks and pavements. Prohibited species include the following:

a. Walnut (Juglans spp.)
b. Osage Orange (Maclura pomifera)
c. Weeping varieties of mulberries, crabapples, cherries, etc. (Morus, Prunus, etc. (weeping))
d. Fruiting Mulberry (Morus alba)
e. Poplar (Populus trichocarpa)
f. Commercial Fruit Trees (Prunus, Pyrus, etc. (fruiting))
g. Weeping Willow (Salix babylonica)
h. American Elm (Ulmus americana)
i. Siberian Elm (Ulmus pumila)

C. Caliper Size. Planted trees shall have a minimum caliper size of two (2) inches and shall conform to the standards described by the ANSI A300 standards for nursery stock,
latest edition.

D. Location. Street trees shall be planted within existing and proposed planting strips and in sidewalk tree wells on streets without planting strips.

Applicant Response: The applicant proposes to install street trees in association with each phase of development. The planned street trees are documented on the Tentative Subdivision Plan and are planted at 2 inch caliper size and spaced in accordance with this standards of this section.

E. Street Tree Maintenance

1. Except for trees located in medians within public rights-of-way, which shall be maintained by the City, it shall be the continuing duty and routine obligation of property owner(s) of land abutting public rights-of-way to perform activities required to maintain trees located within the abutting right-of-way in good health and vigor. Activities may include watering, pruning, protection against damage, and replacement if necessary.

2. Street tree removal and planting shall be the obligation of the adjacent property owner(s).

3. **All maintenance activities shall be conducted in accordance with the City of Sisters Urban Forestry Ordinance and City of Sisters Public Works Construction Standards, latest edition.**

Applicant Response: This is a general policy of maintenance, which will be enforced after installation of the street trees and does not apply to the current proposal.

F. **Assurances. The developer shall install all required landscaping prior to the occupancy of the development. In the event that installation needs to be delayed, the City of Sisters shall require the developer to provide an estimate of landscaping improvement costs to the City. Upon acceptance of this amount, the City shall require a performance bond in the amount of 120 percent of the accepted estimate from the owner/developer.**

Applicant Response: The applicant intends that all landscaping will be installed prior to occupancy of any structure on the site. In the event landscaping is delayed all requisite assurances will be provided.

Staff's Response: The applicant meets the requirement of 3.2.600 Street Trees Section.

3.2.700 Urban Forestry...

Applicant Response: This section establishes the urban forestry program in Sisters, but it does not contain any standards that apply to the current proposal.

H. Chapter 3.3 - Vehicle and Bicycle Parking

3.3.100 Purpose. The purpose of this section is to ensure adequate off street parking is provided by each land use in a manner that avoids street congestion, minimizes impacts on neighboring properties, increases vehicular and pedestrian safety, and promotes good aesthetic design to create and preserve an attractive community character.

3.3.200 Applicability

A. **New Structures. When a structure is constructed, on-site vehicle and bicycle parking and loading spaces shall be provided in accordance with this chapter.**

B. **Alteration of Existing Structures and Use. When an existing use or structure is enlarged or expanded, additional parking to meet the requirements of this Chapter shall be provided for the enlarged or expanded portion only, while maintaining previously existing parking for that use.**

C. **Change in Use. No additional parking shall be required when an existing structure is changed from one use type to another and the vehicle and bicycle parking requirements for each use type are the same. When the change in use requires additional vehicle and/or bicycle spaces, additional parking and bicycle space shall be provided to compensate for the increased intensity of use.**

D. Exception to Parking Space Requirement in the Downtown Commercial District. Properties that develop or that change uses in a manner that requires additional parking spaces to be provided may be excepted from adding additional vehicle parking spaces by the Community Development Director or designee if the public right of way adjacent to the subject site is already developed with curbs, sidewalks and parking.

Applicant Response: The standards of this section generally apply to site development. The only site development that is proposed with this application is the park, and pursuant to table 3.3.300.A, parks do not require off-street parking. Therefore this chapter does not apply to the current proposal.

Staff's Response: With respect to parking at the proposed Park, the status of the proposed Park will be determined per future discussions between the applicant and the City. Staff recommends that the site plan for the proposed Park suffice as an interim plan until the final status of ownership and maintenance of the Park is determined. Otherwise, the applicant meets the requirement of this Section.

I. Chapter 3.4 - Signs

3.4.100 Purpose

The purpose of this chapter is to maintain or improve the aesthetic quality of the City's residential and business environment in a manner which recognizes and balances the need for signs with other visual, aesthetic and safety concerns of the community.

3.4.200 Applicability

All new or remodeled signs within the City Zoning districts shall require a permit, provided that they meet all standards and provisions of this ordinance. The permitting process may be administrative or if necessary, reviewed by a hearings body.

Applicant Response: The proposed subdivision will have at least 2 entrance signs. An example has been included in the Exhibits

3.4.300 Definitions...

Applicant Response: This section includes definitions, but no approval criteria.

3.4.400 General Provisions

A. Signage shall be in proportion with and visually related to the architectural character of the building, restrained in size.

B. Basis for Design. Sisters has a sense of time and place dating from the 1880's. Signage at that time was pedestrian-oriented. The size, lettering and placement of signs were, for the most part, designed to attract the attention of foot and slower-moving horse traffic. The basis for design shall be compatible with the 1880's Western Frontier Architectural Design Theme in Chapter 2.15, Special Provisions.

C. Rectangular, straight-edged and oval signs are the preferred shape for signs. Signs with highly stylized, curvilinear edges are discouraged.

D. Permitted Materials. Wood, stone or iron or their visual equivalent are the recommended materials for both the sign and the stanchion (in the case of groundmounted or monument signs).

E. Signing Techniques shall be in conformance with the 1880's Western Architectural Theme as defined in the Sisters Urban Area Comprehensive Plan and permitted as follows:
1. Painting the sign directly on the facade of the building.
2. Painting of a sign on a finished material or sign board which is subsequently affixed to the building.
3. Affixing raised block letters directly on the facade of the building.

F. Lettering Techniques shall be in conformance with the 1880's Western Architectural Theme as defined in the Sisters Urban Area Comprehensive Plan and permitted as follows:
1. Ornamental lettering, similar to in Exhibit A-1
2. Shaded block or ornamental lettering
3. Raised or routered block letters.

G. Illumination - no sign shall be erected or maintained which, by use of lights or illumination creates an unduly distracting and hazardous condition to a motorist, pedestrian or the general public. In addition:
1. Signs may be externally illuminated by flood lights or other lighting approved by the Community Development Director or designee, located on wall or roof area adjacent to the sign intended to be illuminated with illumination directed down.

2. No exposed reflective type bulb or incandescent lamp shall be exposed to direct view from a public street or highway but may be used for indirect light illumination of the display surface of a sign. This means that a person standing at the adjacent property line would not see the light emitting source.

3. No external illumination devices shall be allowed to exceed the building height requirements of the underlying zone.

4. All illumination shall comply with the Dark Skies Standards in Chapter 2.15, Special Provisions.

H. Any sign or other graphic display which is supported by more than one means and, therefore, cannot be clearly defined as ground, wall, roof, hanging, awning, projecting, or other sign shall be administratively assigned to the sign category most logically applicable and the appropriate standards applied.

I. All signs shall comply with the vision clearance standards.

Applicant Response: A sample of the proposed sign is included in an attached exhibit and the planned location is shown on the Tentative Plan. As documented by the exhibits, the locations and design of the proposed signs conform to these standards.

3.4.500 Permit Exceptions

Applicant Response: The proposal does not include any of the permitted exceptions, therefore this section does not apply.

3.4.600 Prohibitions...

Applicant Response: The proposal does not include any of the prohibited uses, therefore these sections do not apply.

3.4.700 Procedure

A. Sign Permit Required. A sign permit is required in each of the following instances:

1. **Upon the erection of any new sign except exempted signs.**
2. **To make alteration to an existing sign, including a change in the size or materials.**
   Permits shall not be required for minor maintenance and repairs to existing signs.
3. **To alter an existing non-conforming sign.**
4. **To erect a temporary sign for a new business.**

B. Required Information for a Sign Permit. For the purposes of review by the Community Development Director or designee and Building Official, a drawing to scale shall be submitted which indicates fully the material, color, texture, dimensions, shape, lighting, relation and attachment to building and other structures, structural elements of the proposed sign, and the size and dimensions of any other signs located on the applicant's building or property.

C. Sign Permit Fee. The applicant shall pay the required fee as established by the City Council. It is unlawful for any person to erect, repair, alter, relocate or maintain within this City, any sign or other graphic display except as provided in this ordinance. When a sign is erected or placed prior to approval of a required sign permit, the sign permit application fee shall be doubled. Payment of the double fee shall not relieve an applicant from fully complying with the requirements of this ordinance or from any penalties prescribed herein.

D. Either the Community Development Director or the applicant shall have the right to refer a Sign Permit application directly to the Planning Commission in lieu of the normal process for Sign Permits.

Applicant Response: The applicant plans to follow this proposal with a sign permit and the associated fee to gain the needed approval to modify and/or place subdivision signage.

3.4.800 Sign Measurement

A. The following criteria shall be used in measuring a sign to determine compliance with this ordinance:

1. **Area. The area of the sign surface is computed by calculating the area encompassed within any regular geometric figure which would enclose all parts of the sign (excluding structural supports, provided they are not used to attract attention).**

2. **Double-faced signs. Allowable sign square footage applies to only one side of double-faced signs.**

3. **Clearance. Clearance of a sign is measured from the average grade at the base of the sign to the lowest point of the sign.**

4. **Height. Signs shall comply with the following requirements:**
   a. **Height is measured from the grade of the curb line closest to the base of the sign to the highest point of the sign. In the absence of a curb line, the edge of the street pavement shall be used. In the absence of street pavement, the average finish grade shall be used to measure the height.**
   b. **The maximum height of any sign shall be as stated herein, but in no case shall a ground mounted sign exceed fifteen (15) feet in height. No ground mounted sign shall project above the roof line of any building.**
   c. **Height. The height of an attached sign shall not exceed the ridgeline of the building or the top of the false façade.**

5. **Logos shall be considered as part of the allowable sign area and are encouraged to comply with the 1880s Western Architectural Frontier Design Theme.**

3.4.900 Requirements For Signs By Specific Zone

A. Residential Zones

Permanent Subdivision Signs. One (1) monument sign not to exceed 20 square feet in area and a maximum height of four feet. The subdivision sign shall be permitted at the primary street entrance into the subdivision.

Applicant Response: The proposal includes a subdivision sign at each primary street entrance, as Phases are constructed. A photo of the existing sign (to be renamed) is included in the submittal packet. As detailed on the photo, the proposal complies with the measurement standards of this section. Also, because the site has two primary entrances and only one sign is proposed per primary entrance, the proposal complies with these standards.

Staff's Response: Staff is currently processing comprehensive amendments to the Section 3.4 Sign Code. Existing signs on site at the time of approval of Sign Code amendments will be considered non-conforming if the new requirements cause a non-conformity. Any revision to the existing signs will be in accordance with the revised Code as approved. All proposed signs must comply with the new Code as revised. All public signs related to streets must comply with the latest standards per City Public Works requirements.

V. Conformance to the 2001 Development Agreement (2001-21131)

Applicant Response: The referenced Development Agreement was established in 2001, in association with the Comprehensive Plan Amendment, Zone Change, and ultimate annexation that brought the subject property into the Sister Urban Growth Boundary (UGB) as Light Industrial. The intent of the Development Agreement was primarily to provide for the necessary transportation improvements associated with a more intensive zone and limit the impacts of light industrial uses, that would not be compatible with the neighboring rural residential properties to the north (just outside of the urban growth boundary).

The Development Agreement establishes, "Permitted Uses"(#3) and "Minimum Setbacks" (#4). Furthermore the Development Agreement provides a method to amend and/or terminate the agreement "Amendment or Termination of Agreement" (#11). Section 11.1 states:

> *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.*

To date all transportation improvements within the Development Agreement have been addressed and "Permitted Uses" have been changed, as the City has held public hearings and changed the General Plan Designation and Zoning to R and MFR. In association with the current proposal, the applicant is requesting to amend #4 "Minimum Setbacks", which states:

> *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 set forth in the applicable zoning ordinance.*

With this proposal, including the public hearing, the applicant proposes to amend the setback to the following:

- 30' for any building that does not exceed 25' in height
- 100' for any building over 25' in height

Effectively, this setback proposal establishes a 30 foot minimum setback for all structures and allows 2 story residential structures (up to 25 feet) for homes located within the 30-100 foot setback area.

The applicant feels that this request is justified for the following reasons:

- The City has already approved the R zoning immediately abutting the properties to the north, thus the potential for incompatible uses has been removed (Residential uses are compatible with residential uses), and the need for an extra large setback (50 feet) to mitigate conflicting uses is no longer warranted. Respecting that there is a difference between residential and rural residential, the applicant proposes to maintain a 30 foot setback as a buffer. The setback on the adjoining Sun Ranch R zone is a maximum of 24 ft or less.

- Although the properties to the north fall outside of the City limits, those properties do directly abut the City Limits and the Urban Growth Boundary. While, pursuant to this agreement, the City does have the ability to provide an extra buffer to ensure the character of the existing neighborhood is not impacted, the City also has an obligation to the citizens of Sisters and the State of Oregon, to ensure that housing can be provided within the City (within the UGB) at a variety of price points (Goal 10). Any restrictions or limitations that are placed on a property, impact a developers ability to meet the needs of the City (restrictions increase cost, which increases the price to the consumer). The applicant has proposed an amendment to the setbacks that will allow reasonable development to occur on the property, while providing a practical buffer between the Residential and Rural residential uses, thereby ensuring development of the entire property will provide a range of housing types and prices, and meet the residential density requirements as detailed in the City building code.

- By providing residential housing within the UGB and allowing Residential properties to be developed to their full potential, future UGB expansions into other nearby rural residential areas, agriculture lands, and/or forest lands will be delayed.

Staff's Response: The subject Development Agreement cannot be amended by this land use action therefore all conditions therein are still in effect. The traffic study that was completed as part of the development agreement and subsequent land use approvals is also still valid. If the applicant wishes to amend the development agreement a separate process is required. Additionally, if the development agreement is amended, impacts to public infrastructure may need to be reevaluated to address current conditions.

VI. Summary and Conclusion

The preceding sections document that the Master Planned Development the Site Plan and the Subdivision conform to the applicable approval criteria of Chapter 4.2, 4.3 and 4.5, along with the development standards included in Chapters 2 and 3. Because the proposal conforms to all applicable approval criteria and development standards, the applicant respectfully requests that the City approve the applications as proposed.

Staff Recommendation of Approval: Staff recommends approval of this application, subject to the Conditions of Approval attached hereto.

II. Agency Comments are provided as attachments specified below

III. Public Comments

Staff hosted a meeting with the applicant and adjacent landowners. Only one adjacent landowner attended and one property owner residing along the northern property line (Mr. Lee). The property owner requested the applicant to perform a few modifications to the future structures along the common property line. No other public comments have been received prior to publication of this report

IV. Exhibits

The following exhibits make up the record in this matter (these are contained in file MP 15-01 and SUB 15-01 and are available for review at the City of Sisters City Hall):

1. Exhibit A: Combined Burden of Proof Statement and Staff report
    a. Attachments
        i. Master Plan
        ii. Tentative Subdivision Plans with Option #1 and #2 with existing conditions
        iii. Park Site Plan
        iv. Development Schedule
        v. Transportation analysis letter
        vi. Water and Sewer analysis
        vii. 2001 Development Agreement
        viii. Signage Image
        ix. Preliminary Title Report
        x. Draft CC&R's
        xi. Franchise Utility providers "Will Serve" letters
2. Other attachments
    a. Conditions of Approval for applications CP 14-01 (ORD# 448) and Z 14-01 (ORD# 449).
    b. Letter from City Engineer Erik Huffman dated April 16, 2015.
    c. Letter from Sisters Camp Sherman Fires District, Gary Marshall dated March 11, 2015.
    d. Email from Sister Airport, Benny Benson dated April 16, 2015.
    e. Recorded Public Road Easement across USA/USFS land dated May 31, 2006
    f. Letter from Oregon Department of Aviation dated April 24, 2015
3. DRAFT Conditions of Approval for this application
4. DRAFT Planning Commission Resolution

File Number: MP 15-01 & SUB 15-01
Hearing Date: April 30, 2015

----------**END OF REPORT**----------

This decision is subject to appeal. The appeal must be filed within 14 (fourteen) days of the date the final decision is mailed. Any appeal must be on a form provided by the City; must be accompanied by the required fee, and must be accompanied by a statement listing the specific reasons(s) for the appeal. See the Sisters Development Code Chapter 4.1 for appeals procedures. For information regarding appeals, contact the Sisters City Hall, Community Development Department, at (541) 549-6022.

Failure to raise an issue with specificity within the appeal form may preclude an appeal to LUBA, and may prevent the ability of the appellant from collecting damages in Circuit Court.
THE FINAL PLAT SHALL NOT BE RECORDED AND NO PERMITS SHALL BE ISSUED UNTIL ALL CONDITIONS ARE MET AND THE APPEAL PERIOD HAS EXPIRED. AN APPEAL SHALL AUTOMATICALLY STAY THE ISSUANCE OF PERMITS UNTIL THE APPEAL PROCESS HAS CONCLUDED.

Mailed by: _____ Date _____

File Number: MP 15-01 & SUB 15-01
Hearing Date: April 30, 2015

DRAFT Conditions of Approval

1. **Annexation Agreement** dated April 20, 2001 remain vested to the site. Additionally, the traffic impact study and the building heights limits along the northern property line prepared as a term of this Agreement is still in effect and valid.

2. **Conditions of Approval (COA) regarding CP 14-01 (ORD # 448):** The conditions of approval (14 terms) for this land use applications remain in effect. Specifically, CP #14-01 COA (Condition #5) requires the applicant to provide 8 units of affordable housing. These units of affordable housing can be provide in the MFR portion during a subsequent site plan application. All other COA terms referenced in CP# 14-01 remain effective and applicable to this application.

3. **Conditions of Approval (COA) regarding Z 14-01 (ORD#449)**: The COA (9 items) referenced in ZC #14-01 remain effective and applicable to this application.

4. **Modification Requests per 4.5.400B**: Request for Modifications to Lot sizes in the R District - 6,000 sf minimum, 20% reduction requested = 4,800 sf minimum lot size; Requests for Modifications in the MFR District are: Lot sizes - 3,500 sf required, 20% reduction requested = 2,800 sf minimum, Lot Width - 40' required, 20% reduction requested = 32' minimum
Lot Coverage- 60% is the maximum, 20% modification requested = 72% maximum
Height-30' maximum, 20% modification = 36' maximum, Setbacks- All MFR setbacks are reduced by 20%.

5. **Street Circulation**: Extension of the Northern Street to Western property line and ultimately to intersect with Pine Street: The City Engineer recommends that the applicant extend the Northern Street right of way to the western edge of the property to enable a future connection with Pine Street. The USA/US Forest Service owns the adjoining parcel to the West and permission to extend the proposed street to intersect with N. Pine Street has not yet been secured. Because of the adjacent Deschutes County "F1" Forest Zoning, the applicant does not believe such a street connection should be extended (per SDC 3.1.300I7) and instead proposes an alternative pedestrian access corridor to connect with existing trailhead. The applicant will provide additional briefing to support its position at the hearing. The Planning Commission should consider whether or not to require extension of this street and if the developer would be required to extend it to intersect with Pine Street. If required, the applicant shall provide a right of way of sufficient width to enable this future street extension and extend the street during the construction of Phase IV. If permission to extend this street across the Forest Service land by the commencement of lots recordation of Phase 4 is unsuccessful, the right of way reservation and requirement to extend the street shall expire.

6. **Proposed Park**: The City is willing to enter into discussions with the applicant regarding dedicating the proposed park as a publically maintained facility. Notwithstanding the future discussions between the City and applicant, the applicant will provide a developed Park prior to the recordation of Phase IV lots. Portable toilets as a permanent sanitation solution regardless of the final status of ownership and maintenance are not permitted. The submitted site plan is sufficient for an interim solution until the status of the Park's ownership and maintenance is finally determined. A final site plan will be submitted by the applicant if the City declines to accept the proposed Park and the City will work with the applicant to prepare a final site plan if the Park will become Public. Planning Commission, City Parks Advisory Board and City Council will participate in the review and approval of the site plan if the proposed Park will become a public facility.

7. **Lots to Front Open Space**: Is dependent on a current text amendment currently being processed for City Council approval on May 14, 2015.

8. **Compliance with all state and federal aviation requirements.**

9. **All Sisters Development Code requirements in effect at the time of approval that are not modified by this decision are required to be followed**

A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF SISTERS
STATE OF OREGON
PLANNING COMMISSION RESOLUTION PC 2015-09

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

WHEREAS, the applicant, 3 Sisters Partners, LLC, requests approval of a Master Plan for a 20.02 acre property, including a site plan for a Park within the Master Planned area and a Tentative Subdivision Plan for a 5 – Phase, 77 single family residential lot subdivision; and,

WHEREAS, this proposed development provides 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 (MP 15-01 and SUB 15-01) was held by the Sisters Planning Commission on April 30, 2015 at which time findings were reviewed, witnesses were heard, and evidence and written testimony was received.

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 MASTER PLAN (FILE NO. MP15-01) AND THE SUBDIVISION (FILE NO. SUB 15-01) SUBJECT TO THE FOLLOWING EXHIBITS:

1. **Exhibit A – Combined Applicant Burden of Proof and Staff Report.**
    a. **Attachments**
        i. **Master Plan**
        ii. **Tentative Subdivision Plans with Option #1 and #2 with existing conditions**
        iii. **Park Site Plan**
        iv. **Development Schedule**
        v. **Transportation Analysis Letter**
        vi. **Water and Sewer analysis**
        vii. **2001 Development Agreement**
        viii. **Signage image**
        ix. **Preliminary title report**
        x. **Draft CC&R's**
        xi. **Franchise Utilities Will serve Letter**
        xii. **Conditions of Approval for Applications CP 14-01 (ORD 448) and Z 14-01 (ORD #449)**

CITY OF SISTERS

Planning Commission Resolution

(CONSIDERATION BY THE PLANNING COMMISSION, OCTOBER 18, 2012)

xiii. **Letter from City Engineer Erik Huffman dated April 16, 2015**
xiv. **Letter from Sisters Camp Sherman Fire District, Gary Marshall dated March 11, 2015**
xv. **Email from Sisters Airport owner, Benny Benson**
xvi. **Recorded Document: Public Road Easement by USFS May 31, 2006**
xvii. **Letter from Oregon Department of Aviation dated April 24, 2015**

THE FOREGOING RESOLUTION IS HEREBY ADOPTED THIS 30TH DAY OF APRIL, 2015.

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

AYES: Dean, Nagel, Seymour, Tewalt, Wright	(0)
NOES:	(0)
ABSENT: Gentry, Layne	(0)
ABSTAIN:	(0)

5/6/15

Signed: Daryl Tewalt, Acting Chairman

MASTER PLAN AREAS - WITH THE OPTIONAL ALLEY

SINGLE FAMILY RESIDENTIAL (NET)	10.20 Ac.	
MULTI-FAMILY RESIDENTIAL (NET)	1.90 Ac.	
OPEN SPACE	2.14 Ac.	(15.0%)
STREET & ALLEY R-O-W	5.78 Ac.	
TOTAL PROJECT	20.02 Ac.	

DENOTES OPTIONAL ALLEY

MASTER PLAN AREAS - WITHOUT THE OPTIONAL ALLEY

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.	

DENOTES OPTIONAL ALLEY

SCALE
60 0 30 60 120
(FEET)
1 INCH = 60 FT.

N

REGISTERED PROFESSIONAL ENGINEER
87705PE
OREGON
JULY 08, 2001
CHRIS D. CHAMBERS
EXPIRES 12/31/2015

DevTech Engineering Inc.
Site Planning · Civil Engineering
Land Surveying
3052 NW Merchant Way., Ste 107
Bend, OR 97701

3 SISTERS PARTNERS
3SP RESIDENTAIL SUBDIVISION
MASTER PLAN

DRAWING FILE NAME:
PROJECT NO.
SCALE:

DRAWN BY: CDC
CHECKED BY: CDC
LAST EDIT: 3/3/2015

DATE	BY	REV#	REVISION	CK'D

SHEET
MP1.0

OWNER/APPLICANT:	3 SISTERS PARTNERS, LLC 1195 NW REDFIELD CIRCLE BEND, OR 97701 (541) 408-0141
ENGINEER/SURVEYOR:	DEVTECH ENGINEERING 3052 NW MERCHANT WAY, SUITE 107 BEND, OR 97701
CURRENT ZONING:	RESIDENTIAL & MULTI-FAMILY RESIDENTIAL
EXISTING LOTS:	THREE SISTERS BUSINESS PARK TRACT 'A' & LOTS 9-19 20.02 ACRES
PROPOSED LOTS:	77 RESIDENTIAL, 1 MULTI-FAMILY RESIDENTIAL, 1 PARK AND OPEN SPACE
CURRENT USE:	VACANT
TOPOGRAPHY:	SLIGHT UNDULATIONS AND GENTLY SLOPING IN THE NORTHEAST DIRECTION
STREETS/ALLEYS:	PUBLIC CITY OF SISTERS
DOMESTIC WATER:	CITY OF SISTERS
SANITARY SEWER:	CITY OF SISTERS
STORMWATER:	SWALES/INFILTRATION TRENCHES
POWER:	CENTRAL ELECTRIC COOP
TELEPHONE/COM:	CENTURY LINK
CABLE TV/COM:	BEND BROADBAND
SCHOOL DISTRICT:	SISTERS SCHOOL DISTRICT
FIRE DISTRICT:	SISTERS-CAMP SHERMAN RFPD

3SP RESIDENTIAL SUBDIVISION

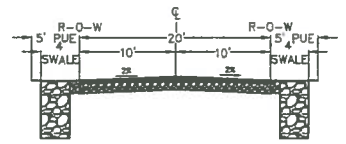
BEING A

RE-PLAT OF 3 SISTERS BUSINESS PARK TRACT 'A' AND LOTS 9-19

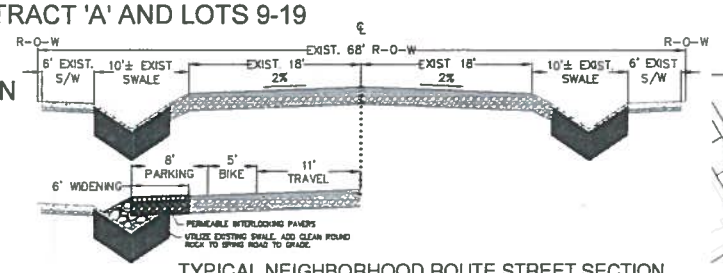
LOCATED IN

SISTERS, OREGON

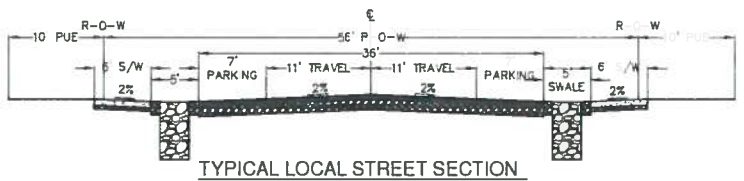
PRELIMINARY
NOT FOR CONSTRUCTION



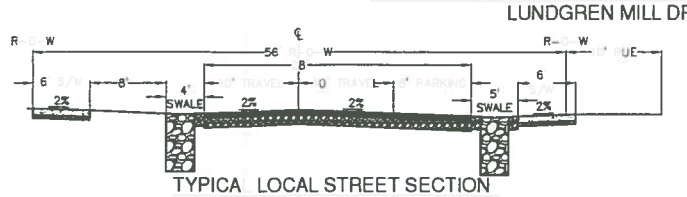
TYPICAL ALLEY SECTION



TYPICAL NEIGHBORHOOD ROUTE STREET SECTION
LUNDGREN MILL DRIVE

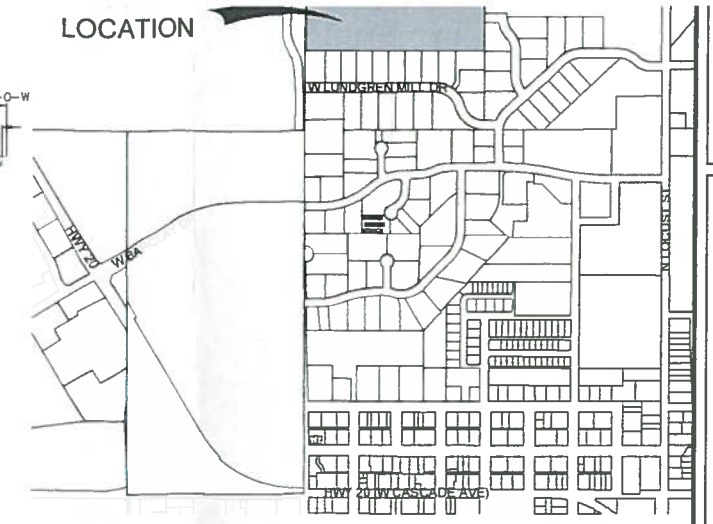


TYPICAL LOCAL STREET SECTION
PARKING BOTH SIDES



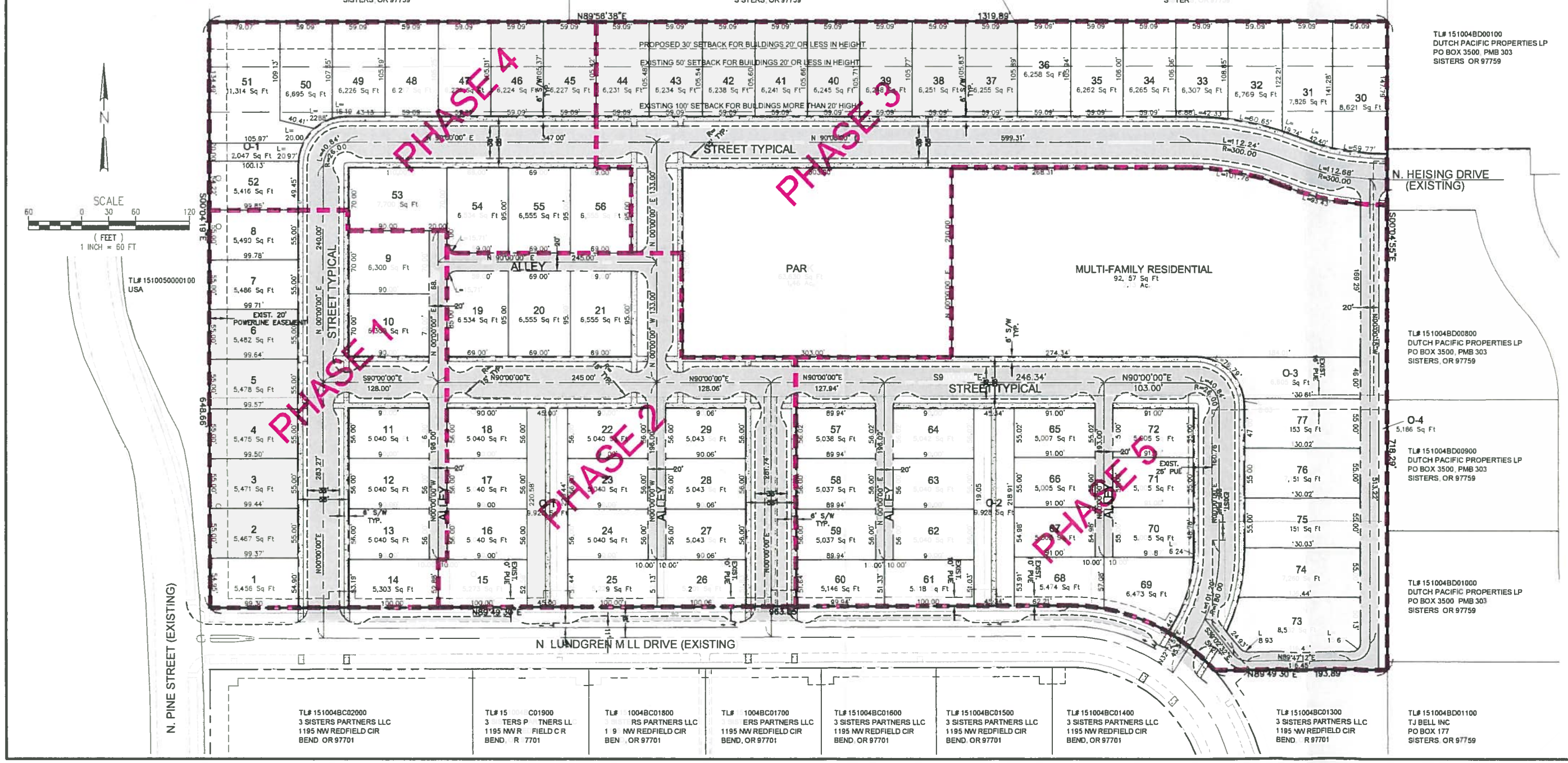
TYPICAL LOCAL STREET SECTION
PARKING ONE SIDE

LOCATION



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



DevTech Engineering Inc.
Site Planning · Civil Engineering
Land Surveying
3052 NW Merchant Way., Ste 107
Bend, OR 97701
Phone: (541) 317-8400

3 SISTERS PARTNERS
3SP RESIDENTIAL SUBDIVISION
TENTATIVE PLAT (OPTION #2)

DRAWN BY:	CDC	CHECKED BY:	CDC		
LAST EDIT:	3/3/2015				
DATE	BY	REW	REVISION	CKD	

PROJECT NO | DRAWING FILE NAME | SCALE:

SHEET
TP2.0

OWNER/APPLICANT	3 SISTERS PARTNERS, LLC 1195 NW REDFIELD CIRCLE BEND, OR 97701 (541) 408-0141
ENGINEER/SURVEYOR	DEVTECH ENGINEERING 3052 NW MERCHANT WAY, SUITE 107 BEND, OR 97701
CURRENT ZONING	RESIDENTIAL & MULTI-FAMILY RESIDENTIAL
EXISTING LOTS	THREE SISTERS BUSINESS PARK TRACT 'A' & LOTS 9-19 20.02 ACRES
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STORMWATER	SWALES/INFILTRATION TRENCHES
POWER	CENTRAL ELECTRIC COOP
TELEPHONE/COM	CENTURY LINK
CABLE TV/COM	BEND BROADBAND
SCHOOL DISTRICT	SISTERS SCHOOL DISTRICT
FIRE DISTRICT	SISTERS-CAMP SHERMAN RFPD

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TOTAL PROJECT	20.02 Ac	

3SP RESIDENTIAL SUBDIVISION

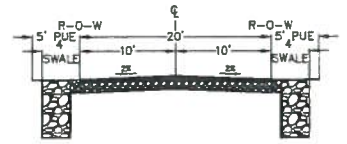
BEING A

RE-PLAT OF 3 SISTERS BUSINESS PARK TRACT 'A' AND LOTS 9-19

LOCATED IN

SISTERS, OREGON

PRELIMINARY
NOT FOR CONSTRUCTION



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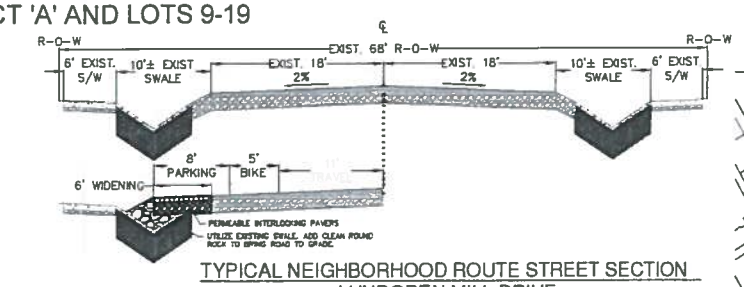
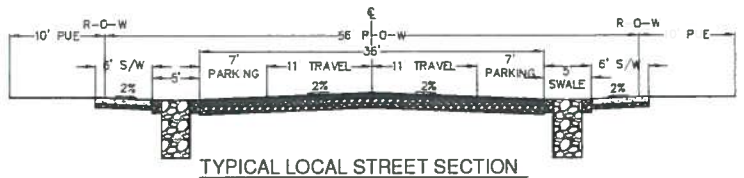
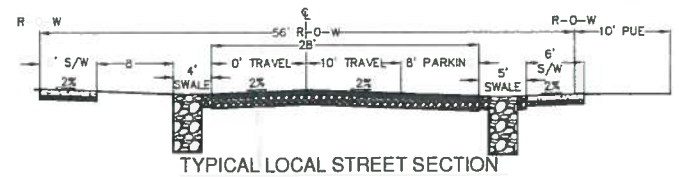


TYPICAL NEIGHBORHOOD ROUTE STREET SECTION
LUNDGREN MILL DRIVE

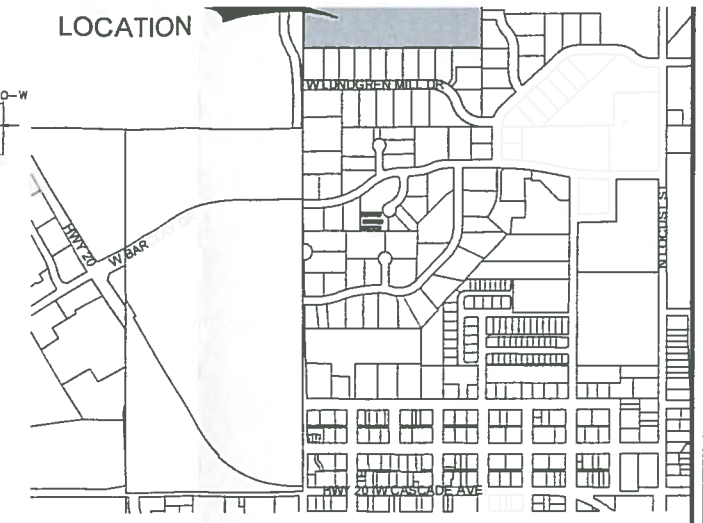


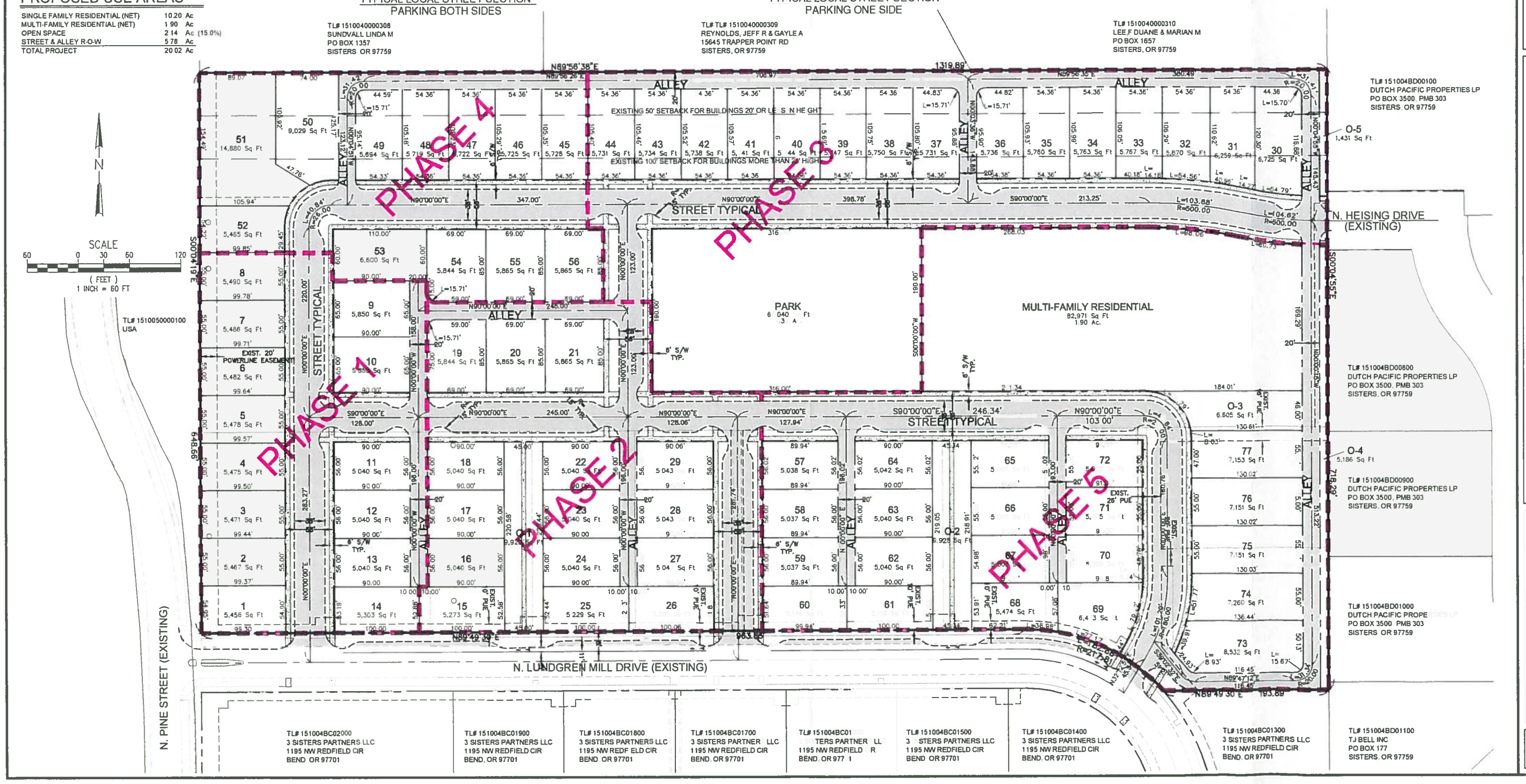
TYPICAL LOCAL STREET SECTION
PARKING BOTH SIDES



TYPICAL LOCAL STREET SECTION
PARKING ONE SIDE

LOCATION





DevTech Engineering Inc.
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3052 NW Merchant Way., Ste 107
Bend, OR 97701
Phone: (541) 317-8429

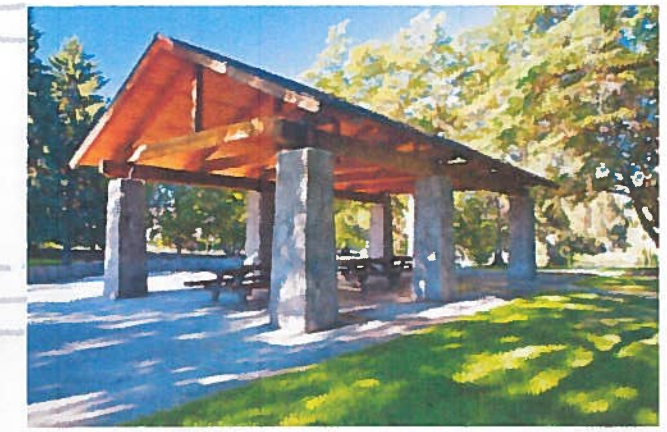
3 SISTERS PARTNERS
3SP RESIDENTIAL SUBDIVISION
TENTATIVE PLAT (OPTION #1)

DRAWN BY:	CDC	CHECKED BY:	CDC
LAST EDIT	3/3/2015	REVISION	
DATE	BY		

PROJECT NO.
SCALE:
DRAWING FILE NAME:

SHEET
TP1.0

3 SISTERS PARTNERS RESIDENTIAL PARK



PROPOSED SHELTER

PROPOSED BENCH

PROPOSED UNIVERSALLY ACCESSIBLE PICNIC TABLE

PROPOSED LITTER RECEPTACLE

03.0915

BOTANICAL DEVELOPMENTS

3SP NEW RESIDENTIAL MASTERPLAN
DEVELOPMENT SCHEDULE

Phase 1	14 SF lots	2015/2016
Phase 2	15 SF lots	2016/2017
Phase 3	15 SF lots Park*	2017/2018
Phase 4	12 SF lots	2018/2019
Phase 5	21 SF lots 1 MF lot	2019/2020

*Park construction may occur before Phase 3

KITTELSON & ASSOCIATES, INC.
TRANSPORTATION ENGINEERING / PLANNING
354 SW Upper Terrace Drive, Suite 101, Bend, Oregon 97702 P 541.312.8300 F 541.312.4585

MEMORANDUM

March 9, 2015 Project #: 18813

Peter Hall
3 Sisters Partners, LLC
1195 NW Redfield Circle
Bend, Oregon 97701

From: Joe Bessman, PE
Project: 3SP Residential Development Debit Letter

The purpose of this letter is to summarize compliance with the April 20, 2001 Development Agreement between the City of Sisters and Deschutes County for the 29.5 acre "School District Property" as referenced in the recitals. The property is located north of Lundgren Mill Drive and west of Pine Street within the City of Sisters, as shown in Exhibit 1.

Exhibit 1. Site Vicinity Map. *Source: Maps.google.com.*

SITE BACKGROUND

The subject property was previously studied as part of a report prepared by David Evans and Associates in the year 2000. At the time, the school district was seeking the annexation of the property and rezone to Industrial. The subject property was referred to as the "School District Property" within the Development Agreement and outlined transportation system needs and cost sharing mitigation to address the impact of trips associated with the rezone.

The original traffic study for the site contemplated 375,815 square-feet of industrial development (which was equivalent to 290 weekday p.m. peak hour trips). This level of industrial development showed impacts on US 20 at three separate intersections. In order to mitigate this impact, Agreement 5.4 restricted the site to allow development of only 210 weekday p.m. peak hour trips.

Three Sisters Partners now owns the property and plans to develop the property with a mix of attached and detached residential units while preserving lands for future industrial space.

PROPOSED DEVELOPMENT PLAN

The current development plan for the property is to construct 77 single-family detached homes and 25 townhomes within the previously platted areas designated as Tract "A" and Lots 19 through 9, as shown in Exhibit 2. The residential property would be served through three local street connections to Lundgren Mill Drive and an eastern connection to Heising Drive, which is currently stubbed to the property boundary. A neighborhood park is planned within the center of the property.

As shown in Exhibit 3, plans for the property include curb bulb-outs throughout the development to maintain low travel speeds and define the allowable parking bays outside of intersections. Most of the internal lots will be alley-loaded, with residential lots around the site periphery front-loaded.

The two western proposed connections to Lundgren Mill Drive are located on straight, tangent roadway sections, the eastern connection is at the apex of the horizontal curve to maximize the available sight lines. As no development has yet occurred on lots to the south of Lundgren Mill Road the driveways do not create conflicts with opposing accesses.

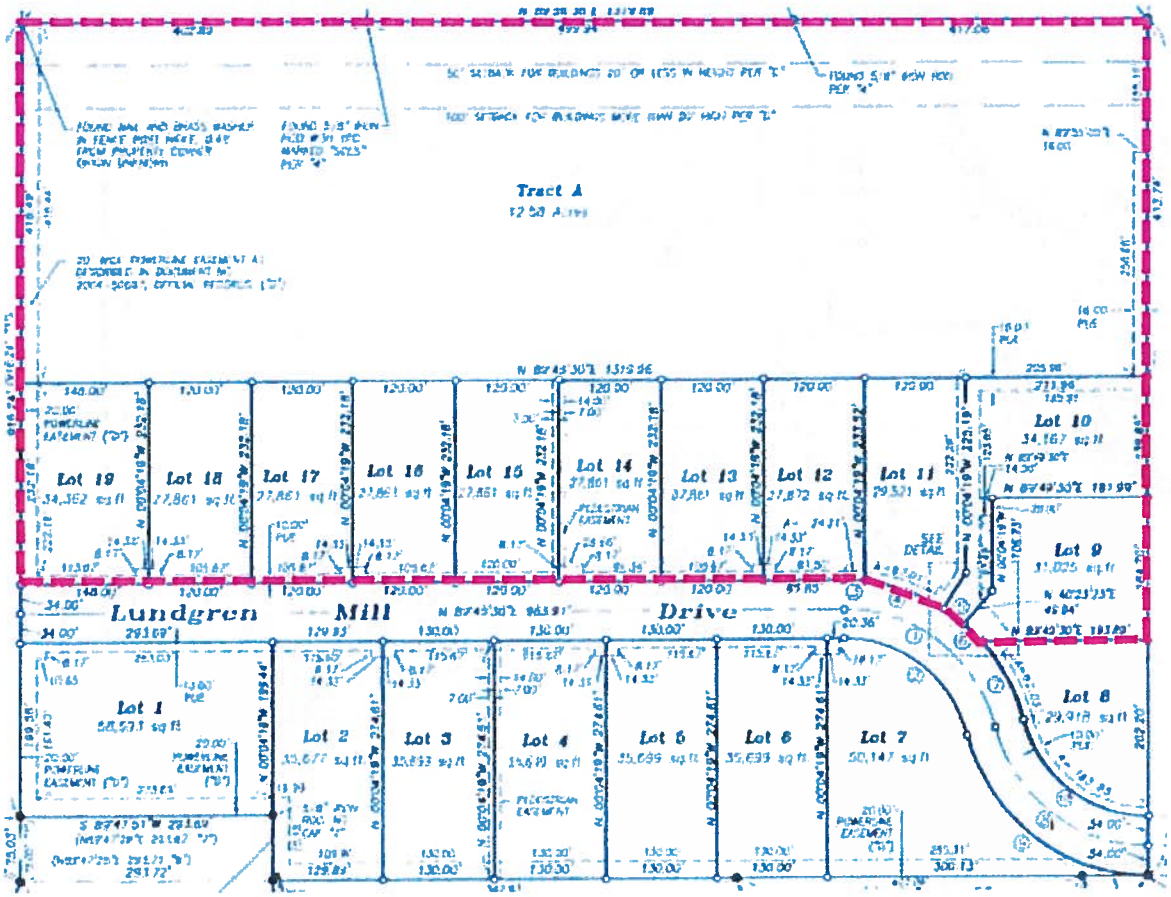


Exhibit 2. Previously approved plat map highlighting the proposed residential area.

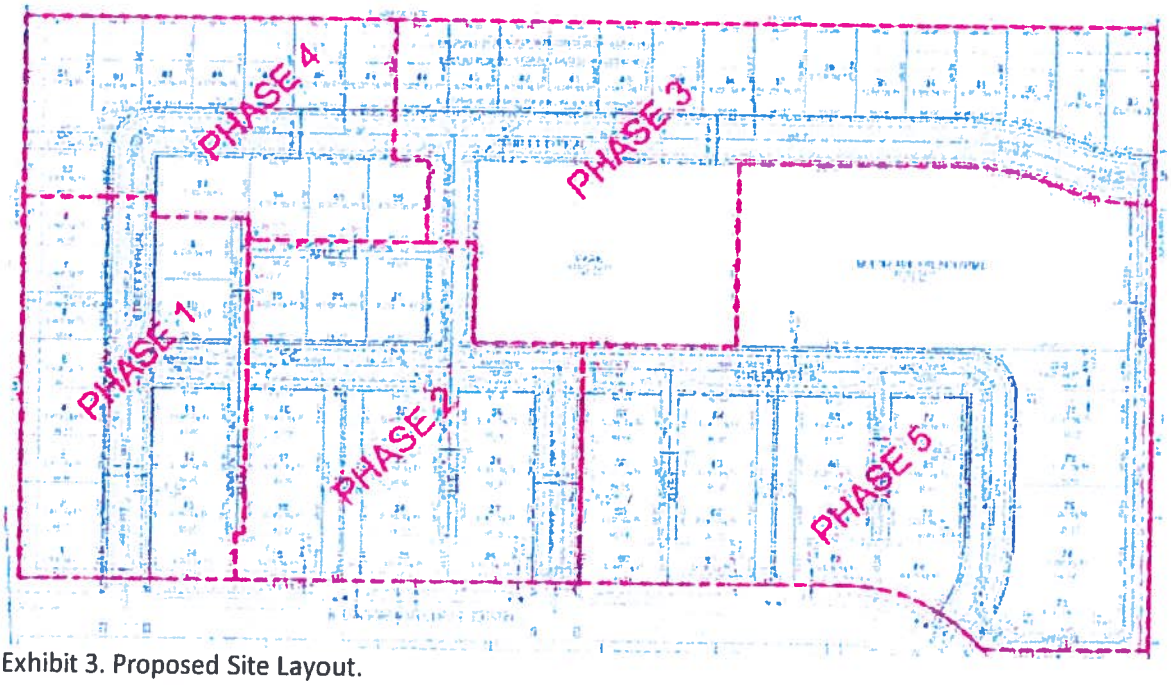


Exhibit 3. Proposed Site Layout.

Trip Generation Potential

The trip generation potential of the proposed residential development was prepared based on the standard reference *Trip Generation, 9th Edition,* published by the Institute of Transportation Engineers (ITE). The resulting daily and weekday p.m. peak hour trip generation potential is summarized below in Table 1.

Table 1. Estimated Trip Generation Potential

Land Use	ITE Code	Size (Units)	Daily Trips	Weekday PM Peak Hour		
				Total	In	Out
Single-Family Detached Housing	210	77	733	77	49	28
Townhome/Condominium	230	25	145	13	9	4
Total			878	90	58	32

As shown in Table 1, the weekday p.m. peak hour trip generation potential is 120 less than the 210 trip limit approved within the development agreement. This is equivalent to approximately 124,000 square-feet of Light Industrial space that could be constructed on the remaining lots (Sisters Business Park Lots 1 through 8).

NEXT STEPS

As summarized herein, the proposed development of 77 single-family detached homes and 25 townhomes is consistent with the previously approved development agreement. Accordingly, the original findings and recommendations from the agreement remain valid and 120 weekday p.m. peak hour trips remain to serve the future industrial development on 3 Sisters Business Park Lots 1 through 8. Please let us know if you have any questions on this analysis at (541) 312-8300.

Attachments:

- Development Agreement
- Approved Plat Map
- Tentative Plat Map

VOL: 2001 PAGE: 21130
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

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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

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

REVIEWED

LEGAL COUNSEL

2001-21130-1

APRIL 20, 2001

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"; DESCHUTES COUNTY, hereinafter referred to as "County;" and BARCLAY MEADOWS BUSINESS PARK, L.L.C., hereinafter referred to as "Barclay Meadows."

RECITALS

A. Barclay Meadows owns a 35 acre parcel of real property identified on the Deschutes County Assessor's Map as 15-10-04, Tax Lot 103, as more particularly described in the attached Exhibit "A," and hereinafter referred to as the "Barclay property."

B. The Sisters School District No. 6, hereinafter referred to as "School District," owns a 29 acre parcel of real property, hereinafter referred to as "School District property," which is adjacent to the west of the Barclay 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. Barclay Meadows (Deschutes County File No. PA-99-4/ZC-99-1) and School District (Deschutes County File No. PA-99-5/ZC-99-3) 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 Barclay property described above, to provide a conceptual plan for future subdivision and industrial development of the Barclay property and to provide a plan for traffic improvements to address the impacts from development of the Barclay property. This Agreement was developed in conjunction with a similar agreement involving the School District 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 joint transportation study prepared by David Evans and Associates analyzing the traffic impacts associated with industrial development of the two properties.

F. It is also the intent of this Agreement to plan for the transportation improvements and contributions that will be required under this Agreement. Barclay Meadows,

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, 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 my 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. 317 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 Deschutes County Ordinance No. 2001-008 following a hearing held on December 27, 2000. Notice of this 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 Barclay Meadows' satisfaction.

3. Permitted Uses:

Barclay Meadows 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, asphalt or concrete batch plant, and wrecking or 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 Barclay 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

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Locust/U.S. Hwy. 20; and 16.4% at Pine Street/U.S. Hwy. 20. Of the total traffic entering 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, Barclay Meadows agrees to restrict development on the Barclay property to uses which will not produce in excess of 203 PM peak hour trips, which when combined with a similar restriction on the School District property (210 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, Barclay Meadows 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 U.S. Hwy. 20/McKinney Butte; U.S. Hwy. 20/Locust; and U.S. Hwy. 20/McKinney Butte.

5.7 With regard to the 413 trips identified herein, Barclay Meadows 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

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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
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
BARCLAY MEADOWS	**Total Cost**	**% Share**	**$ Cost**
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 Barclay 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". Barclay Meadows' exaction referenced in Table 1 will be due and payable by the owner of the property described in the attached Exhibit "A" upon the sooner of subdivision/partition approval or site plan approval for the property, regardless of the development status of the School District 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, Barclay Meadows 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, Barclay Meadows, or its assigns, shall make all payments in the form of cash or check.

6.2 City shall accept and deposit Barclay'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 Barclay Meadows.

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. 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 Barclay property is sold, the rights and interests of Barclay Meadows under this Agreement shall inure to benefit of the purchaser. The transfer of any property subject to this Agreement shall relieve Barclay Meadows 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

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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:

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 by 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

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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

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

805 SW Industrial Way
Suite 204
Bend, OR 97702
ATTN: ARNIE SWARENS/Jack Rinn

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

117 NW Lafayette Avenue
Bend, Oregon
97701
ATTN: LEGAL COUNSEL

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

150 N. Fir St.
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 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 Barclay Meadows 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.

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.

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. Barclay Meadows, City and County and

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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 the other parties the full and complete enjoyment of rights and privileges hereunder.

12.21 Entire Agreement. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. This agreement shall be binding and shall inure to the benefit of the parties and their successors or assigns. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of City to enforce any provision of this agreement shall not constitute a waiver by City of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year hereinafter written.

City of Sisters

By Allen McKibben

Title: MAYOR

Date 4/20/01

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STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Steven M. Wilson as Mayor for the City of Sisters, this 20th day of April, 2001.

Emma J Sivers
Notary Public for Oregon

OFFICIAL SEAL
EMMA J SIVERS
NOTARY PUBLIC - OREGON
COMMISSION NO. 321674
MY COMMISSION EXPIRES MARCH 16, 2003

Emma J Silvers
Notary Public - Oregon
Commission No. 321674

Barclay Meadows, L.L.C.

By
Title Owner

Date 4/21/001

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Arnie Swarens as Owner for Barclay Meadows LLC, this 20th day of April, 2001.

Emma J Sivers
Notary Public for Oregon

OFFICIAL SEAL
EMMA J SIVERS
NOTARY PUBLIC - OREGON
COMMISSION NO. 321674
MY COMMISSION EXPIRES MARCH 16, 2003

Deschutes County

By
Title Chair, Deschutes County Board of Commissioners

Date January 31, 2001

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Tom DeWolf as Chair BOCC for Deschutes County, this 31st day of January, 2001.

Bonnie Baker
Notary Public for Oregon

OFFICIAL SEAL
BONNIE BAKER
NOTARY PUBLIC-OREGON
COMMISSION NO. 321026
MY COMMISSION EXPIRES FEB. 23, 2003

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Exhibit "A"

PARCEL I:

A tract of land located in the Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4) of Section 4, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Commencing at the North Quarter corner of said Section 4; thence South 00°05'01" East along the North-South center Section line, 2590.59 feet to the Center Quarter corner; thence leaving said North-South line South 89°49'54" West along the East-West center Section line, 362.43 feet to the TRUE POINT OF BEGINNING, said point also being on the West line of that certain tract described in Book 191, Page 178, Deed Records; thence South 89°49'54" West along said East-West Section line, 957.79 feet, said point being the Southeast corner of that tract of land described in Book 110, Page 534, Deed Records; thence leaving said East-West line, North 00°04'19" West, 988.59 feet to the Northeast corner of said tract; thence North 0°04'19" West, 327.65 feet to the NW1/16 corner of said Section 4; thence South 89°55'37" East along the North line of said SE1/4 NW1/4 of said Section 4, a distance of 251.38 feet; thence South 0°05'01" East, 162.99 feet; thence North 89°54'59" East along the South line of that certain tract and a Westerly projection thereof as described in Book 194, Page 563, Deed Records, 1068.57 feet to a point on said North-South line and further being on the centerline of Wilt Road (Camp Polk Road); thence along said North-South line and along said centerline of Wilt Road, South 00°05'01" East, 910.24 feet; thence leaving said North-South line and centerline, South 89°49'54" West, 362.43 feet to the Northwest corner of said parcel as described in Book 191, Page 178, Deed Records; thence South 00°01'01" East, 240.38 feet to the TRUE POINT OF BEGINNING and terminus of this description.

PARCEL II:

A tract of land located in the Southwest Quarter (SW1/4) of Section 4, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

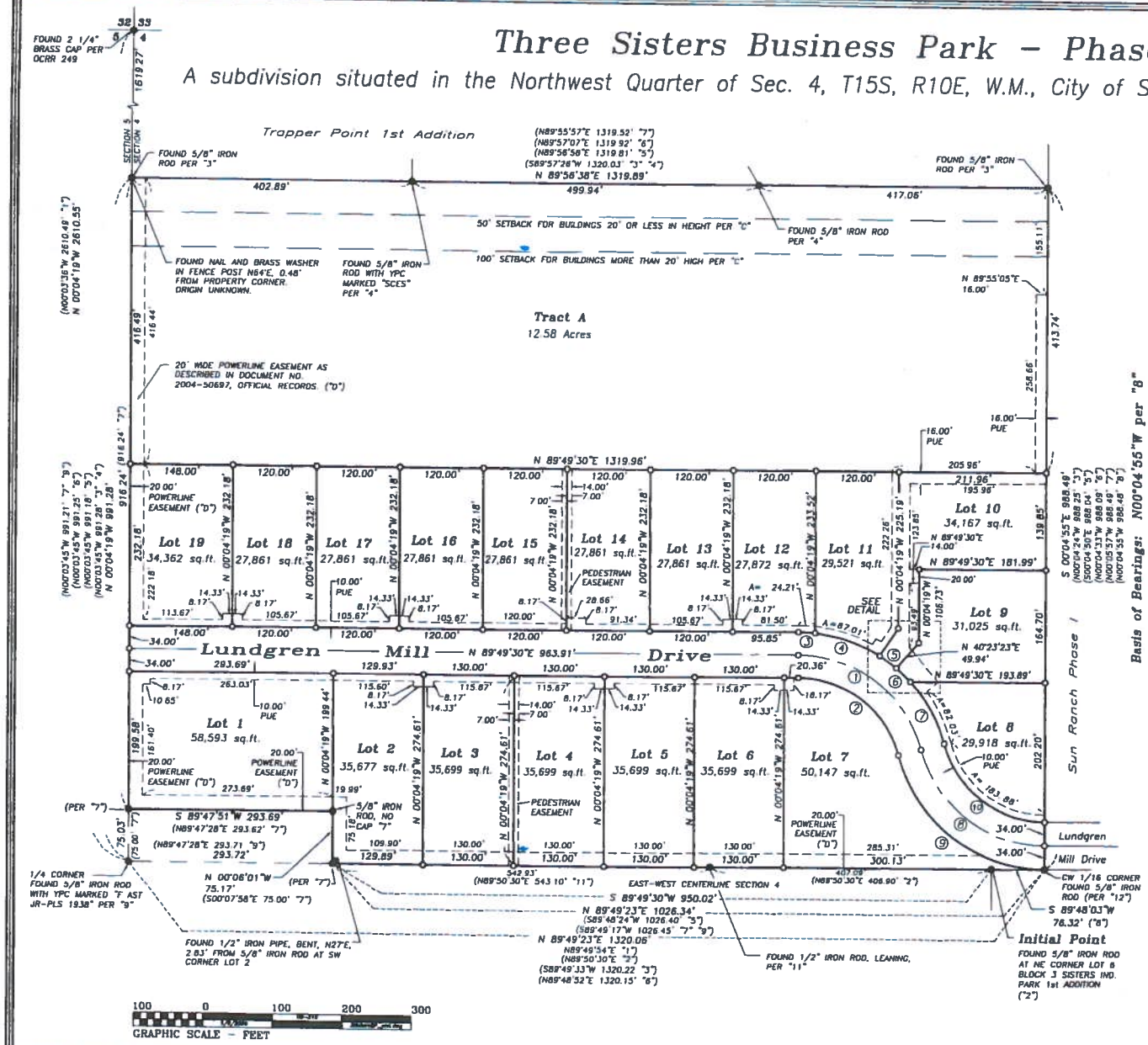
Beginning at a 5/8" iron rod at the Northeast corner of Lot 6, Block 3, Sisters Industrial Park-First Addition, a subdivision of record, also being a point on the East-West centerline of said Section 4 and the South line of that tract of land described in that certain "Statutory Warranty Deed" recorded in Book 424, Page 1547, Deschutes County Official Records; thence North 89°47'36" East, on said South line, 362.56 feet to a 5/8" iron rod; thence South 00°05'23" East, leaving said South line, 258.60 feet to a 5/8" iron rod; thence on the arc of a 1912.87 foot radius curve to the left, (chord bears North 87°28'29" West, 179.43 feet), 179.49 feet to a 5/8" iron rod; thence South 89°50'14" West, 183.64 feet to a 5/8" iron rod on the Easterly terminus of Barclay Drive also being the East line of said "Sisters Industrial Park-First Addition"; thence on said East line, North 00°01'00" West, 249.91 feet to the POINT OF BEGINNING.

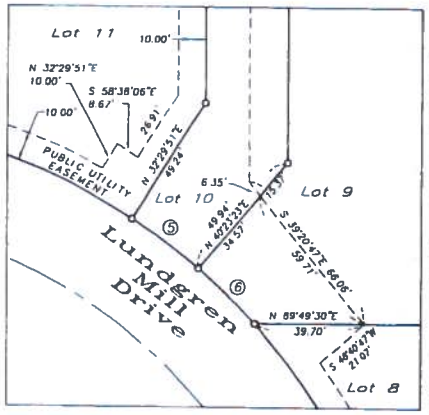
EXHIBIT A

G-1180

Three Sisters Business Park – Phase I

A subdivision situated in the Northwest Quarter of Sec. 4, T15S, R10E, W.M., City of Sisters, Deschutes County, Oregon





Detail
1"=30'

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 19, 2003
MICHELE W. SIMS
RENEWAL DATE 6/30/06

Legend

- ● FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "FRED AST JR – PLS 1938", UNLESS OTHERWISE DESCRIBED
- ○ POST-MONUMENT SET 5/8" X 30" IRON ROD WITH ORANGE PLASTIC CAP MARKED "LS 60068"
- ( ) RECORD DATA FROM REFERENCE MATERIAL
- CENTERLINE OF ROAD
- EASEMENT
- SETBACK LINE
- PUE PUBLIC UTILITY EASEMENT
- YPC YELLOW PLASTIC CAP
- A= ARC LENGTH

Curve Table

Curve	Radius	Length	Delta	Chord	Chord Bear.
C1	183.81'	241.73'	75°21'02"	224.68'	S 52°28'59" E
C2	149.81'	197.02'	75°21'02"	183.12'	S 52°28'59" E
C3	217.81'	24.20'	6°21'54"	24.18'	S 86°59'11" E
C4	217.81'	100.01'	26°18'27"	99.13'	S 70°19'23" E
C5	217.81'	30.00'	7°53'33"	29.98'	S 53°13'23" E
C6	217.81'	28.68'	7°32'37"	28.66'	S 45°50'18" E
C7	217.81'	103.56'	27°14'32"	102.59'	S 28°26'44" E
C8	183.71'	241.68'	75°22'29"	224.62'	S 52°30'43" E
C9	217.71'	286.34'	75°21'23"	266.14'	S 52°30'10" E
C10	149.71'	197.02'	75°24'05"	183.11'	S 52°31'30" E

Sheet 2 of 2

Fred A. Ast, Jr. and Associates 250 West Cascade P.O. Box 751 Sisters, Oregon 97759 541-549-7851

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

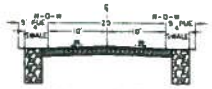
PRELIMINARY
NOT FOR CONSTRUCTION

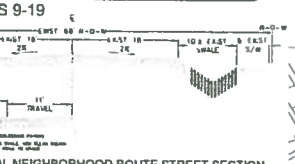
PROJECT DATA

OWNER/APPLICANT	3 SISTERS PARTNERS, LLC 1195 NW REDFIELD CIRCLE BEND, OR 97701 (541) 408-8141
ENGINEER/SURVEYOR	DEVTECH ENGINEERING 3052 NW MERCHANT WAY, SUITE 107 BEND, OR 97701
CURRENT ZONING	RESIDENTIAL & MULTI-FAMILY RESIDENTIAL
EXISTING LOTS	THREE SISTERS BUSINESS PARK TRACT 'A' & LOTS 9-19 20.02 ACRES
PROPOSED LOTS	77 RESIDENTIAL, 1 MULTI-FAMILY RESIDENTIAL, 1 PARK AND OPEN SPACE
CURRENT USE	VACANT
TOPOGRAPHY	SLIGHT UNDULATIONS AND GENTLY SLOPING IN THE NORTHEAST DIRECTION
STREETS/ALLEYS	PUBLIC CITY OF SISTERS
DOMESTIC WATER	CITY OF SISTERS
SANITARY SEWER	CITY OF SISTERS
STORMWATER	SWALES/INFILTRATION TRENCHES
POWER	CENTRAL ELECTRIC COOP
TELEPHONE/COM	CENTURY LINK
CABLE TV/COM	BEND BROADBAND
SCHOOL DISTRICT	6/6 SISTERS SCHOOL DISTRICT
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	2.02 Ac.	(15.0%)
STREET & ALLEY R-O-W	5.16 Ac.	
TOTAL PROJECT	20.02 Ac.	

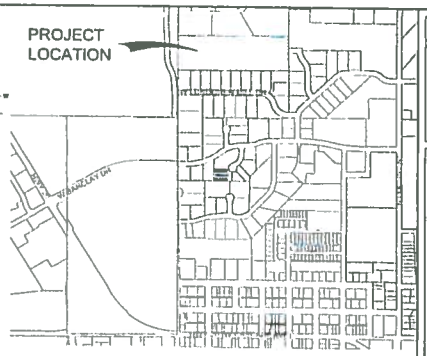

TYPICAL ALLEY SECTION

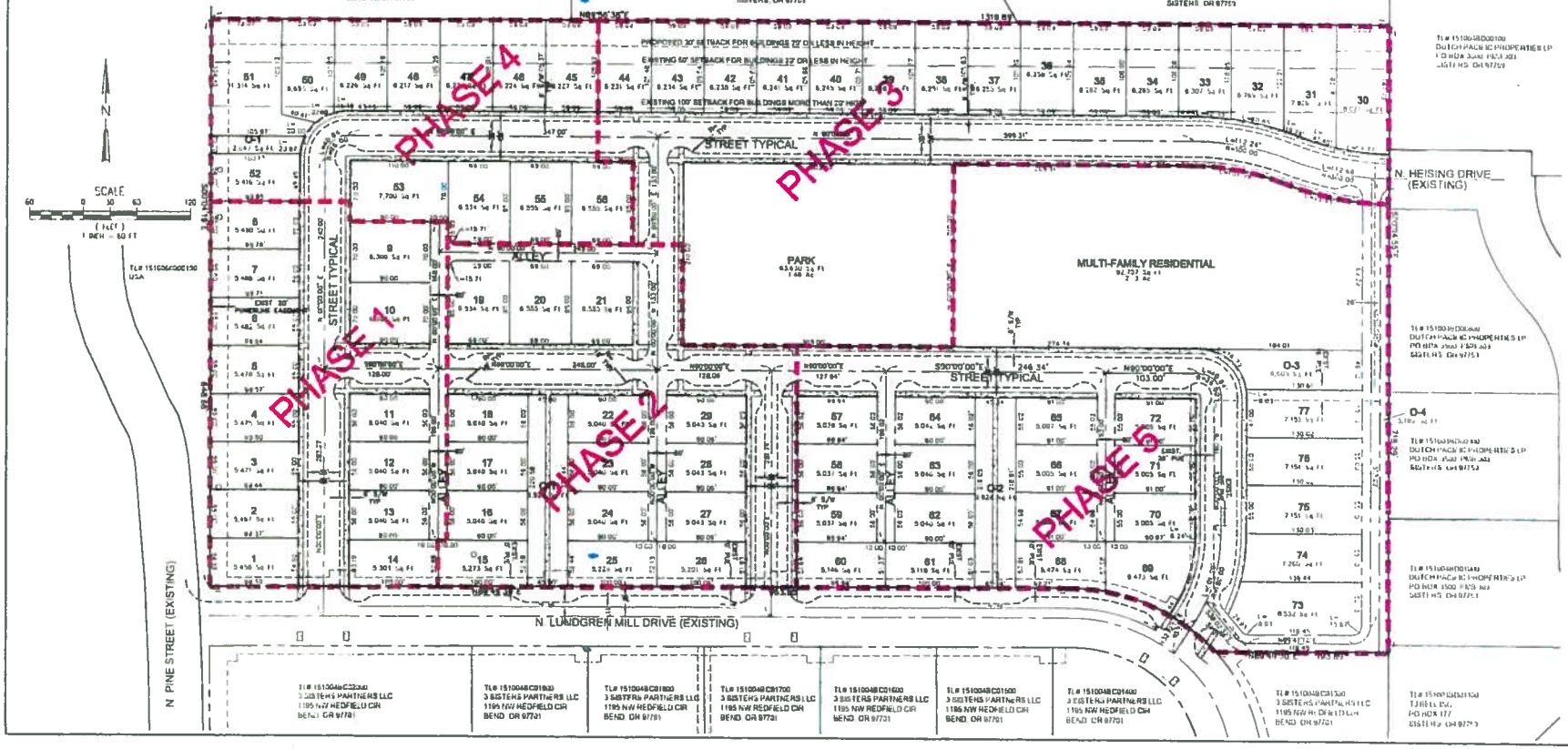

TYPICAL NEIGHBORHOOD ROUTE STREET SECTION
LUNDGREN MILL DRIVE

TYPICAL LOCAL STREET SECTION
PARKING BOTH SIDES

TYPICAL LOCAL STREET SECTION
PARKING ONE SIDE

PROJECT LOCATION





REGISTERED PROFESSIONAL ENGINEER
OREGON
CHRIS D. CHAMBERS

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

3 SISTERS PARTNERS
3SP RESIDENTAIL SUBDIVISION
TENTATIVE PLAT (OPTION #2)

SCALE 1"=60' | PROJECT NO. 150108 | DRAWING FILE NAME 3 SISTERS TP.DWG

DRAWN BY: CDC | CHECKED BY: CDC
LAST EDIT: 3/23/15

DATE	BY	REVISION	CHKD

SHEET
TP2.0

DevTech Engineering, Inc.
Site Planning · Civil Engineering
Land Surveying

Water & Sewer Analysis Memo

To: Peter Hall, 3 Sisters Partners

From: Chris Chambers, PE

Date: 3/9/2015

Re: 3SP Residential Project - Water and Waste Water Analysis Narrative & Assumptions

Project Summary
The proposed project property is located north of W Lundgren Mill Drive and includes Lots 9-19 and Tract A of the Three Sisters Business Park (20.02 total Acres). A re-plat of the Three Sisters Business Park lots into single family, multi-family, and open space is considered. The property received a zone change from light industrial to residential and multi-family in 2007 & 2014. A tentative plat has been prepared for a master plan application and a subdivision application to the City of Sisters. The tentative plat includes 77 single family lots, 22-25 multi-family units, and open space.

A sewage pump station was constructed in 2006 near the intersection of N Jantzen Lane and E Heising Drive and was sized to include sewage contribution from the proposed subject property and Sun Ranch. Sewage flow contributions were calculated based on the previous light industrial zoning for the property. The intent of this memo is to compare the previous zoning and project approvals water and sewer impacts vs. the proposed residential project water and sewer impacts to verify no additional impacts are proposed.

Water Impact Analysis
Light Industrial Demand (previously approved)
For purposes of this calculation we are comparing existing Lots 9-19 and Tract A of the Three Sisters Business Park (20.02 total Acres) to the proposed residential project. Previous water demand methodologies have used a water demand for light industrial properties of 3,500 gallons/day/acre. Under the previous zoning of light industrial, the project would require **70,070 gallons/day**.

(3,500 gal/day/ac)*(20.02 ac) = 70,070 gal/day

Residential Demand (proposed project)
The proposed project includes 77 single family lots, 22-25 multi-family units, and a park/open space irrigated area (assume 2.00 acres irrigated). The City of Sisters *Water Management and conservation Plan* prepared by GSI Water Solutions dated January 2011summerizes residential water demand based on 1.99 people per residence and annual average rates of 188 gpcd for single family residential, and 156 gpcd for multi-family residential. Park irrigation rates during the summer months are assumed to be 20-inchs of water over the April 15th to October 15th irrigation season. Based on this, the summer average water demand for the proposed residential project is **42,502 gal/day**

(77 single family units)*(1.99 people/unit)*(188 gpcd) = 28,807 gal/day
(25 multi-family units)*(1.99 people/unit)*(156 gpcd) = 7,761 gal/day
(2.00 acres)*(43,560 sf/ac)*(20-inches/12-inches)*(7.48 ft^3/gal)/(183 days) = 5,934 gal/day

The proposed residential project water demand is less than the previously approved light industrial project demand. Also, the 2007 and 2014 zone changes assumed a residential density of 5 units/acre. The proposed project includes a density of 5 units/acres, which is in conformance with the previous

zone change assumptions for water demand. In summary, the proposed project will result in an overall decrease in water demand than the previous approved use as light industrial, and is in conformance with the 2007 and 2014 zone change assumptions.

Sewer Impact Analysis

Light Industrial Sewage Contribution (previously approved)

For purposes of this calculation we are comparing existing Lots 9-19 and Tract A (North Park plat) of the Three Sisters Business Park (20.02 total Acres) to the proposed residential project. Previous sewage flow contribution calculations have been based on the City of Sisters *Water Management and conservation Plan* prepared by GSI Water Solutions dated January 2011. The plan estimates equivalent dwelling units (edu) at a rate of 1edu/20,000 sf of industrial land area. The 2007 zone change calculations also assumed 3 edu/light industrial lot. In 2007, the North Park plat proposed 44.4 edu's for single family residential and 20.8 edu's for multi- family residential. Under the previous 2007 zoning of light industrial together with the North Park plat, the project would include **114.4 edu's**.

(7.44 acres for Lots 9-19)*(43,560 sf/acre)/(20,0000 sf/edu) = 16.2 edu
(11 IL lots)*(3 edu/lot) = 33 edu
44.4 edu + 20.8 edu (for North Park plat) = 65.2 edu

Residential Demand (proposed project)

The proposed project includes 77 single family lots, 22-25 multi-family units, therefore the proposed residential project includes **102 edu's**.

(77 single family)+(25 multi-family) = 102 edu

The proposed residential project sewer impact is less than the previously approved light industrial project. Also, the 2007 and 2014 zone changes assumed a residential density of 5 units/acre. The proposed project includes a density of 5 units/acres, which is in conformance with the previous zone change assumptions for sewer impact. In summary, the proposed project will result in an overall decrease in sewer impact than the previous approved use as light industrial together with the North Park plat, and is in conformance with the 2007 and 2014 zone change assumptions.

REGISTERED PROFESSIONAL ENGINEER
52705PE
OREGON
July 09, 2001
CHRIS D. CHAMBERS
EXPIRES: 12/31/2015

VOL: 2001 PAGE: 21130
RECORDED DOCUMENT

STATE OF OREGON
COUNTY OF DESCHUTES

*2001-21130 * Vol-Page Printed: 05/04/2001 13:14:22

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

Mary Sue Penhollow

MARY SUE PENHOLLOW
DESCHUTES COUNTY CLERK

REVIEWED

LEGAL COUNSEL

April 20, 2001

2001-21130-1

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"; DESCHUTES COUNTY, hereinafter referred to as "County;" and BARCLAY MEADOWS BUSINESS PARK, L.L.C., hereinafter referred to as "Barclay Meadows."

RECITALS

A. Barclay Meadows owns a 35 acre parcel of real property identified on the Deschutes County Assessor's Map as 15-10-04, Tax Lot 103, as more particularly described in the attached Exhibit "A," and hereinafter referred to as the "Barclay property."

B. The Sisters School District No. 6, hereinafter referred to as "School District," owns a 29 acre parcel of real property, hereinafter referred to as "School District property," which is adjacent to the west of the Barclay 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. Barclay Meadows (Deschutes County File No. PA-99-4/ZC-99-1) and School District (Deschutes County File No. PA-99-5/ZC-99-3) 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 Barclay property described above, to provide a conceptual plan for future subdivision and industrial development of the Barclay property and to provide a plan for traffic improvements to address the impacts from development of the Barclay property. This Agreement was developed in conjunction with a similar agreement involving the School District 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 joint transportation study prepared by David Evans and Associates analyzing the traffic impacts associated with industrial development of the two properties.

F. It is also the intent of this Agreement to plan for the transportation improvements and contributions that will be required under this Agreement. Barclay Meadows,

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, 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 my 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. 317 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 Deschutes County Ordinance No. 2001-008 following a hearing held on December 27, 2000. Notice of this 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:

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 Barclay Meadows' satisfaction.

3. Permitted Uses:

Barclay Meadows 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, asphalt or concrete batch plant, and wrecking or 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 Barclay 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 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, Barclay Meadows agrees to restrict development on the Barclay property to uses which will not produce in excess of 203 PM peak hour trips, which when combined with a similar restriction on the School District property (210 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, Barclay Meadows 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 U.S. Hwy. 20/McKinney Butte; U.S. Hwy. 20/Locust; and U.S. Hwy. 20/McKinney Butte.

5.7 With regard to the 413 trips identified herein, Barclay Meadows 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

2001-21130.6

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
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
BARCLAY MEADOWS	**Total Cost**	**% Share**	**$ Cost**
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 Barclay 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". Barclay Meadows' exaction referenced in Table 1 will be due and payable by the owner of the property described in the attached Exhibit "A" upon the sooner of subdivision/partition approval or site plan approval for the property, regardless of the development status of the School District 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, Barclay Meadows 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, Barclay Meadows, or its assigns, shall make all payments in the form of cash or check.

6.2 City shall accept and deposit Barclay'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 Barclay Meadows.

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. 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 Barclay property is sold, the rights and interests of Barclay Meadows under this Agreement shall inure to benefit of the purchaser. The transfer of any property subject to this Agreement shall relieve Barclay Meadows 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:

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 by 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

2001-21130-10

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

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

805 SW Industrial Way
Suite 204
Bend, OR 97702
ATTN: ARNIE SWARENS / Jack Rinn

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

117 NW Lafayette Avenue
Bend, Oregon
97701
ATTN: LEGAL COUNSEL

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

150 N. Fir St.
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 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 Barclay Meadows 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.

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.

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. Barclay Meadows, 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 the other parties the full and complete enjoyment of rights and privileges hereunder.

12.21 Entire Agreement. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. This agreement shall be binding and shall inure to the benefit of the parties and their successors or assigns. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of City to enforce any provision of this agreement shall not constitute a waiver by City of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year hereinafter written.

City of Sisters

By Stan McWilson

Title: MAYOR

Date 4/20/01

2001-21130-14

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Steven M. Wilson as Mayor for the City of Sisters, this 20th day of April, 2001.

Emma J Silvers
Notary Public for Oregon

OFFICIAL SEAL
EMMA J SIVERS
NOTARY PUBLIC - OREGON
COMMISSION NO. 321674
MY COMMISSION EXPIRES MARCH 16, 2003

Emma J Silvers
Notary Public - Oregon
Commission No. 321674

Barclay Meadows, L.L.C.

By
Title Owner
Date 4/21/001

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Arnie Swarens as Owner for Barclay Meadows LLC, this 20th day of April, 2001.

Emma J Silvers
Notary Public for Oregon

OFFICIAL SEAL
EMMA J SIVERS
NOTARY PUBLIC - OREGON
COMMISSION NO. 321674
MY COMMISSION EXPIRES MARCH 16, 2003

Deschutes County

By
Title Chair, Deschutes County Board of Commissioners
Date January 31, 2001

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Tom DeWolf as Chair BOCC for Deschutes County, this 31st day of January, 2001.

Bonnie Baker
Notary Public for Oregon

OFFICIAL SEAL
BONNIE BAKER
NOTARY PUBLIC-OREGON
COMMISSION NO. 321026
MY COMMISSION EXPIRES FEB. 23, 2003

2001-21130.15

Exhibit "A"

PARCEL I:

A tract of land located in the Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4) of Section 4, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Commencing at the North Quarter corner of said Section 4; thence South 00°05'01" East along the North-South center Section line, 2590.59 feet to the Center Quarter corner; thence leaving said North-South line South 89°49'54" West along the East-West center Section line, 362.43 feet to the TRUE POINT OF BEGINNING, said point also being on the West line of that certain tract described in Book 191, Page 178, Deed Records; thence South 89°49'54" West along said East-West Section line, 957.79 feet, said point being the Southeast corner of that tract of land described in Book 110, Page 534, Deed Records; thence leaving said East-West line, North 00°04'19" West, 988.59 feet to the Northeast corner of said tract; thence North 0°04'19" West, 327.65 feet to the NW1/16 corner of said Section 4; thence South 89°55'37" East along the North line of said SE1/4 NW1/4 of said Section 4, a distance of 251.38 feet; thence South 0°05'01" East, 162.99 feet; thence North 89°54'59" East along the South line of that certain tract and a Westerly projection thereof as described in Book 194, Page 563, Deed Records, 1068.57 feet to a point on said North-South line and further being on the centerline of Wilt Road (Camp Polk Road); thence along said North-South line and along said centerline of Wilt Road, South 00°05'01" East, 910.24 feet; thence leaving said North-South line and centerline, South 89°49'54" West, 362.43 feet to the Northwest corner of said parcel as described in Book 191, Page 178, Deed Records; thence South 00°01'01" East, 240.38 feet to the TRUE POINT OF BEGINNING and terminus of this description.

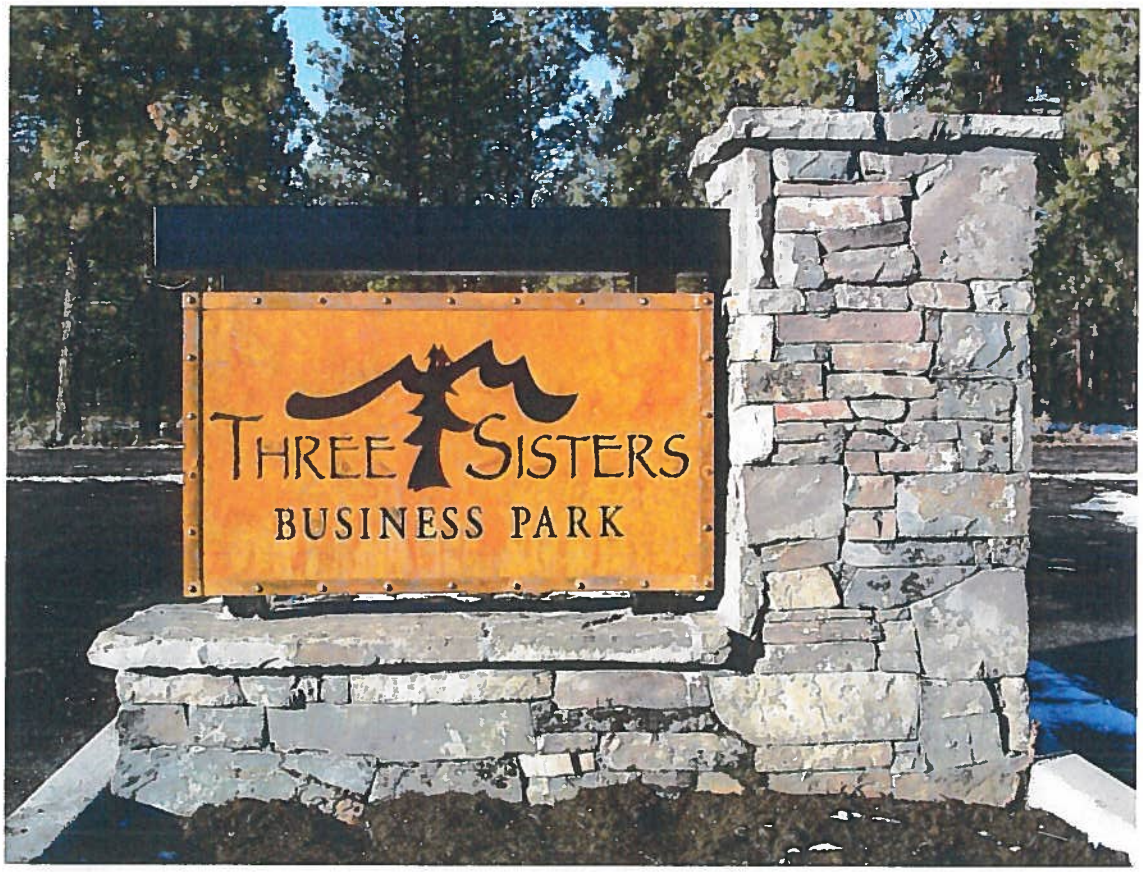
PARCEL II:

A tract of land located in the Southwest Quarter (SW1/4) of Section 4, Township 15 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Beginning at a 5/8" iron rod at the Northeast corner of Lot 6, Block 3, Sisters Industrial Park-First Addition, a subdivision of record, also being a point on the East-West centerline of said Section 4 and the South line of that tract of land described in that certain "Statutory Warranty Deed" recorded in Book 424, Page 1547, Deschutes County Official Records; thence North 89°47'36" East, on said South line, 362.56 feet to a 5/8" iron rod; thence South 00°05'23" East, leaving said South line, 258.60 feet to a 5/8" iron rod; thence on the arc of a 1912.87 foot radius curve to the left, (chord bears North 87°28'29" West, 179.43 feet), 179.49 feet to a 5/8" iron rod; thence South 89°50'14" West, 183.64 feet to a 5/8" iron rod on the Easterly terminus of Barclay Drive also being the East line of said "Sisters Industrial Park-First Addition"; thence on said East line, North 00°01'00" West, 249.91 feet to the POINT OF BEGINNING.

EXHIBIT A

SIGNAGE IMAGE
(Name will be replaced)



15 OREGON AVE
BEND, OR 97701
(541) 389-7711 * Fax (541) 389-0506

Peter Hall

February 22, 2015
Report #1
Title Number: 157750
Title Officer: HOPE BRIDGES

SUBDIVISION REPORT

The land referred to in this Report is described as follows:

Lots Nine (9) through Nineteen (19) inclusive and Tract A, THREE SISTERS BUSINESS PARK – PHASE I, recorded June 29, 2006, in Cabinet G, Page 1179, Deschutes County, Oregon.

and dated as of February 10, 2015 at 7:00 a.m., title is vested in:

Vestee:

3 SISTERS PARTNERS, LLC, AN OREGON LIMITED LIABILITY COMPANY

The estate or interest in the land described herein is:

Fee Simple

SPECIAL EXCEPTIONS:

Tax Information

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 01200
Account No. 253212

NOTE: The 2014-2015 Taxes: $922.50, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 01100
Account No. 253211

NOTE: The 2014-2015 Taxes: $1,011.54, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 01000
Account No. 253210

NOTE: The 2014-2015 Taxes: $884.34, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00900
Account No. 253209

NOTE: The 2014-2015 Taxes: $833.48, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00800
Account No. 253208

NOTE: The 2014-2015 Taxes: $833.48, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00700
Account No. 253207

NOTE: The 2014-2015 Taxes: $833.48, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00600
Account No. 253206

NOTE: The 2014-2015 Taxes: $833.48, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00500
Account No. 253205

NOTE: The 2014-2015 Taxes: $833.48, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00400
Account No. 253204

NOTE: The 2014-2015 Taxes: $833.48, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00300
Account No. 253203

NOTE: The 2014-2015 Taxes: $833.48, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00200
Account No. 253202

NOTE: The 2014-2015 Taxes: $1,024.34, paid in full.
(Includes $18.75 Fire Patrol)

Taxes assessed under Code No. 6-047 Map and Tax Lot Number 15 10 04BC 00100
Account No. 253201

NOTE: The 2014-2015 Taxes: $19,350.88, paid in full.
(Includes $21.31 Fire Patrol)

1. Development Agreement, including the terms and provisions thereof, recorded May 4, 2001, in Volume 2001, Page 21131, Deschutes County Records.

2. Easement, including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein
   As granted to: Central Electric Cooperative, Inc.
   Recorded: August 24, 2004
   Instrument No.: 2004-50697, Deschutes County Records
   (Lots 1-7, 19 and Tract A)

3. Covenants, Conditions and Restrictions, but omitting any Covenants or Restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law as contained in Declaration and including the right to levy certain charges and assessments against the subject property.
   Recorded: August 14, 2006
   Instrument No.: 2006-55471, Deschutes County Records
   (All lots except Tract A)

4. Easement or easements, including the terms and provisions thereof, as contained in instrument recorded August 14, 2006, Instrument No. 2006-55471, Deschutes County Records.
   (All lots except Tract A)

5. Public utility easement as shown on the official plat of said land.

6. Pedestrian easement as shown on the official plat of said land.
   (Lots 3, 4, 14 and 15)

7. Building setbacks as shown on the official plat of said land.
(Tract A)

8. Easement, including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein
As granted to: City of Sisters, Oregon, an Oregon municipal corporation
Recorded: May 12, 2006
Instrument No.: 2006-32997, Deschutes County Records.
(Affects Lundgren Mill Drive)

9. A copy of the terms and provisions of the Operating Agreement (including any approvals of withdrawal of member(s) or acceptance of new member(s) of 3 Sisters Partners, LLC should be furnished for our examination prior to closing. Any conveyance or encumbrance of limited liabilities companies' property must be executed by all of the members unless otherwise provided for in the operating agreement.

NOTE: The following deed(s) affecting said land were recorded within twenty-four (24) months of the date of this report: **NONE**

NOTE: Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

NOTE: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

This report is preliminary to the issuance of a policy of title insurance and shall become null and void unless a policy is issued and the full premium paid.

HB:kg

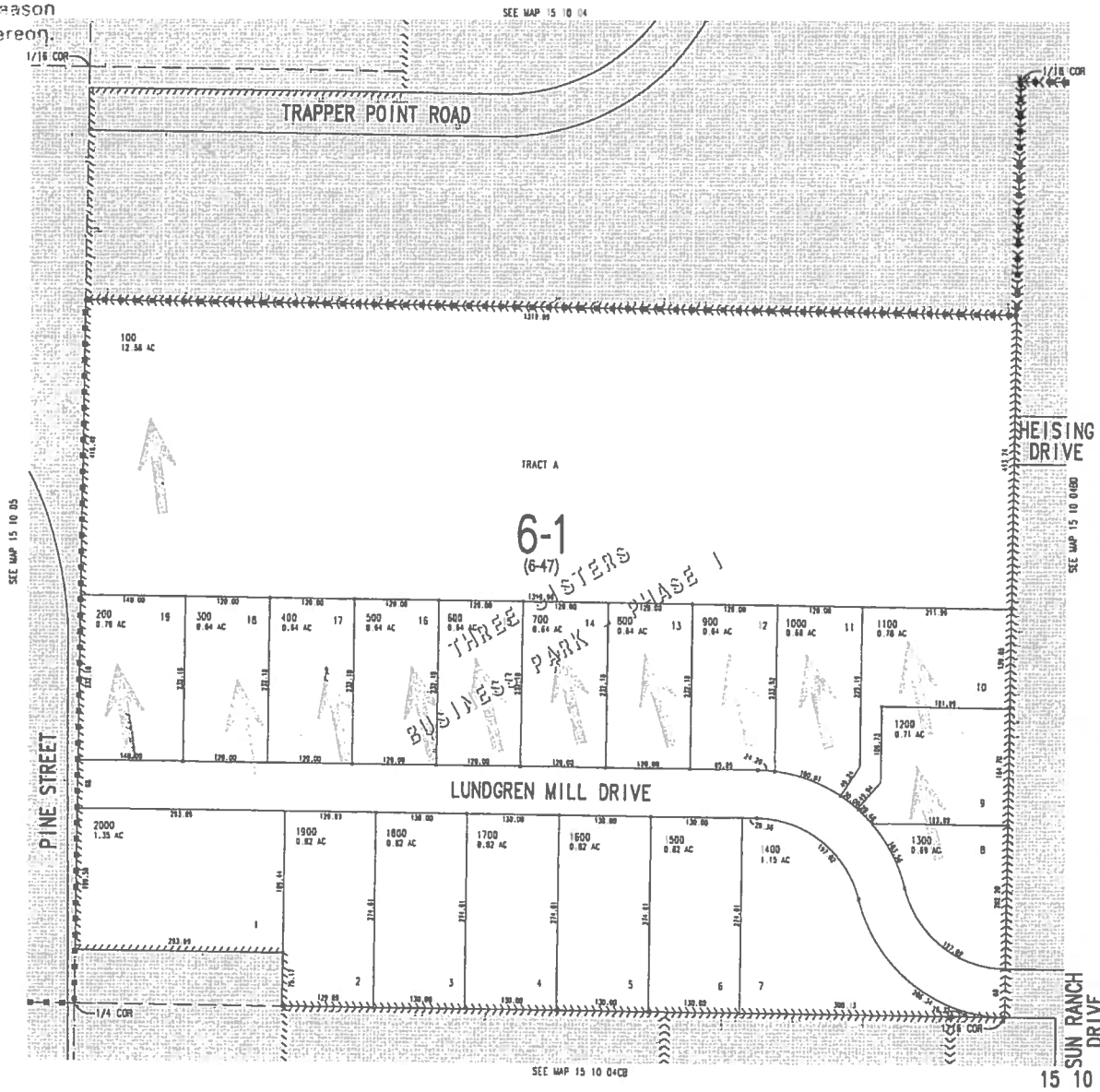
COMPLIMENTS OF
AmeriTitle

This sketch is furnished for information purposes only to assist in property location with reference to other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY.
REVISED: 07/17/2006

SW1/4 NW1/4 SEC. 04 T.15S. R.10E. W.M.
DESCHUTES COUNTY
1" = 100'

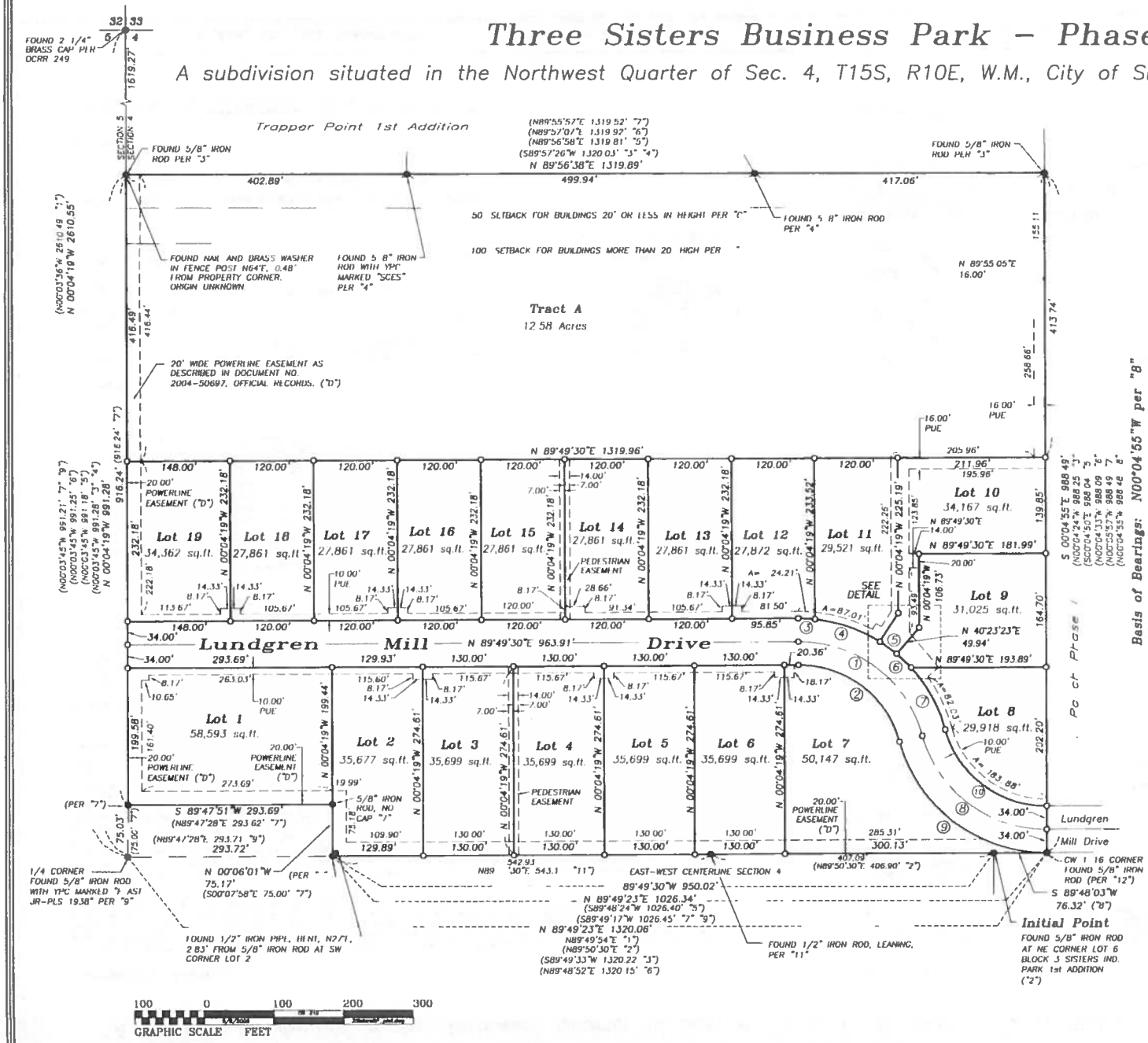
15 10 04BC

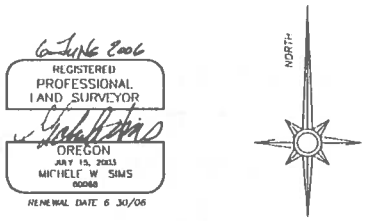


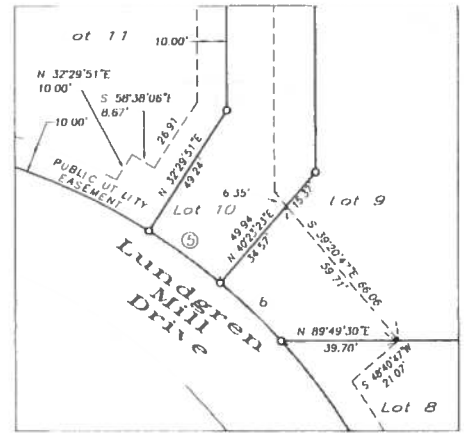
G-115C

Three Sisters Business Park – Phase I

A subdivision situated in the Northwest Quarter of Sec. 4, T15S, R10E, W.M., City of Sisters, Deschutes County, Oregon







Detail
1"=30'

Legend

- ● FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "FRED ASI JR PLS 1938" UNLESS OTHERWISE DESCRIBED
- ○ POST MONUMENT SET 5/8" x 30" IRON ROD WITH ORANGE PLASTIC CAP MARKED "L 60068"
- (RECORD DATA FROM REFERENCE MATERIAL
- —— CENTERLINE OF ROAD
- — — — EASEMENT
- —— —— SETBACK LINE
- PUE PUBLIC UTILITY EASEMENT
- YPC YELLOW PLASTIC CAP
- A= ARC LENGTH

Curve Table

Curve	Radius	Length	Delta	Chord	Chord Bear.
C1	183.81'	241.73'	75°21'02"	224.68'	S 52°29'59" E
C2	149.81'	197.02'	75°21'02"	183.12'	S 52°29'59" E
C3	217.81'	24.20'	6°21'54"	24.18'	S 86°59'33" E
C4	217.81'	100.01'	26°18'27"	99.13'	S 70°39'23" E
C5	217.81'	30.00'	7°53'33"	29.98'	S 53°33'23" E
C6	217.81'	28.68'	7°32'37"	28.66'	S 45°50'18" E
C7	217.81'	103.56'	27°14'32"	102.59'	S 28°26'44" E
C8	183.71'	241.68'	75°22'29"	224.62'	S 52°30'43" E
C9	217.71'	286.34'	75°21'23"	266.14'	S 52°30'10" E
C10	149.71'	197.02'	75°24'05"	183.11'	S 52°31'30" E

Sheet 2 of 2

Fred A. Ast, Jr. and Associates 250 West Cascade P.O. Box 751 Sisters, Oregon 97759 541-549-7851

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK 2006-44967
$71.00
06/29/2006 03:45:16 PM
D-PLAT Cnt=1 Stm=25 JEFF
$50.00 $11.00 $10.00

G-117

Three Sisters Business Park – Phase I

A subdivision situated in the Northwest Quarter of Sec. 4, T15S, R10E, W.M., City of Sisters, Deschutes County, Oregon

Surveyor's Certificate

I, MICHELE W. SIMS, OREGON REGISTERED PROFESSIONAL LAND SURVEYOR NO. 60068, DO HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED HEREON AS THREE SISTERS BUSINESS PARK – PHASE I, BEING THE SUBDIVISION OF A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 15 SOUTH, RANGE 10 EAST, WILLAMETTE MERIDIAN, CITY OF SISTERS, DESCHUTES COUNTY, OREGON, AND THAT THE 5/8" IRON ROD AT THE NORTHEAST CORNER OF LOT 6, BLOCK 3, SISTERS INDUSTRIAL PARK FIRST ADDITION WAS ACCEPTED AS THE INITIAL POINT FOR THREE SISTERS BUSINESS PARK – PHASE I, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT AS DESCRIBED ABOVE, THENCE, ALONG THE EAST-WEST CENTERLINE OF SAID SECTION, S89°49'30"W, A DISTANCE OF 950.02 FEET TO A 5/8" IRON ROD; THENCE, LEAVING SAID CENTERLINE AND ALONG THE BOUNDARY OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN BOOK 525, PAGE 1262, DESCHUTES COUNTY DEED RECORDS, N00°06'01"W, A DISTANCE OF 75.17 FEET TO A 5/8" IRON ROD, THENCE S89°47'51"W, A DISTANCE OF 293.69 FEET TO A 5/8" IRON ROD ON THE WEST LINE OF SAID SECTION; THENCE, LEAVING SAID BOUNDARY AND ALONG SAID SECTION LINE, N00°04'19"W, A DISTANCE OF 916.24 FEET TO A 5/8" IRON ROD AT THE SOUTHWEST CORNER OF TRAPPER POINT, FIRST ADDITION, A SUBDIVISION OF RECORD; THENCE, LEAVING SAID SECTION LINE AND ALONG THE SOUTH BOUNDARY OF TRAPPER POINT, FIRST ADDITION, N89°56'38"E, A DISTANCE OF 1,319.89 FEET TO A 5/8" IRON ROD ON THE WEST BOUNDARY OF SUN RANCH – PHASE I, A SUBDIVISION OF RECORD; THENCE, ALONG SAID BOUNDARY, S00°04'55"E, A DISTANCE OF 988.49 FEET TO A 5/8" IRON ROD AT THE CENTER-WEST SIXTEENTH CORNER OF SAID SECTION; THENCE S89°48'03"W, A DISTANCE OF 76.32 FEET TO THE POINT OF BEGINNING.

SUBJECT TO AND TOGETHER WITH ALL EASEMENTS OF RECORD.

CONTAINING 29.49 ACRES, MORE OR LESS.

Narrative

THE PURPOSE OF THIS SURVEY WAS TO DEFINE THE BOUNDARY OF THE PARCEL DESCRIBED ABOVE AND TO SUBDIVIDE SAID PARCEL INTO THE LOTS, RIGHTS-OF-WAY AND TRACT A, AS SHOWN HEREON. MONUMENTS WERE FOUND AND HELD AS SHOWN ON THE ADJACENT MAP. ADDITIONAL MONUMENTS WERE SET TO DEFINE THE LOTS AND TRACTS, AS SHOWN.

NO UNUSUAL CONDITIONS WERE ENCOUNTERED DURING THE COURSE OF THIS SURVEY.

Reference Material

1. CS00488 SURVEY OF SEC. 3 & 4 BY PLS 599 FILED 8/30/1972
2. CS09740 PLAT OF SISTERS INDUSTRIAL PARK 1st ADDITION BY PLS 1046 FILED 3/14/79
3. CS00491 BOUNDARY OF TRAPPER POINT BY PLS 1642 FILED 10/20/1980
4. CS10228 PLAT OF TRAPPER POINT 1st ADDITION BY PLS 1642 FILED 11/13/1981
5. CS00495 MP 86-4 BY PLS 1020 FILED 5/28/1986
6. CS00494 SURVEY FOR McNAB ARCHITECTS BY PLS 1068 FILED 9/2/1986
7. CS13481 LL 98-67 BY PLS 1938 FILED 12/4/1998
8. CS16752 PLAT OF SUN RANCH PHASE I BY PLS 60068 FILED 1/24/2006
9. CS11542 SURVEY BY PLS 1938 FILED 7/7/1993
10. OCRR 249 BY PLS 706 FILED 1/1/1974
11. CS08329 PLAT OF MOUNTAIN VIEW INDUSTRIAL PARK BY PLS 1046 FILED 4/21/1991
12. CS04956 SURVEY BY PLS 599 FILED 10/20/1972

Easements and Encumbrances

A. RIGHT-OF-WAY EASEMENT FOR CENTRAL ELECTRIC CO-OP RECORDED 7/6/1967 IN BOOK 154, PAGE 49, DEED RECORDS. DESCRIBED AS "NEAR AND PARALLEL TO" SOUTH LINE OF PARCEL.

B. POWERLINE EASEMENT FOR CENTRAL ELECTRIC CO-OP RECORDED 12/3/1993 IN BOOK 321, PAGE 1206, OFFICIAL RECORDS.

C. DEVELOPMENT AGREEMENT RECORDED 5/4/2001 IN DOCUMENT NO. 2001-21131, OFFICIAL RECORDS.

D. POWERLINE EASEMENT FOR CENTRAL ELECTRIC CO-OP RECORDED 8/24/2004 IN DOCUMENT 2004-50697, OFFICIAL RECORDS.

AN AFFIDAVIT OF CONSENT TO DECLARATION BY SISTERS SCHOOL DISTRICT NO. 6, BENEFICIARY OF A TRUST DEED RECORDED 9/30/2005 IN DOCUMENT NO. 2005-66541, OFFICIAL RECORDS, HAS BEEN RECORDED IN DOCUMENT NO. 2006-44968 OFFICIAL RECORDS.

A TEMPORARY SANITARY SEWER, WATER LINE AND ROAD EASEMENT WAS RECORDED 5/12/2006 IN DOCUMENT NO. 2006-32997, DESCHUTES COUNTY OFFICIAL RECORDS.

June 5 2006
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON JULY 15, 2003 MICHELE W. SIMS 60068
RENEWAL DATE 6/30/06

Declaration

KNOW ALL MEN BY THESE PRESENTS THAT 3 SISTERS PARTNERS, LLC, AN OREGON LIMITED LIABILITY CORPORATION, OWNER IN FEE SIMPLE OF THE LAND SHOWN HEREON, HAS CAUSED SAID LAND TO BE SURVEYED AND PLATTED INTO THE LOTS, PEDESTRIAN EASEMENTS, PUBLIC UTILITY EASEMENTS AND RIGHT-OF-WAY AS SHOWN, AND DO HEREBY DEDICATE SAID PUBLIC UTILITY EASEMENTS TO THE PUBLIC FOREVER, AND DO HEREBY DEDICATE SAID RIGHT-OF-WAY TO THE PUBLIC FOREVER, AND DO HEREBY SUBMIT FOR RECORD AND APPROVAL SAID PLAT OF THREE SISTERS BUSINESS PARK-PHASE I.

Peter Hall — 6/5/06
PETER HALL, MEMBER — DATE

Acknowledgment

THIS IS TO CERTIFY THAT ON THIS 5 DAY OF June, 2006, BEFORE ME, A NOTARY PUBLIC, PERSONALLY APPEARED PETER HALL, TO ME KNOWN TO BE THE INDIVIDUAL WHO EXECUTED THE FOREGOING DECLARATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FREELY AND VOLUNTARILY FOR THE PURPOSES THEREIN NAMED.

STATE OF OREGON
COUNTY OF DESCHUTES | SS

Shelley Marsh
NOTARY SIGNATURE
Shelley Marsh
(PRINTED NAME)
NOTARY PUBLIC OREGON
COMMISSION NO. A370783
MY COMMISSION EXPIRES 07-22-07
July-22-2007

Post-Monumentation Certification

I, MICHELE W. SIMS, PLS NO. 60068, CERTIFY THAT THE MONUMENTATION OF ALL OF THE INTERIOR CORNERS OF "THREE SISTERS BUSINESS PARK – PHASE I" WILL BE COMPLETED ON OR BEFORE 12/31/2008

MICHELE W. SIMS, PLS 60068

INTERIOR MONUMENTS SET _____ PER AFFIDAVIT OF MONUMENTATION

RECORDED IN DOCUMENT NO. _____ OFFICIAL RECORDS

DESCHUTES COUNTY SURVEYOR

Approvals

WATER MASTER – ONLY MUNICIPAL WATER RIGHTS EXIST ON THIS PROPERTY — 6-8-06 DATE

DESCHUTES COUNTY SURVEYOR — 6-8-06 DATE

DESCHUTES COUNTY TAX COLLECTOR — 6-8-06 DATE
I HEREBY CERTIFY THAT ALL TAXES ARE PAID AS OF THIS DATE

DESCHUTES COUNTY ASSESSOR — 6-8-06 DATE
I HEREBY CERTIFY THAT ALL AD VALOREM TAXES AND SPECIAL ASSESSMENTS, FEES AND OTHER CHARGES REQUIRED BY THE LAW TO BE PLACED ON THE 2005-2006 TAX ROLLS WHICH BECAME A LIEN OR WILL BECOME A LIEN DURING THIS TAX YEAR, BUT NOT YET CERTIFIED TO THE TAX COLLECTOR FOR COLLECTION HAVE BEEN PAID TO ME.

DESCHUTES COUNTY COMMISSIONER — 6/29/06 DATE

MAYOR – CITY OF SISTERS — 6-29-06 DATE

CITY OF SISTERS PLANNING DIRECTOR — 6-29-06 DATE

CITY OF SISTERS PUBLIC WORKS DIRECTOR — 6-29-06 DATE

CITY OF SISTERS ADMINISTRATOR — 6-29-06 DATE

SISTERS – CAMP SHERMAN RFPD — 6-26-06 DATE

SIGNATURE BY THE CITY OF SISTERS CONSTITUTES ACCEPTANCE BY THE CITY OF ANY DEDICATION MADE HEREIN TO THE PUBLIC.

Fred A. Ast, Jr. and Associates — 250 West Cascade — P.O. Box 751 — Sisters, Oregon 97759 — 541-549-7851

After recording return to:

Schwabe, Williamson & Wyatt, P.C.
Attention: Myles C. Conway
549 SW Mill View Way, Suite 100
Bend, Oregon 97702, Suite 1900

DRAFT

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 3SP NEW RESIDENTIAL

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made this _____ day of_____ 200___, by 3 SISTERS PARTNERS, LLC, an Oregon limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property and improvements situated in the City of Bend, Deschutes County, Oregon more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property");

WHEREAS, Declarant intends to develop the Property as a Class I planned community pursuant to the Oregon Planned Community Act (ORS 94.550 to 94.783, as amended from time to time; referred to herein as the "Act") known as *North Park*. It is currently contemplated that North Park will consist of fifty-seven (57) Lots built-out over three (3) phases, with the initial phase consisting of nineteen (19) Lots, but Declarant reserves the right to expand, contract and modify North Park as provided in this Declaration;

WHEREAS, Declarant has filed a plat map for North Park in Book _____, Page _____ in the plat records of Deschutes County, Oregon (the "Plat"), which shows the location of the Lots and Common Areas within North Park; and

WHEREAS, Declarant wishes to establish and assure a uniform plan for the development of North Park and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety and welfare of the residents of the Property;

NOW THEREFORE, Declarant declares that the Property shall be held, transferred, sold, conveyed, and occupied subject to the Act and subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the land, which shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and which shall inure to the benefit of the Association and each Owner.

ARTICLE 1

DEFINITIONS

The words used hereinabove or hereafter in this Declaration which begin with capital letters (other than words which would be normally capitalized) shall have the meanings assigned to them in Article 1 of this Declaration.

1.1 "Act" shall mean and refer to the Oregon Planned Community Act, being ORS 94.550 to 94.783, as amended from time to time.

1.2 "Additional Property" shall mean and refer to the land described on attached **Exhibit A-1** and any other land whether or not owned by Declarant, which is made subject to this Declaration as provided in Article 12.

1.3 "Areas of Common Responsibility" shall mean and refer to the Common Areas and those other areas for which the Association has maintenance, insurance, operating and other responsibility under this Declaration, as amended or supplemented from time to time.

1.4 "Annual Assessment" shall mean and refer to the Base Assessment and any Specific Assessment which may be levied by the Association in each of its fiscal years pursuant to Article 6 of this Declaration.

1.5 "Articles" shall mean and refer to the Articles of Incorporation for the Association filed with the Oregon Secretary of Sate.

1.6 "Association" shall mean and refer to North Park Homeowners Association, Inc., an Oregon nonprofit corporation.

1.7 "Base Assessment" shall mean and refer to the charge or charges imposed upon all Lots for services rendered or expenses incurred pursuant to Section 6.2 of this Declaration.

1.8 "Board" or "Board" shall mean and refer to the Board of the Association.

1.9 "Bylaws" shall mean the and refer to the Bylaws of the Association, which are attached hereto as **Exhibit B** and which shall be recorded in the deed records of Deschutes County, Oregon.

1.10 "Class A Members" shall mean and refer to all Owners other than the Class B and Class C Members.

1.11 "Class B Member" shall mean and refer to the Declarant.

1.12 "Class C Members" shall mean and refer to Participating Builders.

1.13 "Common Areas" shall mean and refer to all real property and the improvements thereon from time to time owned or leased by the Association for the common use and

enjoyment of the Members, which shall include, but is not limited to, Tracts _____ shown on the Plat and any improvements located thereon.

1.14 "Community-Wide Standard" shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing throughout the Subdivision. Such standard may be more specifically determined by the Board and Architectural Committee. In no event, however, shall such standard be reduced below that standard established by Declarant as of the expiration of the Declarant Control Period.

1.15 "Declarant" shall mean and refer to 3 Sisters Partners, LLC, an Oregon limited liability company, its successors and assigns, as long as it owns at least one (1) Lot or during the Declarant Control Period, whichever is later. No successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in an instrument of succession or assignment designating a party as the Declarant hereunder or which pass by operation of law.

1.16 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for North Park as it may from time to time be amended or supplemented in the manner provided herein.

1.17 "Declarant Control Period" shall mean and refer to the period commencing on the date of this Declaration as set forth above and terminating on the earlier of (a) the date on which seventy-five percent (75%) of the total Lots anticipated to be created within the Subdivision have been conveyed to Owners other than Declarant or a successor declarant; (ii) ten (10) years after conveyance of the first Lot to an Owner other than Declarant or a successor declarant; or (iii) the date on which Declarant elects in writing to terminate its Class B membership interest in the Association.

1.18 "Design Guidelines" shall mean the design guidelines attached hereto as **Exhibit C**, as modified from time to time pursuant to the terms of this Declaration.

1.19 "Dwelling Unit" shall mean any portion of the Property, as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) a Single Family Home, a Townhome and a unit within the Multifamily Building, as may be used and defined as herein provided or as provided in subsequent Declarations covering all or part of the Property.

1.20 "Federal Housing Administration" ("FHA") shall mean and refer to that governmental agency of the United States of America so entitled and any agency or regulatory authority of the United States of America which succeeds the Federal Housing Administration.

1.21 "Land Development Activity" shall mean and refer to any building, construction, reconstruction or repair of a Dwelling Unit, roadways, curbing, sidewalks, utility services or any other Structure on a Lot or any other portion of the Property by the Declarant and/or by other persons regularly engaged in the building or construction business (including a Participating Builder), if granted approval in writing by the Declarant.

1.22 "Lot" shall mean and refer to Lots 17 through 30 shown on the Plat, as well as any additional land which has been subjected to this Declaration by the recording of a Supplemental Declaration. "Lot" shall not mean and refer to Common Areas.

1.23 "Member" shall mean the Class A Members, the Class B Member and the Class C Members of the Association.

1.24 "Mortgagee" shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage," as used herein, shall include deeds of trust. "First Mortgagee" as used herein, shall mean a holder of a mortgage with priority over other mortgages. As used in this Declaration, the term "Mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term "holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

1.25 "Multifamily Building" shall mean and refer to the building constructed on Lot ___ containing more than two (2) Dwelling Units.

1.26 "Owner" shall mean and refer to the record owner of a Lot or a purchaser in possession of a Lot under land sale contract, whether one or more persons or entities, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.27 "Participating Builder" shall mean and refer to a person or entity described in writing by the Declarant as a Participating Builder.

1.28 "Person" shall mean and refer to any individual, corporation, joint venture, partnership, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other separate legal entity.

1.29 "Property" shall mean and refer to the real property described on **Exhibit A** attached hereto and made a part hereof, together with such additional real property as may be subjected to this Declaration.

1.30 "Reimbursement Assessment" shall mean and refer to assessments levied pursuant to Section 6.5 of this Declaration.

1.31 "Resident" shall mean and refer to (i) each individual occupying any Dwelling Unit pursuant to a lease agreement with the Owner thereof who, if requested by the Board, has delivered proof of such lease agreement to the Board; (ii) members of the immediate family of such individual or of an Owner who actually resides within the Property and in the same household with each such individual or Owner; and (iii) any person who has a fixed place of

habitation at a Dwelling Unit of any such individual or Owner to which, whenever he is absent, he has the intention of returning.

1.32 "Rules and Regulations" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board or the Architectural Review Committee, as may be amended from time to time.

1.33 "Single Family Home" shall mean and refer to any Dwelling Unit located on a Lot which is not physically attached to any other Dwelling Unit.

1.34 "Special Assessment" shall mean and refer to any special charge established pursuant to Section 6.3 of this Declaration.

1.35 "Specific Assessment" shall mean and refer to the charge or charges imposed upon some, but less than all, Lots for services rendered or expenses incurred pursuant to Section 6.4 of this Declaration.

1.36 "Structure" shall mean and refer to:

(a) Anything or object (other than trees, shrubbery, landscaping and hedges less than two feet high) the placement of which upon any Lot may affect the appearance of such Lot, including any building, garage, porch, shed, greenhouse, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, signboard, wishing well, bird bath, statues or any other temporary or permanent improvement on such Lot,

(b) Any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot, and any Lot, or

(c) Any change of more than six inches (6") in the grade of any Lot.

1.37 "Subdivision" shall mean and refer to North Park, as the same may be expanded as provided in this Declaration.

1.38 "Supplemental Declaration" shall mean and refer to an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects additional property to the Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the property described therein. The term shall also refer to the instrument recorded by the Association pursuant to Article 12 of this Declaration to subject additional property to the Declaration.

1.39 "Townhome Unit" shall mean and refer to an individual Dwelling Unit located within a Townhome Building.

1.40 "Townhome Building" shall mean and refer to a building constructed on two (2) adjacent Lots containing two (2) Dwelling Units attached together along the common property line.

1.41 "Veterans Administration" ("VA") shall mean and refer to that governmental agency of the United States of America so entitled and any agency or authority of the United States of America which succeeds the Veterans Administration.

ARTICLE 2

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

2.1 **Organization of the Association**. The Association has been organized as a nonprofit corporation under the laws of Oregon (i) to provide for the acquisition, construction, management, maintenance and care of the Common Areas: (ii) to obtain, manage and maintain services for the Property, or sections thereof; and (iii) to take other acts or action which would promote the health, safety or welfare of the Owners and Residents. The Association is charged with such further duties and invested with such powers as are prescribed by law and set forth in the Articles of the Association and herein as all of the same may be amended from time to time. The Articles and Bylaws of the Association shall not be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of Common Areas, and other than by a rebate of any excess Annual Assessment, Special Assessment or other dues, fees or assessments) to the benefit of any Member or individual.

2.2 **Membership in the Association**. Each Owner shall be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot. Transfer of ownership of a Lot shall automatically transfer membership in the Association. Without any other act or acknowledgment, Owners and Residents shall be governed and controlled by this Declaration and the Articles, Bylaws and Rules and Regulations of the Association and any respective amendments thereof.

2.3 **Voting Rights of Members**. The Association shall have the following classes of membership:

2.3.1 **Class A**. Class A Members shall be all Owners (with the exception of the Declarant for so long as the Class B membership interest is outstanding and Participating Builders). Each Class A Member shall be entitled to one (1) vote on each matter submitted to the Members for each Lot owned. If more than one Dwelling Unit is located on any Lot, the Class A Member owning such Lot shall be entitled to one (1) vote for each Dwelling Unit located on such Lot.

2.3.2 **Class B**. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall terminate and become converted to Class A membership upon expiration of the Declarant Control Period.

2.3.3 **Class C**. The Class C Members shall be the Participating Builders. Each Class C Member shall be entitled to one (1) vote on each matter submitted to the Members for each Lot owned. If more than one Dwelling Unit is located on any Lot, the Class C Member owning such Lot shall be entitled to one (1) vote for each Dwelling Unit located on such Lot.

Any vote of the Members shall be taken without regard to class of membership except in those instances requiring the affirmative vote or approval of each class of membership in accordance with this Declaration or the Articles or Bylaws of the Association.

If a Lot is owned by more than one Owner, such Owners shall be deemed to constitute a single Member as to such Lot and shall collectively be entitled to a single vote for such Lot (or for each Dwelling Unit located on such Lot) as to each matter properly submitted to the Members. Fractional voting is not permitted and fractional or split votes shall be disregarded, except for purposes of determining a quorum.

Any Class A or C Member who is in violation of this Declaration, as determined by the Board in accordance with the provisions of this Declaration or the Bylaws or Rules and Regulations of the Association, shall not be entitled to vote during any period in which such violation continues.

Notwithstanding the foregoing to the contrary, if after the Declarant Control Period has ended Declarant wishes to annex the Additional Property pursuant to Section 12.1 of this Declaration, then Class B membership shall be revived with respect to all Lots owned by the Declarant on the annexed property. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first: (a) when the total votes outstanding in the Class A memberships in the annexed property equal the total votes outstanding in the Class B membership in such annexed property, or (b) Seven (7) years from the date of recordation of the final Supplemental Declaration for the last portion of such annexed property.

2.4 **Adoption of Further Rules and Regulations**. The Board may make such Rules and Regulations consistent with the terms of this Declaration and the Articles and Bylaws of the Association as it deems advisable with respect to any meeting of Members, proof of membership in the Association, evidence of right to vote, appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and other matters concerning the conduct of meetings and voting. If the Board shall so determine and if permitted under applicable law, voting on elections and other matters, including any matters requiring the approval of the Class A and C Members as provided in this Declaration, may be conducted by mail or by ballot.

2.5 **Limitation of Liability**. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or its facilities, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Members for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas or its facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or its facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE 3

EASEMENTS AND RIGHTS OF ENTRY

3.1 **Plat Easements**. The Property shall be subject to all easements delineated on the Plat.

3.2 **Owners' Easements in Common Areas**. Declarant grants to each Owner a perpetual, nonexclusive right and easement of use, access and enjoyment in and to the Common Areas, subject to the restrictions and limitations set forth in Article 4 and elsewhere in this Declaration.

3.3 **Easement of Encroachment**. Declarant grants reciprocal appurtenant easements of encroachments, and for maintenance and use of any permitted encroachment, between each Dwelling Unit and any adjacent Common Areas and between adjacent Dwelling Units due to unintentional placement or settling or shifting of improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more the three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. In no event, however, shall an easement for encroachment exist if such encroachment occurred due willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

3.4 **Easements for Utilities, Etc.**

3.4.1 Declarant reserves for itself, so long as Declarant owns any property described on **Exhibits A or A-1** attached hereto, and grants to the Association and all utility providers, perpetual, nonexclusive blanket easements upon, across, over and under the Property and Additional Property for purposes of ingress, egress, installation, maintenance, repair and replacement of utilities and infrastructure; cable and other systems for sending and receiving data and/or other electronic signals; security and similar systems; walkways, pathways and trails; stormwater drainage systems; irrigation systems; sanitary sewer systems; street lights; signage; and entry features; provided, however, that the exercise of these easements does not unreasonably interfere with the use of any Lot.

3.4.2 Declarant also reserves for itself the nonexclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the property described on **Exhibits A or A-1** attached hereto. The Owner of any Lot to be burdened by any easement granted pursuant to this subsection shall be given advance written notice of the grant, and the location of the easement on such Lot shall be subject to the written approval of the Owner, which approval shall not be unreasonably withheld, delayed or conditioned.

3.4.3 All work associated with the exercise of the easements described in this Section 3.4 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to commencement of the work. The exercise of these easements shall not extend to permitting entry into any Dwelling Unit without the Owner's consent, nor shall it

unreasonably interfere with the use of any Lot by the Owner thereof. Except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

3.5 **Easements to Serve Additional Property**. Declarant hereby reserves for itself and its duly authorized agents, successors and assigns a perpetual, nonexclusive easement over the Common Areas for purposes of enjoyment, use, access and development of the property described on **Exhibit A-1** attached hereto, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction and use of roads, sidewalks and walking paths and for connecting and installing any and all utilities on such property.

Declarant agrees that it and its duly authorized agents, successors and assigns shall be responsible for any damage caused to the Common Areas as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway, sidewalk or walkway providing access to such property.

3.6 **Easements for Maintenance, Emergency and Enforcement**. Declarant grants to the Association easements over the Property and Additional Property as necessary to enable the Association to fulfill its maintenance responsibilities under this Declaration. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the terms of this Declaration and the Bylaws and Rules and Regulations of the Association. Any such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in performance of their duties. Except in an emergency situation, entry onto a Lot shall only be during reasonable hours and after notice to the Owner.

3.7 **Easement to Inspect and Right to Correct**. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign and correct any structure, improvement or condition which may exist on any portion of the Property and Additional Property (including Lots), and a perpetual, nonexclusive easement of access throughout the Property and Additional Property to the extent reasonably necessary to exercise such right. Except in an emergency situation, entry onto a Lot shall only be during reasonable hours and after notice to the Owner; provided, however, that no entry into a Dwelling Unit is permitted without the consent of the Owner. The person exercising these easements shall promptly repair any resulting damage.

3.8 **Special Declarant Easements**. Declarant reserves for itself and its duly authorized agents, successors and assigns, for so long as Declarant owns any property described on **Exhibits A or A-1** attached hereto, perpetual, nonexclusive easements on, over and across the Common Areas for purposes of (a) constructing and maintaining such facilities and activities as Declarant, in its sole discretion, deems necessary or convenient to the sale of Lots and Dwelling Units, including, but not limited to, business offices, signs, model units and sales offices; (b)

constructing and maintaining Common Areas, including any Structures thereon; and (c) storing materials and making such other use thereof as Declarant, in its sole discretion, deems necessary or convenient to the construction of Structures on the Property or Additional Property (provided that no such storage or other use shall unreasonably interfere with access to, or the use, occupancy and enjoyment of, any Lot). Declarant and Participating Builders shall also have easements for access to and use of such facilities at no charge.

ARTICLE 4

COMMON AREAS

4.1 **Use of Common Areas**. Every Owner shall have a right to use and enjoy the Common Areas, subject to:

(a) The terms of this Declaration as it may be amended from time to time and any restrictions or limitations contained in any deed conveying the Common Areas to the Association;

(b) The Board' Right to:

(i) adopt, promulgate, enforce and amend from time to time the Rules and Regulations pertaining to the use and enjoyment of the Common Areas, including rules and regulations limiting the number of guests of Owners who may use the Common Areas at any one time;

(ii) suspend the right of an Owner to use all or any portion of the Common Areas (with the exception of any streets or access ways) (A) for any period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation of this Declaration or the Bylaws or Rules and Regulations after notice and a hearing pursuant to Section ____ of the Bylaws; and (B) for any period during which any assessments or any other charges for such Owner's Lot remains delinquent;

(iii) grant easements and dedicate or transfer all or any part of the Common Areas pursuant to Section 3.4 of this Declaration;

(iv) mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section _____ of this Declaration;

(v) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Areas; and

(vi) permit use of any recreational facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(c) All easements granted or reserved by Declarant in this Declaration, and all easements subsequently granted or reserved by Declarant pursuant to a right granted or reserved in this Declaration.

An Owner who resides in a Dwelling Unit may extend his or her right to use and enjoyment of the Common Areas to the other members of his or her household and to guests, subject to the terms of this Declaration and the Rules and Regulations. If an Owner does not reside at his or her Dwelling Unit, then the Owner shall be deemed to have assigned all of the Owner's rights to use and enjoyment of the Common Areas to Residents of such Dwelling Unit, subject to the terms of this Declaration and the Rules and Regulations.

No Owner shall make any change to any installation or landscaping upon the Common Areas, or decorate, alter or repair any part of the Common Areas (except for maintenance of those parts of the Common Areas which the Owner has the duty to maintain, if any), without the prior written consent of the Association.

4.2 **Alienation of Common Areas**. The Association may not encumber, sell or transfer the Common Areas unless such encumbrance, sale or transfer has been approved by a majority of the voting rights of the Association. This requirement shall not apply to the easements described in Section 3.4 of this Declaration.

4.3 **Conversion of Lots to Common Areas**. Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by recording a Supplemental Declaration in the deed records of Deschutes County, Oregon. Such Supplemental Declaration shall be executed by Declarant and bear a certificate of the President or Secretary of the Association reciting that the holders of a majority of the voting rights in the Association have approved such conversion to Common Areas.

4.4 **No Partition**. There shall be no judicial partition of the Common Areas. Each Owner, whether by deed, gift, devise, or operation of law, for such Owner's benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests, and causes of action for judicial partition of any interest in the Common Areas and agrees that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment.

4.5 **Title to Common Areas**. Declarant shall convey to the Association fee simple title to the Common Areas, free and clear of monetary liens, no later than the date of the Turnover Meeting, and the Association shall unconditionally accept fee title to the Common Areas from Declarant on such date.

ARTICLE 5

MAINTENANCE

5.1 **Maintenance by Association**. The Association shall maintain and keep in good repair the Areas of Common Responsibility, such maintenance to be funded by Annual Assessments as provided in this Declaration. This maintenance shall include, but need not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, lawn areas, and Structures and other improvements situated on the Common Areas;

all entry features within the Property; and such portions of the any additional property included within the Areas of Common Responsibility as may be required by the terms of this Declaration.

The Areas of Common Responsibility shall initially include, but are limited to:

(a) Townhome Buildings: the foundations, columns, girders, beams, supports, bearing and shear walls, roof rafters and trusses, and other structural elements; windows (except glazing and screening); exterior entry doors (except glazing and screening); exterior siding, trim, flashing and architectural features; roofs, eaves, soffits and fascia; gutters and downspouts; and other exterior features **[CONFIRM]**;

(b) Multifamily Buildings (only) – (i) the foundations, columns, girders, beams, supports, bearing and shear walls, floors, and other structural elements; windows (except glazing and screening); exterior entry doors (except glazing and screening); exterior siding, trim, flashing and architectural features; roofs, eaves, soffits and fascia; gutters and downspouts; and other exterior features; and (ii) landscaping and lawn areas on Lot 22 (which contains the Multifamily Building) **[CONFIRM]**;

(c) the drainage swales along the public roads within or adjacent to the Property;

(d) any sidewalks and walking paths within or adjacent to the Property not maintained by the City or County; and

(e) the community mailboxes and any off-site signs or entry features **[ANY OTHER AREAS?]**.

The Association may also maintain other property which it does not own and is not required to maintain if the Board determines, in its discretion, that such maintenance is necessary or desirable to maintain the Community-Wide Standard. Such areas shall become part of the Areas of Common Responsibility upon approval by the Board.

5.2 **Maintenance by Owner**. Each Owner shall at all times keep his or her Lot and Dwelling Unit (including all Structures and other improvements and all landscaping and lawn areas located on his or her Lot) in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to Section 5.1 above or other terms of this Declaration or any Supplemental Declaration or other declaration of covenants applicable to such Lot.

Each Owner shall also be responsible for maintaining the landscaping and lawn areas within that portion of any adjacent Common Areas or public right-of-way lying between any Lot boundary and any wall, fence, curb, lake or pond located on the Common Areas or public right-of-way within thirty (30) feet of the Lot boundary; provided, however, that there shall be no right to remove trees, shrubs or similar landscaping from this area without the prior written consent of the Association and compliance with any applicable zoning ordinances.

Responsibility for maintenance of landscaping shall include responsibility for watering of lawns and other landscaping as needed to maintain it in a healthy condition. It shall also

included responsibility for removal and replacement of diseased or dead trees, shrubs and other landscaping.

If any Owner fails to properly perform his or her maintenance responsibility, the Association may, but is not obligated to, perform such maintenance responsibilities on behalf of such Owner and assess the Owner for a Reimbursement Assessment in accordance with Section 6.5 of this Declaration; provided, however, that except when entry is required due to an emergency situation, the Association shall provide the Owner with reasonable notice and an opportunity to cure the problem prior to entry.

5.3 **Party Walls and Party Fences**. Each wall or fence built as part of the original construction on the Lots which serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Each Owner whose Dwelling Unit contains a party wall or whose Lot contains a party fence shall have an easement to enter the Dwelling Unit or Lot, as applicable, of the Owner who shares such party wall or fence to effect necessary maintenance and repairs. If an Owner or its contractors or agents needs to enter the Dwelling Unit or Lot of an adjacent Owner to effect such maintenance or repairs, then the Owner shall provide reasonable advance notice to the other Owner. Access under this Section shall be limited to reasonable times and shall be exercised so as not to unreasonably impair the right of the adjacent Owner and/or occupant to the use and quiet enjoyment of said adjacent Dwelling Unit.

Each Owner shall be responsible for the ordinary maintenance and repair of such Owner's respective side of the party wall or fence. If it becomes necessary to make substantial repairs to, or rebuild, a party wall or fence, the cost thereof shall be shared equally by the Owners of the Lots adjacent to the party wall or fence. If a party wall or fence is damaged or destroyed by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of such insurance, any Owner adjacent to the wall or fence may restore it and seek reimbursement from the other Owner adjacent to the party wall or fence for that Owner's proportionate share of the cost of such restoration without prejudice, however, to the right of a Owner to call for a larger contribution from an Owner under any rule of law regarding liability for negligent or willful acts or omissions. The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

5.4 **Maintenance During Construction**. During construction it shall be the responsibility of each Owner to insure that his or her Lot and adjacent areas are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot or the Common Areas. This Section shall not be applicable to Land Development Activity.

ARTICLE 6

ASSOCIATION FINANCES

6.1 **Budgeting.**

6.1.1 At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated operating expenses of the Association for the coming year. The estimated expenses in the budget shall include, in addition to operating reserves, a contribution to the Reserve Fund determined in accordance with the terms of Section 6.6 below. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount estimated to be generated through the levy of assessments against Lots.

The budget shall also differentiate between expenses applicable to all Lots versus expenses applicable to some, but not all, Lots. By way of example and not limitation, the budget should separately identify (a) the estimated expenses necessary to insure and maintain the Townhome Buildings (including any required Reserve Account Assessment) and (b) the estimated expenses necessary to insure and maintain the Multifamily Building (including any required Reserve Account Assessment) and maintain the landscaping and yard on the Lot 22 (which contains the Multifamily Building).

Estimated operating expenses and Reserve Account Assessments applicable to all Lots shall be allocated among such Lots as Base Assessments pursuant to Section 6.2 below, while estimated operating expenses and Reserve Account Assessments applicable to some, but not all Lots, shall be allocated among the affected Lots as Specific Assessments pursuant to Section 6.4 below.

6.1.2 Notice of Budget and Assessment; Right to Disapprove. The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment and Specific Assessment to be levied pursuant to the budget, to each Owner within thirty (30) days after the adopting the budget. The budget shall automatically become effective unless disapproved by the vote of a majority of the Class A Members.

The Association has no obligation to call a meeting for purposes of considering the budget, but the Owners may call a special meeting for such purposes pursuant to Section __ of the Bylaws. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

6.1.3 Budget Revisions. The Board may revise the budget and adjust the assessments levied pursuant thereto from time to time during the year, subject to the same notice and right to disapprove the revised budget as set forth above.

6.2 **Base Assessments.**

6.2.1 Calculation of Base Assessments. Upon determining the total amount of income required to be generated through the levy of Base Assessments as provided in Section 6.1 above, the Association shall allocate such amount equally among all Lots subject to assessment (as determined by Section 6.8 below) on the effective date of the budget. The amount allocated to each Lot shall then be levied as a Base Assessment.

Declarant may, but is not obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from Declarant, or a loan, as determined by Declarant in its sole discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

6.3 **Special Assessments**. In addition to the Base Assessments authorized above, the Board may levy Special Assessments against an Owner or all Owners in the following manner for the following purposes:

(a) To correct a deficit in the budget, by vote of a majority of the Board;

(b) To collect additional amounts necessary to make repairs or renovations to the Common Areas if sufficient funds are not available from the budget or Reserve Fund, by majority vote of the Board; and

(c) To make capital acquisitions, additions or improvements, by vote of at least sixty percent (60%) of the voting rights allocated to the Owners.

Special Assessments shall be imposed against all Lots in the same proportions as Base Assessments as provided in Section 6.2 above.

6.4 **Specific Assessments**. The Association shall have the authority to levy assessments to satisfy the expenses of (a) insuring, maintaining or repairing the Structures and other improvements or maintaining the landscaping and yard areas on some, but less than all, of the Lots; or (b) undertaking a particular project or effort that benefits some, but less than all, of the Lots (such assessments, "Specific Assessments"). Specific Assessments shall be allocated equally against the Owners of those Lots that benefit from the maintenance, project, effort or other specific undertaking by the Association, unless the Association, in its reasonable discretion determines another method of apportionment more accurately reflects the benefit received by such Owners. An example, for illustrative purposes only and not as a limitation, of undertakings giving rise to a Specific Assessment, are (i) insuring and maintaining the Townhome Buildings (including any required Reserve Account Assessment) and (ii) insuring and maintaining the Multifamily Building (including any required Reserve Account Assessment) and maintaining the landscaping and yard on the Lot 22 (which contains the Multifamily Building).

6.5 **Reimbursement Assessments**. The Association shall have the authority to levy a reimbursement assessment (a "Reimbursement Assessment") against any Owner and such

Owner's Lot if (a) a failure to comply with this Declaration or the Bylaws or Rules and Regulations of the Association has necessitated an expenditure of monies by the Association to effect compliance or resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot; or (b) corrective action of the Association has necessitated an expenditure of monies by the Association as a result of the willful or negligent actions or omissions of such Owner or such Owner's family members, tenants, guests, contractors or invitees. A Reimbursement Assessment, together with interest, costs, and reasonable attorney's fees, shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least ten (10) days' written notice to the Owner being assessed. If, within said ten (10) day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct it not less than ten (10) nor more than thirty (30) days after the request by the Owner, and shall make its decision within not more than thirty (30) days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

6.6 **Replacement Reserve Assessments**.

6.6.1 As a part of any Annual Assessment the Board shall obtain from Owners contributions for a reserve account (the "Reserve Account") established for all items of property included within the Areas of Common Responsibility which will normally require major maintenance, repair or replacement, in whole or in part, in more than one (1) and less than thirty (30) years, for exterior painting (if the Areas of Common Responsibility includes exterior painted surfaces), and for other items, whether are not included within the definition of Areas of Common Responsibility if the Association has responsibility to maintain; provided, however, that the reserve account need not include items that could reasonably be funded from Annual Assessments or other funds or accounts of the Association, or items for which the Owners (and not the Association) are responsible for maintenance, repair and replacement under the terms of this Declaration or the Bylaws.

6.6.2 The Declarant shall conduct an initial reserve study (a "Reserve Study") and initial maintenance plan (a "Maintenance Plan") to determine the Reserve Account requirements. The Reserve Study shall include: (a) identification of all items for which reserves are or will be established; (b) include the estimated remaining useful life of each item as of the date of the Reserve Study; and (c) include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of the item's useful life. The Maintenance Plan shall: (i) describe the maintenance, repair and replacement to be conducted; (ii) include a schedule for the maintenance, repair and replacement; (iii) be appropriate to the size and complexity of maintenance, repair and replacement responsibility; and (iv) address issues that include, but are not limited to, warranties and the useful life of the items for which the Association has maintenance, repair and replacement responsibility.

The Board shall thereafter conduct an annual Reserve Study or review and update an existing Reserve Study to determine the Reserve Account requirements. The Board shall also review and update the Maintenance Plan as necessary.

6.6.3 Contributions to the Reserve Account ("Reserve Account Assessments") shall be in an amount (i) initially determined by Declarant based upon the results of the initial Reserve Study or other reliable information and (ii) thereafter by the Board from time to time based on the results of the annual Reserve Study (or review and update of an existing Reserve Study). Reserve Account Assessments shall be allocated to Lots pursuant to Section 6.2 (Base Assessments) and Section 6.4 (Specific Assessments) of this Declaration, and shall be paid to the Association monthly (or quarterly or annually as determined by the Board).

Reserve Account Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. The Reserve Account must be a separate account holding only Reserve Account Assessments and other funds intended to be used for the same purpose maintained a federally insured bank or other depository institution with branches in Oregon, and any funds in the Reserve Account may be expended only for the purposes for which the Reserve Account was established as described above.

6.6.4 After the Turnover Meeting, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet unexpected increases in expenses if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of such funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period of time.

6.6.5 At any time after the second (2nd) year after the Turnover Meeting, future replacement reserve assessments for the Reserve Account may be increased or reduced by the vote of Owners of Lots representing seventy-five (75%) of the Owners.

6.6.6 Nothing in this Section 6.6 prohibits the prudent investment of Reserve Account funds, subject to any constraints imposed by the Board or the Bylaws or Rules and Regulations of the Association.

6.7 **Commencement of Assessments**.

6.7.1 Base Assessments and Specific Assessments. Declarant shall pay all operating expenses of the Association until the Lots are assessed for Base Assessments and Specific Assessments as provided herein. The date of commencement of Base Assessments and Specific Assessments shall be determined by Declarant; however, in no event shall it commence later than the Turnover Meeting or if no Turnover Meeting is held, the date on which administration of the Association is turned over to the Class A Members. Declarant and all Participating Builders shall be exempt from paying Base Assessments and Specific Assessments on all Lots owned by them.

6.7.2 Reserve Fund Assessments. Reserve Funds Assessments shall commence as to a Lot on the date a certificate of occupancy is issued for the Dwelling Unit constructed on the Lot. Declarant may elect to defer payment of Reserve Fund Assessments on a Lot it owns until the date of conveyance of the Lot to a third party. However, the Declarant may not defer such payment beyond the date of the Turnover Meeting, or if no Turnover Meeting is held, the date on which administration of the Association is turned over to the Class A Members. The

book and records of the Association shall reflect the amount owing from the Declarant for all Reserve Fund assessments.

6.7.3 All Other Assessments. Special Assessments and Reimbursement Assessments shall commence as to a Lot when the Lot is conveyed to a third party other than Declarant.

6.8 **Obligation for Assessments**. Each Owner, by accepting a deed for his or her Lot, is deemed to covenant and agree to pay all assessments authorized in this Declaration or the Bylaws and Rules and Regulations of the Association. All assessments, together with interest, fines and late charges as determined by Board resolution, and collection costs (including reasonable attorneys' fees), shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. The Association may sue any Person liable for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Specific Assessments on the same basis as during the last year for which an assessment was made, if any, until a new budget become effective and a new assessment is levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

No Owner may exempt himself from liability for assessments by non-use of the Common Areas, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

6.9 **Lien for Assessments**. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, fines and late charges as determined by Board resolution, and collection costs (including reasonable attorneys' fees). Such lien shall be superior to all other liens, except (a) liens for real estate taxes and assessments and other levies which by law would be superior; and (b) the lien of any recorded first Mortgage made in good faith and for value. Such lien, when delinquent, may be foreclosed as provided in ORS 94.709 after the Association records a notice of lien containing the information required by and otherwise complying with the requirements of ORS 94.709 (2) and (3) in the deed records for Deschutes County, Oregon.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessments shall be levied on it; and (c) each other Lot shall be charged, in addition to usual assessments, its pro rata

share of the assessments that would have been charged to such Lot had it not been acquired by the Association.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of a first Mortgage or any proceeding in lieu thereof for the benefit of any First Mortgagee shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability as to any assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing, no sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof for the benefit of any First Mortgagee shall be deemed to extinguish any mortgage or lien which the Association has itself placed upon any property owned by the Association.

6.10 **Interest; Fines; Late Fees; Penalties**. The Board, in its reasonable discretion, may from time to time adopt resolutions to set the rate of interest and to impose late fees, fines, and penalties on delinquent assessments or for violations of the provisions of this Declaration or the Bylaws and Rules and Regulations. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the assessment billing address of such Owners. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violation of this Declaration or the Bylaws or Rules and Regulations, other than late fees, fines, or interest arising from an Owner's failure to pay Base Assessments, Specific Assessments, Special Assessments, or Reimbursement Assessments may not be imposed against an Owner or such Owner's Lot until such Owner is given an opportunity for a hearing.

6.11 **Acceleration of Assessments**. If an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, on not less than ten (10) days' written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any Special Assessments.

6.12 **Certificate of Payment**. The Association shall, upon written request by owner, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments levied on a specified Lot have been paid. The Association shall furnish said Certificate within ten (10) days of receipt of the written request. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

6.13 **Subordination of the Lien to Mortgages**. The lien of the Annual Assessments, Special Assessments and Reimbursement Assessments provided for herein shall be subordinate only to the lien of real estate taxes and assessments and the lien any First Mortgage or First Deed of Trust that is recorded before the Association's Notice of Lien. The sale or transfer of any Lot shall not affect the lien of such assessments, except as otherwise provided in this Declaration.

6.14 **Initial Working Fund**. The Board shall collect a working capital contribution against the initial Owner of a Lot (other than the Declarant or a Participating Builder) at the time of closing on the Lot. Such contribution shall be equal to two (2) months of the Annual

Assessments and shall be utilized for commencing business of the Association and providing the necessary working fund for it.

6.15 **Reallocation Upon Annexation of Additional Property**. When additional property is annexed to the Property, the Association shall, within sixty (60) days after the annexation, recompute the budget based upon the additional Lots and Areas of Common Responsibility and recompute all applicable assessments for each Lot. Newly annexed Lots shall be subject to assessment from the time of annexation of such Lots to the Property, unless a later date is provided in this Article 6. The Association shall send notice of any applicable assessment to the Owners of newly annexed Lots not later than sixty (60) days after the annexation or with the next occurring Annual Assessment, whichever is sooner. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws. If Additional Property is annexed to the Property during the Association's fiscal year, the Association shall send notice of and shall collect adjustments to assessments for Lots which were within the Property prior to the annexation. Notice of the adjustment in the assessments shall be sent to such Owners not later than sixty (60) days after the annexation or with the next occurring Annual Assessment, whichever is sooner. To the extent that any adjustment results in a credit with respect to assessments payable by an Owner, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

ARTICLE 7

INSURANCE

7.1 **Association Insurance Coverage**. The Association must obtain and maintain at all times the insurance required by the Act and such additional insurance that the Board deems advisable, which will include but is not be limited to the following:

7.1.1 **Property Insurance**. The Association shall obtain and maintain at all times a policy of property insurance covering the Townhome Buildings, the Multifamily Building and all insurable improvements within the Common Areas against loss resulting from fire and other risks covered under special form coverage ("all risk"), including vandalism, malicious mischief, sprinkler leakage, debris removal, cost of demolition, windstorm, flood and water damage endorsements. Coverage shall be for the full insurable replacement value (without deduction for depreciation) of such improvements, exclusive of land, foundation, excavation and other items normally excluded from coverage and exclusive of the interior of any Dwelling Unit and the contents thereof. Such policy of insurance shall cover the interests of the Association and the Owners and First Mortgagees as their interests may appear and, if available at reasonable cost, the following terms:

(a) A waiver of subrogation by the insurer as to any claims against the Association and any Owner, Resident or guest or invittee of any Owner or Resident;

(b) A standard mortgagee clause, except that the loss payment provision shall be subject to the terms of Article 8 of this Declaration;

(c) A provision that no policy may be canceled, invalidated, or suspended because of the action of an Owner;

(d) A provision that no policy may be canceled, invalidated, or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association correct the defect and allows the Association a reasonable time to make the correction;

(e) A provision that the policy is primary in the event an Owner has other insurance covering the same loss;

(f) A provision that the policy cannot be canceled or substantially modified without at least ten (10) days' prior written notice to all insureds; and

(g) A provision that any adjustment of the loss will be made by the Association, and that all proceeds thereof shall be paid to either the Association or an insurance trustee, as provided in Article 8 of this Declaration.

The Board may, at its discretion, determine the amount of deductible for such insurance policy, based on availability and costs. Owners shall be responsible for the deductible to the extent that it is determined they, their tenants or guests are responsible for the damage caused to Building Structures, Common Maintenance Areas or other properties that the Association insures.

7.1.2 **Liability Insurance**. The Association shall at all times maintain commercial general liability insurance covering the Areas of Common Responsibility with limits of loss of not less than $1,000,000 combined single limit for personal injury or property damage (such policy limits to be reviewed at least annually by the Board and increased in its discretion), insuring the Association, all Owners, all Residents and any managing agent against liability to the public or to individual Owners.

7.1.3 **Worker's compensation insurance**. The Association shall obtain and maintain at all times a policy of worker's compensation insurance to the extent required by applicable laws.

7.1.4 **Fidelity Bonds**. The Board shall obtain and maintain at all times fidelity bonds naming the Directors of the Board and all other officers, directors and employees of the Association handling or responsible for funds of or administered by the Association. If a management agent has the responsibility for handling or administering funds of the Association, the management agent will be required to maintain fidelity bond coverage for its officers, employees and agents responsible for such funds. In no event may the aggregate amount of such bonds be less than a sum equal to three (3) months Annual Assessments. The bonds must contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

7.1.5 **Insurance Against Loss of Association's Personal Property**. The Association shall obtain and maintain at all times insurance against loss of personal property of

the Association by fire, theft, and other losses, with deductible provisions as the Board deems advisable.

7.1.6 **Other Insurance.** Such other insurance as the Board deems advisable; provided, however, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such property, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned community projects established by the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or other governmental or quasi-governmental agency involved in the secondary mortgage market, so long as such agency is a Mortgagee, an insurer or guarantor of a Mortgage, or Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by such agency.

7.2 **By Owners**. It is acknowledged that the foregoing provisions specify only the insurance required to be obtained and maintained by the Association and that the following insurance must be obtained and maintained by each Owner (as applicable):

7.2.1 **Property Insurance (Single Family Homes).** Each Owner of a Single Family Home shall obtain and maintain special form ("all risk") property insurance covering (a) the Dwelling Unit and all other insurable improvements on located on its Lot; (b) all furnishings, fixtures, equipment, decorations and personal property and chattels of the Owner; and (c) all personal property and chattels of the Owner stored elsewhere within the Subdivision. Such insurance must be maintained for the full insurable value thereof (exclusive of excavation and foundations and without deduction for depreciation), subject to commercially reasonable deductibles.

7.2.2 **Property Insurance (Townhome Units and the Multifamily Building).** Each Owner of a Townhome Unit or the Multifamily Building shall obtain and maintain special form ("all risk") property insurance covering (a) the interior of the Dwelling Unit (including, but not limited to, all furnishings, fixtures, equipment, decorations and personal property and chattels of the Owner); (b) all personal property and chattels of the Owner stored elsewhere within the Subdivision; and (c) any additions or improvements made by the Owner to its Dwelling Unit. Such insurance must be maintained for the full insurable value thereof, subject to commercially reasonable deductibles.

7.2.3 **Liability Insurance.** Public liability insurance in the amount reasonably set by the Association no more often than every three (3) years, covering any liability of any Owner to the extent not covered by any public liability and property damage insurance obtained and maintained by the Association.

7.2.4 **Other requirements.** Each insurance policy required to be maintained by an Owner, as provided above, shall contain the following:

(a) A waiver of subrogation against the Association and its property manager, if any, and against the other Owners (property insurance only);

(b) A waiver of any defense based on acts of the insured;

(c) A provision that any adjustment of loss will be made by the Owner (but only with the prior written approval of the Association, which shall not be unreasonably withheld) and that all proceeds thereof shall be paid to either the Association or the insurance trustee pursuant to Article 8 below (Single Family Home property insurance only); and

(d) A provision that such policies cannot be canceled or substantially modified without at least ten (10) days' prior written notice to all insureds, including the Association.

7.2.5 **Board's Right to Modify Requirements.** The Association may, over time, adjust the above required types and amounts of insurance or require additional insurance, so long as such changes or additional requirements are commercially reasonable.

ARTICLE 8

DAMAGE OR DESTRUCTION

8.1 **Townhome Building, Multifamily Building or Common Areas**. If any Townhome Building or Multifamily Building or any improvements within the Common Areas are damaged or destroyed by fire or casualty, the repair, restoration or ultimate disposition of any insurance proceeds shall be in accordance with the following:

(a) If the insurance proceeds derived from such loss amount to $75,000 or less, then the Board shall contract with any licensed contractor or contractors to rebuild or repair such damage or destroyed improvements in conformance with the original plans and specifications, or if adherence to such original plans and specifications is impracticable in the Board's opinion, then in conformance with revised plans and specifications provided such repairs or rebuilding shall be of a quality and kind substantially equivalent to the original construction. The Board shall accept bids only in specific amounts and shall not enter into any cost-plus or other sliding scale arrangement for compensation to the contractor.

(b) If the insurance proceeds derived from such loss exceed $75,000, all such insurance proceeds shall be paid directly to an insurance trustee as may be designated by the Board, as trustee for all affected Owners and their respective first Mortgagees, as their interests may appear. The insurance trustee shall disburse the insurance proceeds periodically as construction progresses, subject to satisfaction of the following conditions:

(i) Upon notification of the receipt of insurance proceeds by the insurance trustee, the Board shall enter into a contract for a specific dollar amount with a licensed contractor or contractor for the repair or rebuilding of all of the damaged or destroyed improvements, as nearly as practicable to the original plans and specifications thereof and in accordance with all applicable building codes.

(ii) The Board shall enter into said contract with a licensed contractor or contractors which shall have provisions for periodic disbursements of funds by the insurance trustee. Disbursements to the contractor shall be made subject to the prior presentation

of an architect's certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board, along with customary lien waivers.

(iii) The Board shall employ a licensed architect to supervise the repair and rebuilding to insure that such work, services and supplies are of proper quality and that construction is contemplated in a workmanlike manner and according to plans and specifications.

(c) If the damage to a Townhome Building or the Multifamily is only to those parts of a Dwelling Unit for which the responsibility for insuring is that of the Owner (such as the interior of the Dwelling Unit), then that Owner shall be responsible for reconstruction and repair, but the proceeds of any insurance that may have been obtained by the Association, if any, shall be made available for such purpose.

(d) If the proceeds of insurance maintained by the Association are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for payment of the costs thereof are insufficient, assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs. The foregoing provisions of this subparagraph are applicable to the repairs and reconstruction to be under-taken by the Association and do not cover damages to those portions of a Dwelling Unit for which the responsibility of insuring is that of the Owner.

(e) If the amount of available insurance proceeds should exceed the cost of any such reconstruction or repair, the excess shall be paid to the Association and applied by it to reduce the common expenses.

8.2 **Single Family Homes.** If all or any portion of a Single Family Home or any other improvements located on such Owner's Lot is/are damaged by fire or other casualty, the Owner thereof shall either (a) restore the damaged improvements or (b) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (a) above must be performed so that the improvements are in substantially the same condition in which they existed before the damage or destruction, unless the owner complies with the provisions of Article 10. The Owner must commence such work within sixty (60) days after the damage or destruction occurs and must complete the work within six (6) months thereafter. All insurance proceeds arising from such damage or destruction shall be paid to the Association ($75,000 or less) or to an insurance trustee as may be designated by the Board (if more than $75,000), as trustee for the affected Owner and its respective first Mortgagees, as their interests may appear. The Association or insurance trustee, as applicable, shall disburse the insurance proceeds as construction progresses upon receipt of an application for payment signed by the Owner and its contractor. The Association or insurance trustee shall have the right, but not the obligation, to hire an architect or building inspector to inspect the progress of construction to confirm whether the amount of funds requested to be disbursed is consistent with the cost or value of the repair or reconstruction work in place at the time of such request. The cost of the architect or inspector, as well as a reasonable administrative fee for the Association's oversight of such repair and reconstruction work, may be deducted from the

insurance proceeds. If the proceeds of insurance maintained by the Owner is not sufficient to defray the costs of reconstruction and repair, then the Owner shall be required to make up any deficiency. If the amount of available insurance proceeds should exceed the cost of any such reconstruction or repair, the excess shall be paid to the Owner when construction is completed.

ARTICLE 9

CONDEMNATION

Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on its behalf or on the written direction of all Owners subject to the taking, if any,) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as trustee for all Owners and First Mortgagees, as their interests may appear, to be disbursed as follows:

(a) If the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the Class A and C Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefore, in accordance with plans approved by the Board of the Association. If such improvements are to be repaired or restored, the provisions in Section 8.1 regarding disbursement of insurance proceeds in respect to casualty damage or destruction shall apply.

(b) It the taking does not involve any improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net funds shall be paid to the Association and applied by it to reduce the common expenses.

ARTICLE 10

ARCHITECTURAL STANDARDS

10.1 **Composition and Appointment**. An Architectural Review and Covenants Committee (the "Architectural Committee") shall be appointed by the Declarant for long as Declarant is the Owner of any Lot and thereafter by the Board. Such Committee shall initially consist of three (3) members, but may thereafter be increased or decreased in size by Declarant or the Board, as applicable, from time to time. Members of the Architectural Committee shall serve for a term of one (1) year, or until their successors are elected and qualified. Any vacancy in the membership of the Architectural Committee shall be filled by either Declarant or the Board, depending on whom has authority at the time to appoint members of the Architectural Committee, to serve for the remaining portion of the term of the originally appointed member. If any vacancy shall occur, the remaining members of the Architectural Committee may continue to act until the vacancy has been filled. Except for members who have been designated by the Declarant, any member may be removed with or without cause by the Board. In the event that

Declarant or the Board shall fail to designate an Architectural Committee, the Board shall serve as the Architectural Committee.

10.2 **Powers and Duties**.

(a) The Architectural Committee shall serve as an architectural review board and shall regulate the external design, appearance and location of the Lots and Structures thereon so as to enforce the architectural provisions of this Declaration, enforce the requirements of the Plat, any supplemental plats and deeds of subdivision, and to preserve and enhance values and to maintain a harmonious relationship among Structures and the Property.

(b) The Architectural Committee shall serve in such other capacities as may be determined by the Board from time to time in enforcing the provisions of this Declaration and the Articles, Bylaws and Rules and Regulations of the Association. Any decision or determination of the Architectural Committee may be appealed by a Member affected thereby to the Board.

10.3 **Submission of Plans to Architectural Committee for Approval**. Except for such Structures as may be constructed by the Declarant or Structures constructed by a Participating Builder which have first been approved in writing by the Declarant, no Structure of any kind whatsoever shall be commenced, erected, placed, moved onto or permitted on any Lot, nor shall any existing Structure upon any Lot be removed or altered in any way which materially changes the exterior appearance thereof (including change of exterior color) until plans and specifications therefore shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as the Architectural Committee may reasonably require, but shall in all cases include:

(a) A site plan showing the location of all proposed and existing Structures on the Lot and all existing Structures on adjoining Lots,

(b) Exterior elevations for the proposed Structures,

(c) Specifications of materials, color scheme and other details affecting the exterior appearance of the proposed buildings, and

(d) Description of the plans or provisions for landscaping or grading.

The provisions of this Section 10.3 shall not apply to Land Development Activity. Any plans and specifications of any Participating Builder which have been approved in writing by the Declarant shall not be subject to any review or approval by the Architectural Committee following the termination of the Class B membership or the Declarant Control Period.

10.4 **Decision of the Architectural Committee.** The Architectural Committee shall render its written decision approving or denying each application submitted to it within thirty (30) days after its receipt of all materials required with respect to such application; provided, however, that the Architectural Committee shall be entitled to request one extension of time, not to exceed an additional thirty (30) days. If the Architectural Committee fails to render its written

decision within such thirty (30) or sixty (60) day period (as applicable), then the application shall be deemed approved. In the event an applicant submits incomplete plans and specifications (as determined by the Architectural Committee in its reasonable discretion) to the Architectural Committee, the Architectural Committee shall provide the applicant with written notice of the deficiencies, in which event the time period for the Architectural Committee to make its decision as described above shall not begin until after the Architectural Committee has received all materials required for a complete submission.

The architectural character of all Structures, or alterations, additions, or improvements thereof (other than interior alterations not affecting the external appearance of a Structure) when visually related to each other and the surrounding natural environment shall be, in the opinion of the Architectural Committee, harmonious in terms of type, size, scale, form, color and material. The Architectural Committee, at its sole discretion, may withhold consent to any proposed work if the Architectural Committee finds the proposed work does not comply with the Design Guidelines or would be inappropriate for the particular Lot or incompatible with other Structures in North Park. The Architectural Committee may consider siting, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots or the Common Areas, and any other factors that it reasonably believes to be relevant in determining whether or not to consent to any proposed work. The Architectural Committee shall not, however, be responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the applicant's responsibility.

Any approval or disapproval of a requested action by the Architectural Committee shall be in writing. In denying any application, the Architectural Committee shall specify the reasons for such denial. The Architectural Committee may approve an application subject to such conditions and qualifications as the Architectural Committee or Board deems appropriate to enforce the architectural provisions of this Declaration. Consent by the Architectural Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

10.5 **Appeal**. After such time as Declarant no longer control appointment of members of the Architectural Committee, any Owner adversely impacted by Architectural Committee action may appeal such action to the Board. Such appealing Owner shall submit to the Board a written notice of appeal, setting forth specific objections or mitigating circumstances justifying the appeal, within ten (10) days after the Architectural Committee's action. The Board shall issue a final, conclusive decision within forty-five (45) days after receipt of such notice, and such decision shall be final and binding on the appealing Owner and the Architectural Committee; provided, however, that the Board shall make reasonable efforts to reach a decision within twenty (20) days after receipt of notice from the appealing Owner. If the Board is serving as the Architectural Committee, then such appeal shall be deemed a request for reconsideration.

10.6 **Rules, Regulations and Policy Statements**. The Architectural Committee shall enforce the Design Guidelines. The Architectural Committee may recommend, from time to time, subject to the approval and adoption of the Board, modifications to the Design Guidelines and reasonable rules and regulations pertaining to its authorized duties and activities under this Declaration and may from time to time issue statements of policy with respect to the Design

Guidelines, other architectural standards and such other matters as it is authorized to act on. The Architectural Committee shall adopt rules of procedure, subject to the prior approval and adoption of the Board, which rules of procedure shall include provisions substantially to the following effect:

(a) The Architectural Committee shall hold regular meetings as necessary. Meetings of the committee may be called by the chairman and by a majority of the members of said committee.

(b) A majority of the members of the Architectural Committee present at any meeting shall constitute a quorum.

(c) The Architectural Committee shall maintain minutes of its meetings and a record of the votes taken at the meetings.

(d) All meetings of the Architectural Committee shall be open to the Members of the Association and any vote of the Architectural Committee shall be taken at an open meeting. Nothing contained herein, however, shall prevent the Architectural Committee from meeting in closed session or executive session in accordance with state laws or regulations.

(e) A copy of all minutes, rules, regulations and policy statements of the Architectural Committee shall be filed with the records of the Association and shall be maintained by the Association as a permanent public record. The Association shall make copies thereof available to any interested Member at a reasonable cost or shall make such minutes, rules, regulations and policy statements available to any Member for copying.

10.7 **Expenses of the Architectural Committee**. The Architectural Committee may charge reasonable fees for the processing of any requests, plans and specifications including consultation with a professional. The Association shall pay all ordinary and necessary expenses of the Architectural Committee; provided, however no member of the Architectural Committee shall be paid any salary or receive any other form of compensation, at the expense of the Association except upon authorization by the Board and upon approval by (i) fifty percent (50%) of the votes cast by the Class A and C Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and (ii) the Class B Member voting in person or by proxy at such meeting.

10.8 **Estoppel Certificate**. Within fifteen (15) days after the Architectural Committee's receipt of a written request from an Owner and the payment of a reasonable fee to the Architectural Committee to cover costs, the Architectural Committee shall provide such Owner with a certificate executed by the chairperson or other authorized member of the Architectural Committee certifying with respect to any Lot owned by the Owner, that, as of the date thereof either (a) all improvements made or done upon such Lot comply with this Declaration, or (b) such improvements do not so comply, in which event, the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner and such Owner's heirs, devisees, successors, and assigns shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall

be conclusive as among Declarant, the Architectural Committee, the Association, all Owners, and all persons deriving any interest through any of them.

10.9 **Right of Entry**. The Association and the Architectural Committee through their authorized officers, employees and agents shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling or alteration of any Structure thereon is in compliance with the provisions of this Article without the Association or the Architectural Committee or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

10.10 **Limitation of Liability**. Neither the Architectural Committee nor any member thereof shall be liable to any Owner, Resident or Participating Builder for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the Architectural Committee or a member thereof, provided only that the Architectural Committee or the member has, in accordance with its or his or her actual knowledge, acted in good faith.

10.11 **Land Development**. Notwithstanding any other provisions of this Declaration, any Land Development Activity shall not require the approval of or be subject to review by the Architectural Committee. This provision shall not be construed in any manner as a limitation upon the right of the Declarant to review and approve any plan or modification thereof of any Participating Builder.

ARTICLE 11

USE RESTRICTIONS

11.1 **Residential Use**. Lots shall only be used for residential purposes. Except with the Board's prior consent, no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, and no goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business shall be kept or stored on any Lot. Nothing in this Section shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any residence as a sales office or model home for purposes of sales in the Subdivision, and (c) the right of the Owner of a Lot to maintain such Owner's personal business or professional library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls, or confer with business or professional associates, clients, or customers in such Owner's residence. The Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

11.2 **Air Conditioning Units.** No Owner shall install, or permit to be installed or maintained, air conditioning units through exterior modifications of its Dwelling Unit or through window openings. The only air conditioning units that will be permitted are those units which are

considered central in nature and installed on a slab in the rear yard of a Lot outside of and adjacent to the Dwelling Unit.

11.3 **Screens and Fences**. Except for any fence installed by the Declarant, a Participating Builder, or the Association, no fence or screen shall be installed on a Lot except in accordance with the Design Guidelines established by the Architectural Committee and with the prior written approval of the Architectural Committee. If a fence is permitted by the Architectural Committee, the fence shall be a so-called good neighbor fence not to exceed six (6) feet in height. No chain-link, metal cloth or agricultural fences are permitted; provided, however, that chain link fences may be installed, with the prior approval of the Architectural Committee, for domestic pet runs. Any fencing which may be installed by the Declarant in the Common Area shall be maintained by the Association.

11.4 **Antennae and Satellite Dishes.** Except as otherwise provided by law or this Section, no exterior antennas, satellite dishes, microwave, aerial, tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic radiation shall be erected, constructed, or placed on any Lot. With prior written consent from the Architectural Committee, exterior satellite dishes or antennas with a surface diameter of two feet (2') or less and antennas designed to receive television broadcast signals only may be placed on any Lot if they are not visible from any street and are screened from neighboring Lots. The Architectural Committee, with the approval of the Board, may adopt reasonable Rules and Regulations governing the installation, safety, placement, and screening of such antennas, satellite dishes, and other transmission devices. Such rules shall not unreasonably delay or increase the cost of installation, maintenance, or use or preclude reception of a signal of acceptable quality (the Architectural Committee, in its sole discretion, may determine what constitutes a signal of acceptable quality). Such Rules and Regulations may prohibit installation of exterior satellite dishes or antennas if signals of acceptable quality can be received by placing antennas inside a Dwelling Unit without causing an unreasonable delay or cost increase.

11.5 **Prohibition of Hazardous Items**. No Owner shall use, or permit the use by a Resident, of any firearms, air rifles, pellet guns, BB guns, bows and arrows, slingshots, or other similar dangerous weapons, projectiles or devices anywhere on or about the Subdivision, nor shall any Owner use or permit to be brought onto its Lot any highly flammable or dangerous oils or fluids such as naphtha, benzine, or other explosives or articles deemed to be extra hazardous to life, limb, or property, without in each case obtaining the written consent of the Association.

11.6 **Temporary Structures.** No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn, or other outbuilding shall be maintained or used on any Lot at any time as a residence or for any other purpose, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

11.7 **Nuisances.** No noxious, offensive or other activity that would constitute a common law nuisance shall be carried out on the Common Areas or any Lot, nor shall anything be done thereon which may become an annoyance to the neighborhood. The Board shall have the sole authority to determine nuisances and annoyance and their decision shall be final and conclusive.

11.8 **Clothes Hanging Devices.** Clothes lines and other clothes hanging devices are not permitted on any Lot unless such clothes line or hanging device is temporary in nature, located in the rear yard and screened from public view by a fence approved by the Architectural Committee.

11.9 **Pools.** No above ground swimming pools may be erected upon any Lot.

11.10 **Signs.** No sign of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the Subdivision or carried by any person or by any other means displayed within the Subdivision except as provided below:

(a) **"For Sale" Signs.** An Owner may erect one (1) sign not exceeding two (2) feet by three (3) feet in dimension, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale.

(b) **"For Rent" Signs.** An Owner may erect one (1) sign not exceeding three (3) square feet in area advertising its Dwelling Unit for rent. Such sign shall be visible from the front of the Dwelling Unit only, and shall be displayed from within the Dwelling Unit.

(c) **Political Signs.** Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen

(d) **Declarant's Signs.** Any signs or billboards erected by the Declarant on the Common Areas or any Lots owned by Declarant are exempt from the provisions of this Section.

11.11 **Vehicles and Parking**.

11.11.1No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked upon its Lot or any part of the Common Areas for a period in excess of twenty-four (24) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the residents of the Subdivision. Should any Owner fail to remove such vehicle within two (2) days following the date on which notice is mailed to such Owner by the Board, the Board may have the vehicles removed from the Subdivision and charge the expense of such removal to the Owner as a Reimbursement Assessment. No on-street vehicle maintenance or repair involving motor oils, fuels, or other lubricants or solvents shall be permitted anywhere on the Property. Any maintenance or repair of vehicles must take place entirely within the garage of an Owner. On-site vehicle washing shall be permitted only in paved areas that discharge all waste to a water quality treatment facility.

11.11.2 Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, boats, watercraft, trailers, recreational vehicles, campers, motorcycles, similar equipment and anything being in excess of three-quarters of a ton in weight shall be parked only in enclosed garages or areas designated by

the Board, if any; provided, however, that such vehicles and equipment may be parked on the public streets within the Subdivision or an Owner's Lot (outside of an enclosed garage) while being prepared for travel, limited to forty-eight (48) hours prior to leaving and forty-eight (48) hours after returning to the Subdivision, and in respect to commercial vehicles and the like, while performing services on the Property.

11.12 **Animals**. The maintenance, keeping, boarding or raising of animals, livestock, or poultry regardless of number, is prohibited on any Lot or upon the Common Areas, except for (i) the keeping of guide animals and reasonable number of orderly domestic pets (e.g. fish, nonpoisonous reptiles, dogs, cats, or caged birds), not to exceed two (2) pets which can regularly leave the Lot, subject to the Rules and Regulations adopted by the Board. Such pets or animals shall not be kept or maintained for commercial purposes or for breeding. Any pet or animal causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon fourteen (14) days written notice from the Board. Animals shall not be permitted upon the Common Areas except for orderly domestic pets accompanied by someone who can control the animal and unless carried, leashed, or under other positive control. Animal droppings shall be cleaned up by the Owner responsible for the animal being on the Property. If an animal's owner fails to clean up after his or her pet or fails to comply with leash laws or the requirements of this Declaration or the Bylaws or Rules and Regulations, the animal in question may be permanently removed from the Property upon fourteen (14) days written notice from the Board and charges may be levied against the responsible party as allowed by law. Any Owner who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Owner and Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Property. All animals shall be registered and inoculated as required by law. The appropriate governmental authorities shall have an easement and right of access across the Property to enforce local animal control laws and ordinances.

11.13 **Rubbish and Trash**. No Lot or any part of the Common Areas shall be used as a dump for trash or rubbish of any kind. All garbage and other debris and waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. In the event an Owner or occupant fails to remove any trash, rubbish, garbage, or other debris or waste materials from such Owner's or occupant's Lot (or from the street or other Common Areas if deposited thereon by such Owner or occupant) within five (5) days after notice from the Association, the Association may have such waste removed and charge the expense of such removal to the Owner of the Lot as a Reimbursement Assessment. Customary construction activities by Declarant that relate to development and construction of the Subdivision or buildings and improvements which are scheduled to be part of the Subdivision shall not violate this Section.

11.14 **Garages**. No garage shall be utilized for other than the purpose of parking and storage of vehicles and other types of items normally stored in garages in first-class residential neighborhoods. No garage may be converted into or used for living space.

11.15 **Leases**.

11.15.1No Dwelling Unit may be rented or leased for less than seven (7) consecutive days. The Board may, however, adopt by resolution reasonable rules and regulations to govern short-term rentals, which are defined as rentals or leases for a period of less than thirty (30) days, to protect and preserve the residential nature of the Subdivision, which may include, but is not limited to, limiting the number of time per year that a Dwelling Unit may be rented or leased on short-term basis.

11.15.2All agreements for the rental or lease (including sublease) of Dwelling Units and all Owners, renters, lessees and sublessees of Dwelling Units must comply with this Section.

(a) All rentals and leases, including subleases, of Dwelling Units must be by written agreement which provides that the terms of the agreement are subject in all respects to the provisions of this Declaration and the Bylaws and Rules and Regulations, and that any failure by the tenant, lessee or sublessee to comply with the terms of such documents is a default under the agreement.

(b) The Owner must provide the tenant or lessee (including sublessee) of the Dwelling Unit a copy of this Declaration and the Bylaws, including any relevant amendments to such documents, and all Rules and Regulations in effect during the period of such rental or lease and obtain a receipt for delivery of such documents.

(c) Upon the commencement of the rental or lease period (including any renewal or sublease), the Owner must provide the Association a statement of Dwelling Unit occupancy information and a copy of the receipt specified in paragraph (b) of this Section. If the Owner fails to provide such receipt, the Association may, but is not obligated to, provide such documents to the tenant, lessee or sublessee. The Association must obtain a receipt therefor, and may charge a reasonable service fee and the copy expenses to the Owner as a Reimbursement Assessment.

(d) If the Board determines that a tenant, lessee or sublessee of a Dwelling Unit has violated any provisions of this Declaration or the Bylaws and Rules and Regulations, in addition to any other remedies available to the Association, the Board may require that the Owner terminate such rental or lease agreement, or Owner's lessee terminate any sublease.

(e) An Owner is responsible for paying for any damage to the Common Areas caused by his or her guests, tenants or lessees (including sublessees) and for any fines imposed by the Board for any violations of this Declaration or the Bylaws and Rules.

11.16 **Tree-Cutting Restrictions**. No tree the diameter of which is six inches (6") or more may be removed from any Lot without the prior approval of the Architectural Committee unless it is diseased, poses an immediate danger to persons or property, or is within 10 feet (10') of an existing or proposed building.

11.17 **Landscaping**. The portion of any Lot not occupied by Structures, hard-surfacing, vehicular driveways or pedestrian paths, shall be kept planted with grass, trees or shrubs or other

ground covering or landscaping in conformance with the standards set by the Architectural Committee and approved by the Board. Such standards will take into consideration the need for providing effective site development to:

(a) enhance the site and building,

(b) screen undesirable areas or views,

(c) establish acceptable relationships between buildings and adjacent properties, and

(d) control drainage and erosion.

Each Owner shall obtain the Architectural Committee's prior approval of all landscaping plans before commencing installation of any landscaping. Landscaping for all portions of the Lot shall commence within sixty (60) days after the final building inspection by the local government jurisdiction and shall be completed within six (6) months after such inspection. Owners shall irrigate their entire yard to keep lawns green and other landscaping fresh. The Association may irrigate from hose bibs connected to individual Dwelling Units of Owners who fail to properly irrigate their yards. If plantings on any Lot have died or are dying because the Owner of the Lot neglected to properly care for and irrigate the plants, or because of other harm to the plants caused by such Owner, the Association shall have the right, but not the obligation, to replace the plantings and assess the Owner for the cost as a Reimbursement Assessment.

As required by the Architectural Committee, existing trees shall be retained, buffer areas maintained and the natural contour of the land respected. The Architectural Committee reserves the right to require special treatment of slopes, construction of walls, and use of stone fills to preserve trees that cannot otherwise be saved. Notwithstanding the foregoing, any clearing, grading or other development work performed pursuant to any final site development plan by the Declarant and approved by all appropriate governmental authorities for Declarant or for any Participating Builder shall not be subject to the review or approval of the Architectural Committee.

11.18 **Athletic and Recreational Facilities.** Outdoor athletic and recreational equipment or facilities such as basketball hoops, hockey goals, swing sets and sport courts shall not be placed on any Lot except in accordance with this Section. Outdoor athletic and recreational equipment and facilities such as basketball hoops, hockey goals, swing sets and sport courts shall only be permitted in the rear yard of a Lot and must be approved in advance by the Architectural Committee pursuant to Article 10. Outdoor athletic and recreational equipment or facilities shall not be placed within any street within the Subdivision or the Common Areas.

11.19 **Water and Sewage Systems.** No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks.

11.20 **Solar Devices.** No artificial or manmade device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed, or

maintained upon any portion of the Subdivision, including any Lot, without the prior written consent of the Board.

11.21 **Window Treatments**. All shades, drapery linings and other window treatments visible from the exterior of a Dwelling Unit shall be white or off-white. No foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose.

11.22 **Subdivision of Lots**. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Association. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

11.23 **Exterior Holiday Decorations.** Lights or decorations may be placed on the exterior of Dwelling Units in commemoration or celebration of publicly observed holidays, provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly observed holiday between December 1 and December 31 of any year, may not be displayed before November 15th of any year and must be removed by January 15th of the following year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday and must be removed within two (2) weeks after the holiday.

11.24 **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot or the Common Areas, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot or the Common Areas. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or the Common Areas. No tank for the storage of oil or other fluids may be maintained on any of the Lots or the Common Areas.

11.25 **Flags**. The Board is authorized and reserves the right to regulate the type of flags which may be displayed on the Property, including the right to prohibit the display of flags on the Property or the right to require the removal of flags that the Board deems inappropriate in its sole discretion. The Board is also authorized to regulate, restrict or prohibit the erection and placement of flag poles on the Property and reserves the right to do so in its sole discretion.

ARTICLE 12

ANNEXATION OF ADDITIONAL PROPERTY

12.1 **Annexation by Declarant.** Declarant may from time to time and in its sole discretion annex to the Subdivision as Additional Property any real property now or hereafter acquired by it (including, but not limited to the, the property described on **Exhibit A-1** attached hereto), and may also from time to time in its sole discretion permit other holders of real property to annex the real property owned by them to the Subdivision. The rights reserved unto Declarant to subject additional real property to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional real property to this

Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build improvements of any kind. The annexation of such real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a Supplemental Declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. Any such annexation shall be effective upon the filing for record of such supplemental declaration unless otherwise provided therein.

(b) The property included in any such annexation shall thereby become a part of the Subdivision and this Declaration, and Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property; and

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property;

(d) There is no limitation on the number of Lots which Declarant may create or annex to the Subdivision, except as may be established by applicable ordinances of the local governmental authority. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by applicable ordinances of the local governmental authority.

(e) Upon annexation, additional Lots so annexed shall be entitled to voting rights as set forth in Article 2 above.

(f) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Article 6 above.

(g) No consent or joinder of any Class A Member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

12.2 **Annexation by Action of Members.** At any time the Board may request approval of the Owners for the annexation of additional property into the Subdivision to be

subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved by at least seventy-five percent (75%) of the vote of the Owners, and the consent of the Declarant so long as the Declarant is a Class B Member. Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements; provided, however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation shall be evidenced by a Supplemental Declaration signed by the president and secretary of the Association certifying that the Supplemental Declaration was adopted in accordance with this Declaration and ORS 94.590. For purposes of voting on an annexation pursuant to this Section, Declarant shall be treated as a Class A Member with one (1) vote per Lot owned.

ARTICLE 13

MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article shall apply to both this Declaration and to the Bylaws notwithstanding any other provisions contained therein.

13.1 **Notices of Action**. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street number of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Property or Additional Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; or any violation of this Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

13.2 **Special FHLMC Provision**. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or Members representing at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Areas which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the Board or provisions of any Supplement Declaration regarding assessments shall not be subject to this provision where such decision or Supplemental Declaration is otherwise authorized by this Declaration);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design, exterior appearance or maintenance of Lots and the Common Areas (the issuance and amendment of architectural standards, procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement, or reconstruction of such property.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

13.3 **No Priority**. No provision of this Declaration or the Bylaws of the Association gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

13.4 **Notice to the Association**. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

13.5 **Amendment by Board**. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded in the deed records of Deschutes County, Oregon to reflect such changes.

13.6 **Applicability of this Article**. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws of the Association, or Oregon law for any of the acts set out in this Article.

13.7 **Failure of Mortgagee to Respond**. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested. An affidavit from the President of the Association indicating that a Mortgagee did not respond to a request and is therefore deemed to have consented to the requested action, along with a copy of the return receipt signed by or on behalf of the Mortgagee, may be attached to any amendment to this Declaration and the Bylaws of the Association and shall be conclusive proof such Mortgagee's consent and approval of such action.

ARTICLE 14

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1 **Agreement to Encourage Resolution of Disputes Without Litigation**. Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Seven Oaks without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.2 in a good faith effort to resolve such Claim.

As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to

(a) the interpretation, application, or enforcement of this Declaration or the Article, Bylaws or Rules and Regulations;

(b) the rights, obligations, and duties of any Bound Party under this Declaration or the Article, Bylaws or Rules and Regulations; or

(c) the design or construction of improvements within the Subdivision, other than matters of aesthetic judgment under Article 10, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

(a) any suit by the Association to collect assessments or other amounts due from any Owner;

(b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration or the Article, Bylaws or Rules and Regulations;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

14.2 **Dispute Resolution Procedures**.

14.2.1 **Notice**. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

14.2.2 **Negotiation**. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

14.2.3 **Mediation**. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 14.2(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Charlotte, North Carolina area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the

parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

14.2.4 **Settlement**. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

14.3 **Initiation of Litigation by Association**. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of the Owners entitled to cast 75% of the total Class A and Class B votes in the Association, respectively, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Declarant Control Period;

(b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(c) initiated to challenge ad valorem taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

ARTICLE 15

AMENDMENT

15.1 **General Amendments**. Subject to the other limitations set forth in this Declaration, this Declaration may be amended by an instrument approved by not less than seventy-five percent (75%) of the vote of the Owners, and the consent of the Declarant so long as the Declarant is a Class B Member. Upon approval of an amendment as provided herein, the president and secretary of the Association shall execute an instrument amending this Declaration

and certifying that the amendment was adopted in accordance with this Declaration and ORS 94.590, which certification shall be properly acknowledged in the manner of acknowledgment of deeds, and the Board, or other duly appointed and authorized persons, shall record the instrument amending this Declaration in the land records for Deschutes County, Oregon. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording.

For purposes of voting on an amendment to this Declaration pursuant to this Section, Declarant shall be treated as a Class A Member with one (1) vote per Lot owned, except as otherwise provided by ORS 94.585. In no event shall an amendment pursuant to this Section create, limit, or diminish Declarant's special rights without Declarant's written consent or change the boundaries of any Lot or any use to which any Lot is restricted unless the Owners of the affected Lots consent to the amendment.

15.2 **Declarant Amendments**. Notwithstanding anything to the contrary herein contained, the Declarant reserves the right to amend this Declaration during the Declarant Control Period without the consent of any Owners, or any other persons claiming an interest in the Property or the Association if such amendment is necessary to (i) bring this Declaration into compliance with any rule, regulation or requirement of the Federal Housing Administration, The Federal National Mortgage Association, The Federal Home Loan Mortgage Corporation, or local governments; (ii) make corrective changes; (iii) reflect the relocation of boundary lines between the Common Area and any Lots or among any Lots, provided however that an approved resubdivision of the affected property is properly recorded; (iv) add all or any portion of the Additional Land pursuant to Section 12.1.

ARTICLE 16

GENERAL PROVISIONS

16.1 **Duration**. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years unless amended or terminated as provided in this Article.

16.2 **Enforcement**. The Association, or any Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration (including without limitations, for the collection of assessments), the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event that is the subject of the suit or action, attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees and costs incurred in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed. The provisions of

this Section shall be in addition to and not in limitation of any rights or remedies provided in other Sections of this Declaration.

16.3 **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Subdivision designed to increase security within the Subdivision. NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION, AND NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

16.4 **Severability**. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions hereof which provisions shall remain in full force and effect.

16.5 **Construction**. The Board shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

16.6 **Invalidity**. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

16.7 **Headings**. The headings of the Articles and Sections of this Declaration are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

16.8 **Gender**. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on the ___ day of_____, 200__.

3 SISTERS PARTNERS, LLC, an Oregon limited liability company

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of Deschutes)

The foregoing instrument was acknowledged before me the _____ day of _____, 200__, by _____, the _____ of 3 SISTERS PARTNERS, LLC, an Oregon limited liability company, on behalf of the company.

_____
Notary Public, State of Oregon
My Commission Expires:_____

List of Exhibits

Exhibit A – Legal Description of Property
Exhibit A-1 – Legal Description of the Additional Property
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Engineering Department
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Bend, OR 97701
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we're the local dog. we better be good.

3/2/2015

Dear Developer/Engineer

BendBroadband engineering department has received a tentative plan for your project titled: **3 Sisters Partners**
In an effort to coordinate the placement of conduits in the utility trenches, we would at this time like to identify the responsibilities of both Bend Broadband and the developer (Engineering Co) in making this project come together smoothly.

BendBroadband will:

- **Provide specifications and conduit design maps** upon request (construction dept.)
- **Provide materials for conduit infrastructure** (excluding street crossings)
- **Make provisions with conduits and cables to each property corner** following developer provided utility trenches (construction dept.)
- **Provide a contact list of Bend Broadband engineering/construction personnel** for your assistance with any questions or problems

Developer/Engineering Co will:

- Provide Bend Broadband with an **AutoCAD drawing** of the approved project (engineering dept.) all data to be utilized within our dept.
- Provide Bend Broadband with a **power company trench design map** as soon as it is available, we will need this in order for us to complete our design (delivered to our office c/o engineering dept.)
- Provide a **tentative schedule of utility trench** work and name of contacts for the project, including excavation contractor, project manager, etc. (via mail, office delivery, or e-mail)
- **Notify our Engineering dept.** 10 working days prior to our placement of conduit facilities in utility trenches (via phone, office delivery, or e-mail) Once received phone call project will be forwarded to construction for scheduling.
- Provide **specified amounts** of 2" conduit at each main utility trench crossing (per Engineering plan)
- Provide a **separate 2" conduit for each lot** on street crossings (2lots\2Conduits)

Special Note:

It should be noted that occasionally we require additional trench (other than that needed by the Power or Telephone Companies). It shall be the responsibility of the developer to provide any additional trench inside the development or across adjacent Right of Ways as needed for tie-ins and connectivity.

Occasionally, when scheduling of our crews' presents a situation where the developer (or his contract excavator) desires to place our infrastructure on our behalf, this can be performed *only* according to our map layout, at no cost and with the consent of our Construction/Engineering Dept.

For final plan sign-off please call our Engineering Dept for availability, or leave plans at our new Tech Ops building and a phone number that we can call when they are ready for pick-up. Our new building is located at 63070 Nels Anderson Rd between 3rd St and Sherman Rd in Bend, OR. There is a buzzer/intercom at the door to announce your arrival to our Dispatchers.

Thank you in advance for your cooperation, we hope that this information is helpful in completing this portion of your project.

Sincerely,

Engineering Department
BendBroadband LLC

****

Direct inward dial numbers and email listings below:

Engineering Department:

James Ludwig – Engineering Tech (541) 330-7964
jludwig@bendbroadband.net

Sosanna McHugh – Engineering Tech (541) 693-5981
smchugh@bendbroadband.net

Jeff Liberty – Engineering Tech (541) 312-6449
jliberty@bendbroadband.net

Construction Department:

Doug McCallister – **Construction Supervisor** (Conduit Specifications, Underground and Overhead Extensions)
(541)312-7223(*office*) 948-0479(*cell*) doug.mccallister@bendbroadband.net

CENTRAL ELECTRIC
COOPERATIVE, INC.

March 3, 2015

3 Sisters Partners Residential
c/o Peter Hall
1195 NW Redfield Cir
Bend, OR 97701-5445

RE: Will Serve Letter for Three Sisters Business Park, W Lundgren Mill Dr

In response to your inquiry, please be advised that property located in T.15S., R.10E., W.M., Section 04, Deschutes County, Oregon, is within the service area of Central Electric Cooperative, Inc.

Central Electric Cooperative is prepared to serve these locations in accordance with the rates, policies and available system capacity of the Cooperative.

Sincerely,

Robert E Fowler
Engineering Service Rep

PO Box 846 • 2098 N Hwy 97 - Redmond, Oregon 97756-0187
Tel 541.548.2144 • Fax: 541.548.0366
www.cec.coop

3/4/2015

CenturyLink™

Peter Hall
3 Sisters Partners LLC
1195 NW Redfield Circle
Bend, Ore 97701

RE: 100 Unit Apt. Complex
Three Sisters Business Park, T15S, R10E, Sec 4, Lots 9-19 and Tract A, Sisters, Deschutes County

Dear Mr. Hall:

This information is provided in response to your request regarding telephone service for the property described as Three Sisters Business Park, T15S, R10E, Sec 4, Lots 9-19 and Tract A, Sisters, Deschutes County, Oregon.

The address at issue is in CenturyLink service territory. Sisters is the serving exchange.

The developer and subsequent property owners are subject to the terms and conditions contained in CenturyLink's filed Price List for Exchange and Network Services, Section 59, entitled "Construction of Outside Plant Facilities". It shall be in effect at the time service is billed.

There exists the possibility that facilities will not be available at CenturyLink when requested by the applicant. Delays may be encountered until such time as facilities become available. Since telephone service is handled on an individual case basis, installation dates will be negotiated upon application of each customer.

The Tariffs and Price Lists discussed are on file with the Oregon Public Utilities Commission.

Sincerely,

Joseph Dairy
Sr. Design Engineer
CenturyLink
100 NW Kearney Ave.
Bend, Ore. 97701
541-385-0221
joseph.dairy@centurylink.com

ORDINANCE NO. 448

AN ORDINANCE ADOPTING A COMPREHENSIVE PLAN MAP AMENDMENT FROM LIGHT INDUSTRIAL (LI) TO RESIDENTIAL (R) AND A COMPREHENSIVE PLAN AMENDMENT FOR LOTS 9-19 THAT ARE PART OF THE THREE SISTERS BUSINESS PARK – PHASE 1

WHEREAS, Three Sisters Partners LLC is the property owner of 19 lots that are collectively known as Three Sisters Business Park – Phase I and further identified as lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19; and,

WHEREAS, the property owner requested a Comprehensive Plan Map Amendment (CP 14-01) for 14.85 gross acres (a portion of 19 platted lots) from Light Industrial (LI) to Residential (R) and a Comprehensive Plan Amendment to Chapters 9 and 14; and,

WHEREAS, the proposal would have retained 2.06 acres of land designated as Light Industrial in the Comprehensive Plan which would have acted as a buffer between the light industrial land to the south, and the proposed residential land to the north; and,

WHEREAS, after due notice, a public hearing on the proposed Comprehensive Plan Amendment (14-01) was held before the Sisters Planning Commission at the City of Sisters Council Chambers (520 E Cascade Avenue, Sisters, 97759) on February 20th and March 20, 2014 following which the findings were reviewed, witnesses were heard and evidence was received and the Planning Commission on a 6-0 vote recommended that the City Council deny Comprehensive Plan Amendment (CP 14-01) due to loss of economic land and potential incompatible land uses (light industrial next to residential uses); and,

WHEREAS, after due notice, a public hearing on the proposed Comprehensive Plan Amendment (14-01) was opened before the City Council at the City of Sisters Council Chambers (520 E Cascade Avenue, Sisters, 97759) on April 24, 2014 following which the City Council remanded the application back to the Planning Commission for review of new material; and,

WHEREAS, on May 15, 2014 the Planning Commission held a workshop to review new material including a residential land needs analysis and land use comparison memo; and,

WHEREAS, on June 5, 2014 the applicant submitted two new options known as Option 1 and Option 2 for Planning Commission's review at their June 19, 2014 public hearing; and,

WHEREAS, Option 2 includes changing the Comprehensive Plan land use designation to Residential on lots 9-19 which is 8.32 acres and retains lots 1 – 8 as Light Industrial and a Comprehensive Plan Amendment to Chapters 9 and 14; and,

WHEREAS, after due notice, a public hearing on the proposed Comprehensive Plan Amendment (14-01) was held before the Sisters Planning Commission at the City of Sisters Council Chambers (520 E Cascade Avenue, Sisters, 97759) on June 19, 2014 following which findings were reviewed, witnesses were heard and evidence was received; and,

WHEREAS, a motion was made recommending approval of Option 2 (Tax Lots 151004BC00200-1200) for Comprehensive Plan Amendment (CP 14-01) and the Planning Commission had a tie vote (3-3) and therefore the motion was defeated; and,

WHEREAS, the City Council found that Option 2 would contribute to the 20-year land supply for residential and that the North Sisters Business Park (NSBP) District exceeded a 20-year land supply even after CP 14-01 was approved; and,

WHEREAS, the City Council found that Option 2 is consistent with the Statewide Planning Goals and Comprehensive Plan; and,

WHEREAS, the City Council found that Option 2 and their affected areas can be provided with adequate public facilities, services and transportation networks to support the uses; and,

WHEREAS, the City Council found that Option 2 will not have a significant effect on a transportation facility in the region and so the project is in compliance with 4.7.600, Transportation Planning Rule (TPR); and,

WHEREAS, after due notice, a public hearing on the Comprehensive Plan Amendment (CP 14-01) was held before the Sisters City Council at the City of Sisters Council Chambers (520 E Cascade Avenue, Sisters, 97759) on July 10, 2014 following which the findings were reviewed, witnesses were heard and evidence was received and the City Council finds and approves Comprehensive Plan Amendment (CP 14-01).

NOW, THEREFORE, the City Council of the City of Sisters ordains as follows:

SECTION 1. The City of Sisters approves and adopts the staff report and findings attached to this Ordinance as Exhibit A.

SECTION 2. The Comprehensive Plan Map is amended as provided in Exhibit B and C, which is incorporated into this Ordinance by reference.

SECTION 3. The Comprehensive Plan is amended as provided in Exhibit D, which is incorporated into this Ordinance by reference

PASSED by the Common Council of the City of Sisters this 10th day of July 2014, and APPROVED by the Mayor of the City of Sisters.

Brad Boyd, Mayor

ATTEST:

Kathy Nelson, City Recorder

Conditions of Approval Agreement

This Development Agreement, hereinafter referred to as "Agreement", is made and entered into by and between the City of Sisters, hereafter referred to as "City", and 3 Sisters Partners, LLC, hereafter referred to as "3 Sisters".

Recitals

1. This Agreement is a conditions of approval agreement with 3 Sisters Partners, LLC, the owners of the approximately 29-acres of real property that is legally described in Exhibit A attached hereto (hereafter the "Property"). The Property includes lots 1 through 19 (inclusive) and Tract A as depicted on the recorded plat for Three Sisters Business Park, Phase 1, Deschutes County, Oregon.

2. 3 Sisters received Comprehensive Plan Text Amendment, Development Code Text Amendment, Comprehensive Plan Map Amendment and Zoning Map Amendment land use approvals from the City on June 14, 2007. The approvals are for the development proposed in City land use permit files C-06-04, CP06-03, Z06-02.

3. The Findings and Recommendation of the Sisters Planning Commission signed February 27, 2007 recommended two conditions of approval.

4. At the request of the City Council, 3 Sisters has agreed to provide 8 units within the approved Tract A of the Three Sisters Business Park for development with affordable housing units. As no subdivision was proposed as part of the 3 Sisters applications, it is appropriate to assure the provision of such lots when the property is subdivided through this agreement.

5. The intent of this Agreement is to require 3 Sisters to comply with the two conditions of approval specified in the Planning Commission's Findings and Recommendation and to voluntarily amend the proposal to provide affordable housing as part of any future development proposal for Tract A of the Three Sisters Business Park.

6. This Agreement was authorized by the City Council as part of the land use decision approving the Comprehensive Plan Amendments, Development Code Amendments, Comprehensive Plan Map and Zoning Map Amendments proposed by 3 Sisters in connection with the above referenced land use applications. A public hearing was held before the City Council on May 24, 2007 after notice to the public was provided.

7. The execution of this Agreement is in the best interest of the public health, safety and welfare and is consistent with 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. This Agreement shall be effective upon signing by the parties and shall last until such time as all conditions of approval have been satisfied by 3 Sisters or until a residential subdivision plat is approved and recorded for Tract A of Three Sisters Business Park. When Tract A of the Three Sisters Business Park is subdivided, the requirements of this Agreement, shall have been met or assured.

2. The permitted uses, density, and height within the residential portion of Three Sisters Business Park (Tract A) are regulated by the City Development Code as amended by this series of applications, and any subsequent changes adopted by the City of Sisters.

3. The City Engineer has calculated the impact of the 3 Sisters development proposals on the City water system based on the approval of 62 residential living units in Tract A of Three Sisters Business Park and the construction of a maximum of 57 second story loft units on industrial lots 1-19 of the Three Sisters Business Park. Based on this proposed density, the City Engineer has required 3 Sisters to provide the City with 11.58 acres of pre-1892 water rights. 3 Sisters shall be required to provide such water rights to the City as a condition of any subdivision approval for residential development in Tract A of the Three Sisters Business Park. In the event the City approves a tentative residential subdivision plan for Tract A with densities lower than set forth above, the obligation of 3 Sisters to convey water rights to the City shall be reduced on a proportional basis.

4. The City Engineer has required 3 Sisters to make a proportionate share contribution to the costs of improvements to a sewer pump station constructed on the adjacent Dutch Pacific property. 3 Sisters has deposited approximately $27,000 with the City which shall be released to Dutch Pacific upon the dedication of sewer pump station #1 to the City.

5. 3 Sisters has agreed to construct affordable housing units within Tract A of Three Sisters Business Park based on obtaining approval to construct 62 residential units in Tract A. In the event 3 Sisters is approved for the development of 62 residential units in Tract A, 3 Sisters will provide eight (8) affordable housing units within Tract A. The number of affordable housing units shall be reduced on a proportional basis in the event 3 Sisters is approved for the development of less than 62 residential units in Tract A. 3 Sisters will work with Housing Works, Neighbor Impact, Habitat for Humanity, or such other affordable housing program provider(s) that is approved by the City of Sisters in writing, to assure that the units/lots are affordable as detailed below. Affordable housing is housing affordable to households earning 80% of Area Median Income (AMI) or lower as designated on a yearly basis for Deschutes County by the federal department of Housing and Urban Development (HUD). Housing is affordable when no more than 30% of annual household income is spent on housing

(principal, interest, taxes and insurance). The units to be constructed shall also meet any covenants, conditions and restrictions developed by 3 Sisters for Tract A. 3 Sisters may choose to construct the dwelling units and work with one of the affordable housing providers to implement the affordability component. The program, as proposed shall include the following:

- The anticipated 6-unit rental complex shall remain affordable for a period of at least 50 years.
- The anticipated 2 attached townhomes shall remain affordable for a period of at least 20 years.
- The square footage of all the affordable units provided under this agreement shall sum to a minimum of 7000 square feet in size.
- In the event a mini-storage facility with second story loft apartments is constructed on either of Lots 4, 5, 6 and/or 7 of the Three Sisters Business Park, the second story loft units shall be constructed to meet applicable Housing Quality Standards as defined for the HUD Voucher program.

6. 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 than 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. If, because of a change in policy, law or circumstance, the Agreement fails of its essential purpose, 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 rights and conditions, as set forth herein, notwithstanding any change in local ordinance or policy.

7. The following shall constitute defaults on the part of a party:

   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 give 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 time granted by the non-breaching party; or,

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.

8. 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.

9. This Agreement is not assignable and does not run with the land. If any property subject to this agreement is sold, the obligations of 3 Sisters under this Agreement shall remain obligations of 3 Sisters until satisfied.

10. All future discretionary approvals for Three Sisters Business Park and lots within shall be as lawfully established at the time such approvals are requested.

11. All City obligations to expend moneys under this Agreement are contingent upon future appropriations as part of the local budget process. Nothing in this Agreement obligates the City to appropriate money to fund the obligations undertaken in this Agreement.

12. The City assumes that the Three Sisters Business Park development will be served with City services like any other property in the City.

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

14. The City may, at its election, record this Agreement at the office of the Deschutes County Clerk no later than 10 days following the execution of this Agreement. The Agreement does not, however, bind subsequent owners of land or Lots within the Three Sisters Business Park, including the land designated as Tract A.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year hereinafter written.

CITY OF SISTERS

By _____

Title Mayor

Date June 14, 2007

OFFICIAL SEAL
KATHRYN NELSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 410050
MY COMMISSION EXPIRES SEPTEMBER 19, 2010

State of Oregon)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Brad Boyd, as Mayor for the City of Sisters, this 14 day of June, 2007.

Kathryn Nelson
Notary Public for Oregon
My commission expires: September 19, 2010

3 SISTERS PARTNERS, LLC

By _____

Title Managing Member

Date 6/20/07

OFFICIAL SEAL
KATHRYN NELSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 410050
MY COMMISSION EXPIRES SEPTEMBER 19, 2010

State of Oregon)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Peter B Hall, as Managing Member for 3 Sisters Partners, LLC this 20 day of June, 2007.

Kathryn Nelson
Notary Public for Oregon
My commission expires: September 19, 2010

ORDINANCE NO. 449

AN ORDINANCE ADOPTING A ZONE CHANGE FROM NORTH SISTERS BUSINESS PARK (NSBP) TO RESIDENTIAL (R) FOR LOTS 9-19 THAT ARE PART OF THE THREE SISTERS BUSINESS PARK – PHASE I

WHEREAS, Three Sisters Partners LLC is the property owner of 19 lots that are collectively known as Three Sisters Business Park – Phase I and further identified as lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19; and,

WHEREAS, the applicant requested a Zone change (Z 14-01) for 14.85 gross acres (19 platted lots) from North Sisters Business Park (NSBP) District to Residential (R) District that are collectively identified as the Three Sisters Business Park; and,

WHEREAS, the proposal would have retained approximately 2.06 acres of land zoned as North Sisters Business Park (NSBP), which would act as a buffer between the light industrial land to the south, and the proposed residential land to the north; and,

WHEREAS, after due notice, a public hearing on the proposed application was held before the Sisters Planning Commission at the City of Sisters Council Chambers (520 E Cascade Avenue, Sisters, 97759) on February 20th and March 20, 2014 following which the findings were reviewed, witnesses were heard and evidence was received and the Planning Commission on a 6-0 vote recommended that the City Council deny the Zone change (ZC 14-01) due to loss of economic land and potential incompatible land uses (light industrial next to residential uses); and,

WHEREAS, after due notice, a public hearing on the proposed Zone change (ZC 14-01) was opened before the City Council at the City of Sisters Council Chambers (520 E Cascade Avenue, Sisters, 97759) on April 24, 2014 following which the City Council remanded the application back to the Planning Commission for review of new material; and,

WHEREAS, on May 15, 2014 the Planning Commission held a workshop to review new material including a residential land needs analysis and land use comparison memo; and,

WHEREAS, on June 5, 2014 the applicant submitted two new options known as Option 1 and Option 2 for Planning Commission's review at their June 19, 2014 public hearing; and,

WHEREAS, Option 2 (Tax Lots 151004BC00200-1200) includes changing the zoning designation to Residential on lots 9-19 which is 8.32 acres and retaining lots 1 – 8 as North Sisters Business Park (NSBP); and,

WHEREAS, after due notice, a public hearing on the proposed Zone change (ZC 14-01) was held before the Sisters Planning Commission at the City of Sisters Council Chambers (520 E Cascade Avenue, Sisters, 97759) on June 19, 2014 following which findings were reviewed, witnesses were heard and evidence was received; and,

WHEREAS, a motion was made recommending approval of Option 2 (Tax Lots 151004BC00200-1200) for Zone change 14-01 (ZC 14-01) and the Planning Commission had a tie vote (3-3) and therefore the motion was defeated; and,

WHEREAS, the City Council found that Option 2 would contribute to the 20-year land supply for residential and that the North Sisters Business Park (NSBP) District exceeded a 20-year land supply even after ZC 14-01 was approved; and,

WHEREAS, the City Council found that Option 2 is consistent with the Statewide Planning Goals and Comprehensive Plan; and,

WHEREAS, the City Council found that Option 2 and their affected areas can be provided with adequate public facilities, services and transportation networks to support the uses; and,

WHEREAS, the City Council found that Option 2 will not have a significant effect on a transportation facility in the region and so the project is in compliance with 4.7.600, Transportation Planning Rule (TPR); and,

WHEREAS, after due notice, a public hearing on the Zone change (ZC 14-01) was held before the Sisters City Council at the City of Sisters Council Chambers (520 E Cascade Avenue, Sisters, 97759) on July 10, 2014 following which the findings were reviewed, witnesses were heard and evidence was received and the City Council finds and approves Zone change (ZC 14-01).

NOW, THEREFORE, the City Council of the City of Sisters ordains as follows:

SECTION 1. The City of Sisters approves and adopts the staff report and findings attached to this Ordinance as Exhibit A.

SECTION 2: The real property is described in Exhibit B (legal description).

SECTION 3: The real property described in Exhibit B shall be zoned as Residential (R) District as shown in Exhibit C.

Section 4: The City of Sisters approves and adopts the Conditions of Approval attached to this Ordinance as Exhibit D

PASSED by the Common Council of the City of Sisters this 10th day of July 2014, and APPROVED by the Mayor of the City of Sisters.

Brad Boyd, Mayor

ATTEST:

Kathy Nelson, City Recorder

Exhibit D
Conditions of Approval

1. At the time of the Master Plan and Replat/Subdivision the applicant and City shall amend the June 14, 2007 Development Agreement in a manner that is consistent with the status of the re-zoned property, and any affects that re-zoning and the Master Plan and Subdivision of the property has on the terms of the agreement.
2. Tract A and Lots 9-19 shall be processed as a Master Plan development concurrently with a replat/subdivision application.
3. Once the re-platted/subdivision lot configuration is known and due to the close proximity of the Sisters Eagle Air airport, a Hold Harmless Agreement and Aviation and Hazard Easement will be required on the portions of tax lots 1100 and 1200 that are within the first 1500 feet of the Airport Approach Safety Zone. These Agreements shall be recorded against the property in the deed records of Deschutes County.
4. Due to the proximity of the Sisters Eagle Air airport's landing strip, once the re-platted lot configuration is known, a Declaration of Noise from the Airport shall be recorded on the portion of tax lots 1100 and 1200 that are located within 1500 feet of the airport runway. This Declaration shall be recorded against each property deed for these affected lots or on the recorded plat.
5. The trip generation associated with this development shall not exceed the total trips that were projected under the older Business Park zoning (217 pm peak hour trips). In the event that the actual dwelling density resulting from the re-plat exceeds this trip amount, a Traffic Impact Study shall be required.
6. In the event that the density of the re-platted Residentially-zoned lots exceeds the 5 lots per gross acre density that was the basis of the revised water and sewer analysis submitted and dated 2-25-2014, a revised water and sewer impact analysis shall be required that is based on the actual density that results from the re-platted land.
7. The approved density range for the residentially zoned portion of this property is 3 to 5 single family dwelling units per gross acre. Any increase in density above five units per gross acre shall cause the replat/subdivision of this development not to occur until water and sewer impact assessments are provided to the City, and are evaluated and are found not to adversely impact the City's infrastructure. Further, if the density exceeds five units per gross acre, a new Development Agreement shall be prepared by the Applicant; reviewed and if acceptable to the City approved by the Sisters City Council. This revised Agreement shall address the actual density and associated impacts; the mitigation measures needed for these impacts, and requirement for water rights transfer or equivalent cash contribution based on projected usage at the higher density.
8. The 2001 Development Agreement (volume 2001, page 21131) remains in full force and effect.
9. All properties within the airport overlay zone are subject to the development restrictions listed in Sisters Development Code chapter 2.11.500 and 2.11.600.

CITY OF SISTERS
Public Works Department

520 E. Cascade Ave.
P.O. Box 39
Sisters, OR 97759

(541) 323-5212
Fax: (541)549-0561
www.sisters.or.us

TO: Patrick Davenport, Community Development Director

FROM: Erik Huffman, City Engineer

DATE: April 16, 2015

SUBJECT: MP 15-01 and SUB 15-01 Three Sisters Partnership Residential Subdivision

Application Notes:

Master plan for phased residential subdivision in a portion of the plat of North Sisters Business Park.

Access and Circulation:

Access and circulation shall be as shown on the submitted tentative plat with the following modification: The northerly east-west local street shall be extended to the westerly property line of the development area in anticipation of a future connection to North Pine Street. The street may terminate at the westerly property line of the development. The spacing between Lundgren Mill Drive and the proposed northerly east-west local street is approximately 500 feet which warrants an additional roadway connection to North Pine Street. In addition, the road centerline radius shown on the tentative plat at the northwestern intersection is significantly smaller than City standard. The creation of a T intersection will eliminate the curvature of the roadway centerline.

Traffic Impacts:

The applicant has submitted a traffic letter summarizing compliance with the April 20, 2001 development agreement between the City of Sisters and Deschutes County for the property. The traffic letter indicates that the development is consistent with the previously approved development agreement. The calculated trip generation provided for the proposed development is shown to be less than the trip generation in the development agreement, therefore, no additional traffic analysis is necessary.

The tentative plan indicates intersection bulb outs to provide traffic calming throughout the development. Intersection bulb outs shall be provided on constructed improvements to maintain low traffic speeds and to define parking bays.

Transportation:

All street and sidewalk improvements shall comply with the latest Public Right of Way Accessibility Guidelines and Oregon Transportation Commission Standards for Accessible Person Parking Places including but not limited to accessible curb ramps, sidewalks, accessible parking spaces, striping, and signage.

Lundgren Mill Drive - Existing Neighborhood Route per TSP

The north side of Lundgren Mill Drive shall be improved to provide the typical cross section for "Neighborhood Route with Bike Lanes" in City of Sisters Public Works Standards. Existing sidewalks may remain if they are verified by the developer to comply with PROWAG standards. ADA compliant curb ramps shall be provided at intersections. Lundgren Mill Drive improvements shall occur as part of adjacent development phases.

Proposed Internal Local Streets

Internal local streets (labeled "Street Typical" on the tentative plat) shall be constructed per the typical cross section for "Residential Local Street with Parking Both Sides" in City of Sisters Public Works Standards. Drainage swales and intersection bulb outs shall be required. Street trees shall be required per City of Sisters development code standards. Right of way shall be 58 feet wide typical except where sidewalks are located in a public access easement.

Proposed Alleys

Internal alleys shall be paved a minimum of 20 foot wide pavement within a minimum 20 foot wide public right of way. Pavement section shall be a minimum of 2" HMAC over 8" Aggregate Base Rock. Drainage swales shall be provided within public easements adjacent to the public right of way.

Site Access

Concrete driveway aprons per City of Sisters Public Works Standards shall be required for all site access points to public streets.

Water:

The applicant has submitted a water and sewer analysis indicating that water demand is not in excess of previous development approvals for the property. No additional water capacity analysis is necessary.

All existing and proposed buildings shall be connected to the City of Sisters Municipal Water System.

Waterlines to serve all parcels shall be looped in general and sized to provide required domestic and fire flows for proposed uses.

All public water and sewer improvements that the city will own and maintain shall be located within public utility easements or in the public right of way. Public utility easements must be recorded prior to signing of partition plat. Public utility easements shall be a minimum width of 20 feet wide.

All main lines intended to be public are required to be installed 'to and through', and shall terminate at the ends of streets at the development boundaries.

The maximum fire hydrant spacing shall be 400 feet or less if required by the Sisters-Camp Sherman Fire District.

Each tax lot shall have its own water service.

Backflow devices shall be required at all points of connection to proposed water mains including all domestic, fire sprinkers, irrigation, and any private hydrant lines.

All water system improvements for each current phase shall be constructed prior to final occupancy of building structures in that phase.

Sewer:

The applicant has submitted a water and sewer analysis indicating that water demand is not in excess of previous development approvals for the property. No additional sewer capacity analysis is necessary.

All existing and proposed buildings shall be connected to the City of Sisters Sewer System.

All public water and sewer improvements that the city will own and maintain shall be located within public utility easements or in the public right of way. Public utility easements must be recorded prior to signing of partition plat. Public utility easements shall be a minimum width of 20 feet wide.

All sewer main lines intended to be public are required to be installed 'to and through', and shall terminate at the ends of streets at the development boundaries.

Grading and Drainage:

All drainage generated within public right of way shall be maintained within public right of way and all drainage generated within a private property shall be maintained within the same private property. Any stormwater facilities which must cross property lines must be located in stormwater easements. Storm water runoff from private property shall not impact public right-of-way or easements unless otherwise approved by the Public Works Director or City Engineer.

Proposed site drainage facilities and stormwater systems shall be designed for a 25 year/24 hour storm event (2.8 inches) and have appropriate pretreatment per City standards. Infiltration rates, if used, must be supported by a Geotech report or other verifiable documentation.

Stormwater treatment and disposal calculations shall be provided to the City for review and approval prior to construction of each phase.

Grading and drainage shall be subject to City and Central Oregon Stormwater Manual (COSM) design, construction, and testing standards.

Drywells and other underground injection control (UIC) systems are not allowable in the public right of way. New on-site private drywells and other underground injection control (UIC) systems not part of the public drainage system must be registered and approved by the Oregon Department of Environmental Quality (DEQ) prior to construction.

Construction Plans:

Prior to the development of each phase, construction plans that include all proposed and/or required public improvements, water/sewer service connections, site grading/drainage and utilities shall be submitted to the City for review and approval.

All public facilities that the City of Sisters will own and maintain shall be constructed per the City of Sisters Public Works Standards, latest edition.

All public improvement construction will require a performance bond and warranty bond. Performance bonds will not be released until public improvements are accepted by Sisters City Council.

Fire Department Comments

By: Gary Marshall
Date: March 11, 2015
Planner: Pauline Hardie / Patrick Davenport
Applicant: Peter Hall, 3 Sisters Partners
Site Plan No.: MP 15-01 & SUB 15-01

Fire Safety During Construction – 2014 OFC 3310 and 3312
Approved fire department access roads shall be provided to all construction sites. Required water supply, fire hydrants, and safety precautions shall be made available as soon as combustible materials arrive on site.

Water Supply - 2014 OFC Appendix B
The required water supply for fire suppression for this building or project shall be 1,000 gallons per minute at 20 psi residual pressure. This flow requirement is for one/two family residential homes not to exceed 3,600 square feet. Documentation shall be provided to the Fire Marshal from the Water Purveyor demonstrating the fire flow infrastructure capacity in flow at 20 p.s.i. residual pressure. The duration of flow shall meet the requirements of Appendix B also. Water flow for structures other than those listed will be evaluated when plans are submitted. A conference with the Fire Marshal for other structures is suggested prior to infrastructure installation to accommodate additional fire flow when needed.

Fire-Flow Requirements for Buildings – 2014 OFC Appendix B
A reduction of fire flow may be allowed for this project if an approved fire suppression system or alarm system is installed. For commercial occupancies, no commodities, furniture, goods, merchandise, wares, materials or possessions shall be stored or used within this structure until the fire sprinkler or suppression system is completed, tested and operational, unless otherwise approved by both, the Fire Marshal and Building Official.

Fire Hydrants – 2014 OFC Section 507.5 and Appendix C
The minimum amount of fire hydrants needed on this site shall be one (1) spaced no more than 600 feet from the most remote portion of each building measured by an approved fire access route around the exterior of the facility or building, fire hydrants shall be provided where required by the fire code official. Fire hydrants shall be installed to specifications of the water purveyor and fire department.

Fire Hydrant Spacing - 2014 OFC Section 507 and Appendix C
Fire hydrants shall be located along the route of the fire apparatus access roadway and spacing of hydrants shall not exceed 500 feet.

Obstruction & Protection of Fire Hydrant – 2014 OFC 507.5.4 through 507.5.6
Unobstructed access to fire hydrants shall be maintained at all times. A 3-foot clear space shall be maintained around the circumference of fire hydrants. When exposed to vehicular damage, concrete curbing, sidewalks, or 4 inch concrete filled bollards placed 3 feet from hydrants shall suitably protect fire hydrants. Hydrants shall be coated with approved red paint color and markings.

Premises Identification - 2014 OFC 505.1
Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background and visible at night. Dwellings that are located off of street frontage shall post additional visible approved reflective address sign at the entrance to their driveway.

Street or Road Signs – 2014 OFC 505.2
Streets and roads shall be identified with approved signs. Signs shall be of an approved size and weather resistive construction.

Fire Lanes - 2014 OFC 503.3 and Appendix D
Approved No Parking signs or other approved notices shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Such signs or notices shall be kept in legible condition at all times. Spacing for signage shall be every 75 feet on both sides of roads less than 28 feet in width and on one side of roads less than 32 feet in width.

Fire Apparatus Access Roads (General) - 2014 OFC Section 503 and Appendix D
Fire apparatus access roads shall be placed within 150 of all exterior walls of the first floor of all buildings. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet designed with a uniform all-weather driving surface to support the imposed GVW of 60,000 lbs. and a vertical clearance of not less than 13 feet 6 inches. Turning radius shall not be less than 45 feet and gradient shall not exceed 12 percent unless the authorities having jurisdiction approve a variance. Dead-end access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus. A cul-de-sac, hammerhead or other means for the turning around of fire apparatus may be approved.

Additional Comments:

1. Alley access roads may be used for required fire department access to meet the minimum distance requirements to specific dwellings if the alleys are designed and constructed to Oregon Fire Code regulations.
2. Future multi-family structures will be reviewed for Oregon Fire Code requirements when plans are submitted.
3. Addressing structures correctly will be paramount for emergency services. There are specific building lots that do not have frontage to named streets that will cause delay from emergency services.
4. Civil Plan Sheet with engineered scale drawings shall be submitted to Fire Marshal for approval of Fire Department Access, Water Supply and Fire Hydrant Locations.

Patrick Davenport

Subject: FW: FW: Peter Hall/Clearpine MP 15-01, SUB 15-01 Need PW and City Engineer Comments ASAP

From: Benny Benson [mailto:bbenson@energyneeringsolutions.com]
Sent: Thursday, April 16, 2015 5:20 PM
To: Patrick Davenport
Subject: Re: FW: Peter Hall/Clearpine MP 15-01, SUB 15-01 Need PW and City Engineer Comments ASAP

Patrick

Thanks for passing this along. My request is that you take a close look with respect to Airport Overlay Areas and the Airport Safety Combining Zone and apply sufficient wording so that developers and future land owners acknowledge these areas and the potential for air traffic/activities and associated noise. If I remember the regulation correctly, the acknowledgement puts the responsibility on the developer/land owner to provide for building around noise mitigation and the inability to file complaints against the airport. (Reference 18.80.044.A). In the interest of future encroachment in and around the airport this needs to be a highlighted/recorded point/document.

I see there is reference to not being within 1500 feet of the runway an thus potentially not part of the noise sensitive area. Since the runway primary surface actually extends 200 feet past the end of the pavement, I think they may need to remeasure for confirmation. Either way the critical item is record of acknowledgement of potential airport activities and associated noise for long term encroachment protection.

For reference, typical flying patterns when approaching a runway to land are with left turns. For the Sisters Airport that will put landing traffic N & NW of the airport at altitudes at and below 1,000. If I read the development map right, this air traffic pattern will at times be directly over the proposed development.

Otherwise, I am completely supportive of the development and hope we can get more housing access in the city sooner than later.

Let me know if you need an other details.

--
Benny Benson, PE

Phone | 541-549-8766 ext. 201
Mobile | 541-390-7232
Fax | 541-549-1901

15820 Barclay Dr. Sisters, OR 97759

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2006-42901

NO FEE

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06/22/2006 09:54:53 AM

D-EAS Cnt=1 Stn=4 TRACY
This is a no fee document

DESCHUTES COUNTY CLERK

CERTIFICATE PAGE

This page must be included
if document is re-recorded.
Do Not remove from original document.

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
COMMISSIONERS' JOURNAL
CJ 2006-604
06/21/2006 02:50:34 PM
2006-604

OMB No. 0596-0082
North Pine Street (Lundgen Mill Road)

NATIONAL FOREST ROADS AND TRAILS ACT
PUBLIC ROAD EASEMENT

THIS EASEMENT, dated this 31ST day of MAY, 2006, from the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to Deschutes County, a subdivision of the State of Oregon, hereinafter called Grantee.

WITNESSETH:

WHEREAS, the Grantee has applied for a grant of an easement under the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 532-538), for a road over certain lands or assignable easements owned by the United States in the County of Deschutes, State of Oregon, and administered by the Forest Service, Department of Agriculture.

NOW THEREFORE, Grantor does hereby grant to Grantee an easement for a public road and highway along and across a strip of land, hereinafter defined as the right-of-way over and across the following described lands in the County of Deschutes, State of Oregon, as described on exhibit A attached hereto.

T. 15 S., R. 10 E., W.M.
Sec. 5, NE1/4SE1/4, SE1/4NE1/4

The word "right-of-way" when used herein means said strip of land whether or not there is an existing road or highway located thereon. Except where it is defined more specifically, the word "highway" shall mean roads or highways now existing or hereafter constructed on the right-of-way or any segment of such roads or highways.

The right-of-way is shown and specifically described on the plat attached hereto and made a part hereof.

This grant is made subject to the following terms, provisions, and conditions:

REVIEWED
Mark Elliot
LEGAL COUNSEL

DC 2006-275

1. Outstanding valid claims, if any, existing on the date of this grant.

2. The easement herein granted is limited to use of the described right-of-way for the purpose of construction, operation, and maintenance of a highway and does not include the grant of any rights for nonhighway purposes or facilities; Provided, That the Forest Service shall not exercise its right to use or authorize the use of any portion of the right-of-way for nonhighway purposes when such use would interfere with the free flow of traffic or impair the full use and safety of the highway; and Provided further, That nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of construction limits.

3. Any reconstruction of the highway situated on this right-of-way shall conform with plans, specifications, and written stipulations approved by the Forest Supervisor or authorized representative prior to beginning such reconstruction.

4. Consistent with highway safety standards, the Grantee shall:

   (a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.

   (b) Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed. The Grantee shall perform these activities where it is deemed necessary during a joint review between the authorized Forest Officer and Grantee prior to completion of the highway. The Grantee also shall maintain all terracing, water bars, leadoff ditches, or other preventive works that may be necessary to accomplish this objective. This provision also shall apply to waste disposal areas and slopes that are reshaped following slides that occur during or after construction.

5. The Grantee shall:

   Establish no borrow, sand, or gravel pits; stone quarry; permanent storage areas; sites for highway-operation and maintenance facilities; camps; supply depots; or disposal areas within the right-of-way, unless shown on approved construction plans, without first obtaining approval of the authorized Forest Officer.

6. The Grantee shall maintain the right-of-way clearing by means of chemicals only after the Forest Supervisor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

7. The Grantee does by the acceptance of this document covenant and agree for itself, its assigns, and its successors in interest to the property here granted or any part thereof, that the covenant set forth below shall attach to and run with the land:

   (a) That the Grantee shall operate the described property and its appurtenant areas and its buildings and facilities whether or not on the land therein granted as a public road, in full compliance with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of Agriculture and in effect on the date of this document to the end that no person in the United States shall, on the grounds of race, sex, color, religion, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs or activities provided thereon; and

   (b) That the United States shall have the right to judicial enforcement of these covenants not only as to the Grantee, its successors and assigns, but also as to lessees and licensees doing business or extending services under contractual or other arrangements on the land therein conveyed.

The Chief, Forest Service, may terminate this easement, or any segment thereof, (1) by consent of the Grantee, (2) by condemnation, or (3) after a five (5) year period of nonuse, by a determination to cancel after notification and opportunity for hearing as prescribed by law.

IN WITNESS WHEREOF, Grantor, by its Forest Supervisor, Deschutes National Forest, Pacific Northwest Region, Forest Service, has executed this easement pursuant to the delegation of authority by the Assistant Secretary of Agriculture to the Chief, Forest Service, 7 CFR 2.60, and the delegation of authority by the Chief, Forest Service, 49 F.R. 34283, published August 29, 1984, and the delegation of authority by the Regional Forester, Pacific Northwest Region, Forest Service, 58 F.R. 30766, published May 27, 1993, on the day and year first above written.

UNITED STATES OF AMERICA

By Leslie A. C. Weldon

Leslie A. C. Weldon
Forest Supervisor
Deschutes National Froest
Pacific Northwest Region
USDA Forest Service

ACKNOWLEDGMENT

STATE OF OREGON)
)ss.
County of Deschutes)

On this 31ST day of MAY, 2006, before me, the undersigned, personally appeared LESLIE A.C. WELDON, Forest Supervisor, Deschutes National Forest, Pacific Northwest Region, Forest Service, Department of Agriculture, the same person who executed the within and foregoing instrument, who being by me duly sworn according to law, did say that she executed said instrument on behalf of the United States of America by its authority duly given and by her delivered as and for its act and deed. And she did further acknowledge that she executed said instrument as the free act and deed of the United States of America, for the purposes and consideration herein mentioned and set forth, and I do hereby so certify.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Name (Printed) WALTER F. MILLER
Notary Public for the State of OREGON
My Commission Expires 5/9/07

OFFICIAL SEAL
WALTER F MILLER
NOTARY PUBLIC-OREGON
COMMISSION NO. 367854
MY COMMISSION EXPIRES MAY 9, 2007

ACCEPTANCE

Deschutes County, acting by and through its Board of County Commissioners, does hereby accept the foregoing Public Road Easement as a public road pursuant to ORS 92.014.

DATED this 12th day of June, 2006.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

DENNIS R. LUKE, CHAIR

-absent-
BEV CLARNO, COMMISSIONER

MICHAEL M. DALY, COMMISSIONER

ATTEST:

Bonnie Baker
Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Dennis R. Luke, ~~Bev Clarno~~ and Michael M. Daly, the above-named Board of County Commissioners of Deschutes County, Oregon, acknowledged the foregoing instrument, on behalf of Deschutes County, Oregon.

Dated this 12th day of June, 2006.

Bonnie Baker
NOTARY PUBLIC FOR OREGON
My Commission Expires: Feb. 23, 2007

REVIEWED
LEGAL COUNSEL

OFFICIAL SEAL
BONNIE BAKER
NOTARY PUBLIC-OREGON
COMMISSION NO. 364212
MY COMMISSION EXPIRES FEB. 23, 2007

DC 2006-275

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

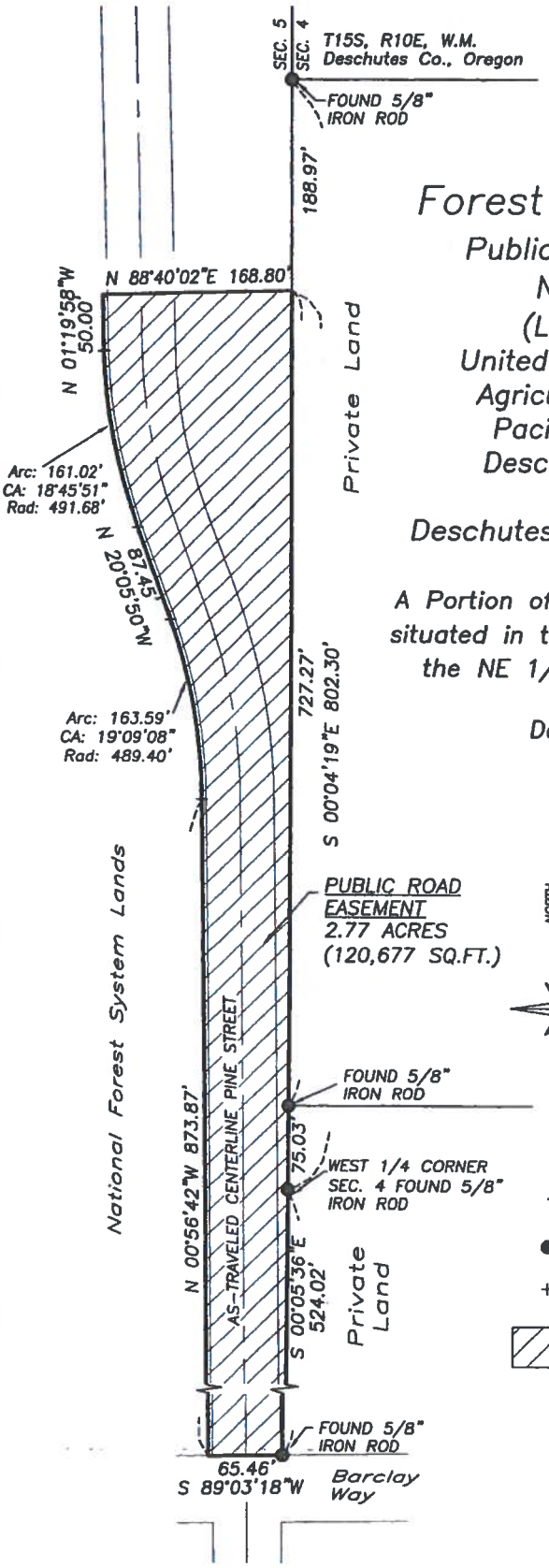
Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

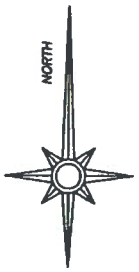
Exhibit A

Forest Road & Trail Act

Public Road Easement for
North Pine Street
(Lundgren Mill Road)
United States Department of
Agriculture Forest Service–
Pacific Northwest Region
Deschutes National Forest
to
Deschutes County, State of Oregon

A Portion of Tax Lot 100, Map 15–10–05, situated in the SE 1/4 of the NE 1/4 and the NE 1/4 of the SE 1/4 of Sec. 5, T15S, R10E, W.M., Deschutes Co., Oregon





24 May 2006

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 15, 2003
MICHELE W. SIMS
50068

RENEWAL DATE 6/30/06

Legend

- ● FOUND MONUMENT AS DESCRIBED.
- + CALCULATED CORNER; NOT FOUND, NOT SET.
- PERMITTED AREA = 2.77 ACRES

Date of Survey: January, 2006

Reviewed by Forest Land Surveyor
Forest Land Surveyor — Date 5/26/06

Approved for R/W Plat Purposes
Forest Engineer — Date 5/26/06

Fred A. Ast, Jr. and Associates 250 W. Cascade Ave. P.O. Box 751 Sisters, OR 97759 541-549-7851

Oregon
John A. Kitzhaber, MD, Governor

OREGON DEPARTMENT OF AVIATION

3040 25th Street, SE
Salem, OR 97302-1125
Phone: (503) 378-4880
Toll Free: (800) 874-0102
FAX: (503) 373-1688

April 24, 2015

Patrick T. Davenport, AICP
City of Sisters
Community Development Director
520 E. Cascade Avenue
P.O. Box 39
Sisters, Oregon 97759

SUBJECT: File # MP 15-01, SUB 15-01 (Ord 449)

Dear Patrick:

Thank you for the opportunity to comment on the proposed Three Sisters Business Park Comprehensive change and Re-Zone located on Lundgren Mill Drive. This comment letter is in reference to the recommendation of approval of Option 2 by the Sisters Planning Commission and final adoption by the City Council on July 10, 2014.

The Oregon Department of Aviation would like to make sure the following comments and possible conditions of approval are added to the final land use decision.

- Prior to issuance of a building permit the applicant must file and receive a determination from the Oregon Department of Aviation as required by OAR 738-070-0060 on FAA Form 7460-1 Notice of Proposed Construction or Alteration to determine if any new structures in the development will pose a hazard to aviation safety at the Sisters Eagle airport. A subsequent submittal may be required by the FAA due to its location to the Sisters Eagle Airport.
- Since the development runs perpendicular to the Sisters Eagle Airport, it may benefit the applicant to contact ODA directly in order to identify which specific building areas will need to be reviewed through the FAA Form 7460-1 process.
- The height of the new building should not penetrate FAA Part 77 Imaginary Surfaces, as determined by ODA and the FAA.
- Shields on any external building and street lights should be designed as to not interfere with aircraft or airport operations.
- Marking Lights, per FAA design, may be needed to identify to structures.

Again, thank you for allowing ODA to comment on this development proposal. If you have any questions or need further information please feel free to contact me at 503-378-2529 or Jeff.Caines@aviation.state.or.us Heather Peck at 503-378-3168 or Heather.Peck@aviation.state.or.us, Projects & Planning Manager.

Sincerely,

Jeff Caines, AICP
Aviation Planner
Oregon Department of Aviation

Memorandum

To: Sisters Planning Commission
From: Peter Hall, 3 Sisters Partners, LLC
Date: April 29, 2015
RE: MP15-01, SUB15-01

Dear City of Sister Planning Commission,

This memo is written to address three points relevant to the applications under review. The comments address two of the Recommended Conditions of Approval in the Staff report; the referenced Street Circulation (COA #5) and the Affordable Housing requirement (COA#2) and the third point references setback restrictions along the northern boundary of the subject parcel addressed in a 2001 Agreement.

1. Street Circulation (COA #5)

Pursuant to comments received from the City Engineer, Planning Staff has recommended that the Planning Commission consider the need for the extension of the proposed Heising Drive to the western property line, for a potential future connection to Pine Street. Please note that Pine Street to the west of the subject property is outside of the City Limits, and zoned F1 under Deschutes County zoning standards, therefore the City access spacing requirements over this roadway do not apply.

In the event that the City determines that the access spacing requirements do apply, the applicant is requesting an exception to the 600-foot maximum roadway spacing standard, as allowed under this section. The SDC reference and allowable exceptions are detailed below:

Figure 3.1.300.A. Access Spacing Standards

Street Facility	Maximum spacing* of roadways	Minimum spacing* of roadways	Minimum spacing*of roadway to driveway	Minimum Spacing* driveway to driveway
Arterial	1,000 feet	660 feet	330 feet	330 feet or combine
Collector:	600 feet	330 feet	100 feet	100 feet or combine
Neighborhood/Local	600 feet	150 feet	50 feet	10 feet

Notes: *Measured centerline to centerline
TSP January 2010

7. Exceptions

Memorandum

a. The Community Development Director or designee may allow exceptions to the access standards above in any of the following circumstances:

1. Where existing and planned future development patterns or physical constraints, such as topography, parcel configuration, and similar conditions, prevent access in accordance with the above standards.

2. Where the proposal is to relocate an existing access for existing development, where the relocated access is closer to conformance with the standards above and does not increase the type or volume of access.

3. Where the proposed access results in safer access, less congestion, a better level of service, and more functional circulation, both on-street and on-site, than access otherwise allowed under these standards.

4. When access requirements are divided by one or more multi-use pathway(s), in conformance with the provisions of Section 3.1.400. Multi-use pathways shall be located to minimize out-of-direction travel by pedestrians and bicycles and shall be 10-feet wide and located within an easement whose width is specified by the Fire Marshal.

The referenced area (the County road known as Pine Street headed north from Lundgren Mill Drive) is located outside of the City Limits and the Urban Growth Boundary, it is constrained by existing parcel configuration, including US Forest Service Property and the developed Trapper Point Subdivision to the north (both outside of the UGB). Additionally, Pine Street is separated from the recommended connection by over 130 feet at this location. Also, at this location, Pine Street is substandard to City specifications, thus an unsafe connection.

Within the City Limits, as proposed, all access standards will be met. The design includes four vehicle accss points to primary connector roadways, in addition to green space corridors for pedestrians. **Furthermore, as an alternative to a roadway at the northwest corner, the Applicant is proposing a public access tract at the west end of Heising Drive to be used as a multi-use connection to the USFS trail system.** The tract is proposed to be 10' wide by approximately 100' in length and will be improved with a multi-use connection.

In summary, travelers entering the site from the south, east, and west can efficiently access the neighborhood from four proposed local streets. The Pine Street connection from the north is unlikely to generate trips as it only provides access to Forest Service Land. For the above stated reasons, the applicant feels that requiring a roadway connection to the west is not warranted.

Memorandum

2. Affordable Housing (COA #2)

Pursuant to a 2007 Zone Change Condition of Approval, the applicant agreed to provide 8 units of affordable housing in the MFR portion of the property. As this project is progressing, the applicant has reached out to providers of affordable housing; preliminary conversations suggest that development of affordable housing would necessitate that the applicant donate the land or provide it at a greatly reduced price. Understanding the true financial implications of this condition, the applicant is requesting a reduction in the amount of affordable housing that needs to be supplied by this development. Specifically, **the Applicant is requesting that no more than 25%** of the total units constructed in the MFR be required to comply with the affordable housing Condition of Approval. The Master Plan proposes to establish 22-25 housing units within the MFR area, therefore the applicant is requesting **a maximum of 5-6 units** be required. The applicant feels that this is a reasonable compromise, given that the Master Planned Development will provide a number of housing options at a variety of price points.

3. Setbacks on Northern Boundary

Pursuant to a 2001 Development Agreement, setbacks well beyond City code requirements were imposed on the Applicant's property. The purpose was to provide a significant buffer between existing rural residential properties, future industrial development on this property. **The applicant is not requesting a modification to these existing setbacks as part of this residential development proposal.** However, Applicant intends to address these setbacks with the Planning Commission and/or City Council in the future, through the appropriate process, and would like the Planning Commission to be aware of this at this time.

Thank you for your thoughtful consideration of these items and I would be happy to address these items further at the Public Hearing, should you have questions, comments, or concerns.

Sincerely,

Peter Hall

Peter Hall
3 Sisters Partners, LLC

CITY OF SISTERS PLANNING COMMISSION MEETING

APRIL 30, 2015

I. CALL TO ORDER

II. VISITOR COMMUNICATION

IIV. PUBLIC HEARINGS

A. File No: MP 15-01, SUB 15-01

a. Applicant: 3 Sisters Partners, LLC /Peter Hall

b. Project Description: Type III Review of a Master Plan for a 20.02 acre property, including a Site Plan for a proposed park within the Master Planned Area, and a Tentative Subdivision Plan for a 5 Phase, 77 lot subdivision.

B. File No: CI 15-01

a. Applicant: Michael Black

b. A code interpretation/land use decision clarification to consider allowing options to build single family detached dwellings and/or attached dwellings (townhomes) on 21 remaining lots in the Aspenwood Subdivision.

V. TEXT AMENDMENTS

A. TA 14-06 Sign Ordinance revisions- various Sections throughout 3.4 Signs and Section 5.1.500. Minor Variances

B. TA 14-07 Formula Foods Establishments- 2.5.300 Development Standards - HIGHWAY COMMERCIAL (HC) DISTRICT; L. Formula Food Establishments.

VI. DISCUSSION:

A. Transportation System Plan Update

Transportation Growth Management Grant application for Plan refinement

VII. OTHER COMMISSION BUSINESS

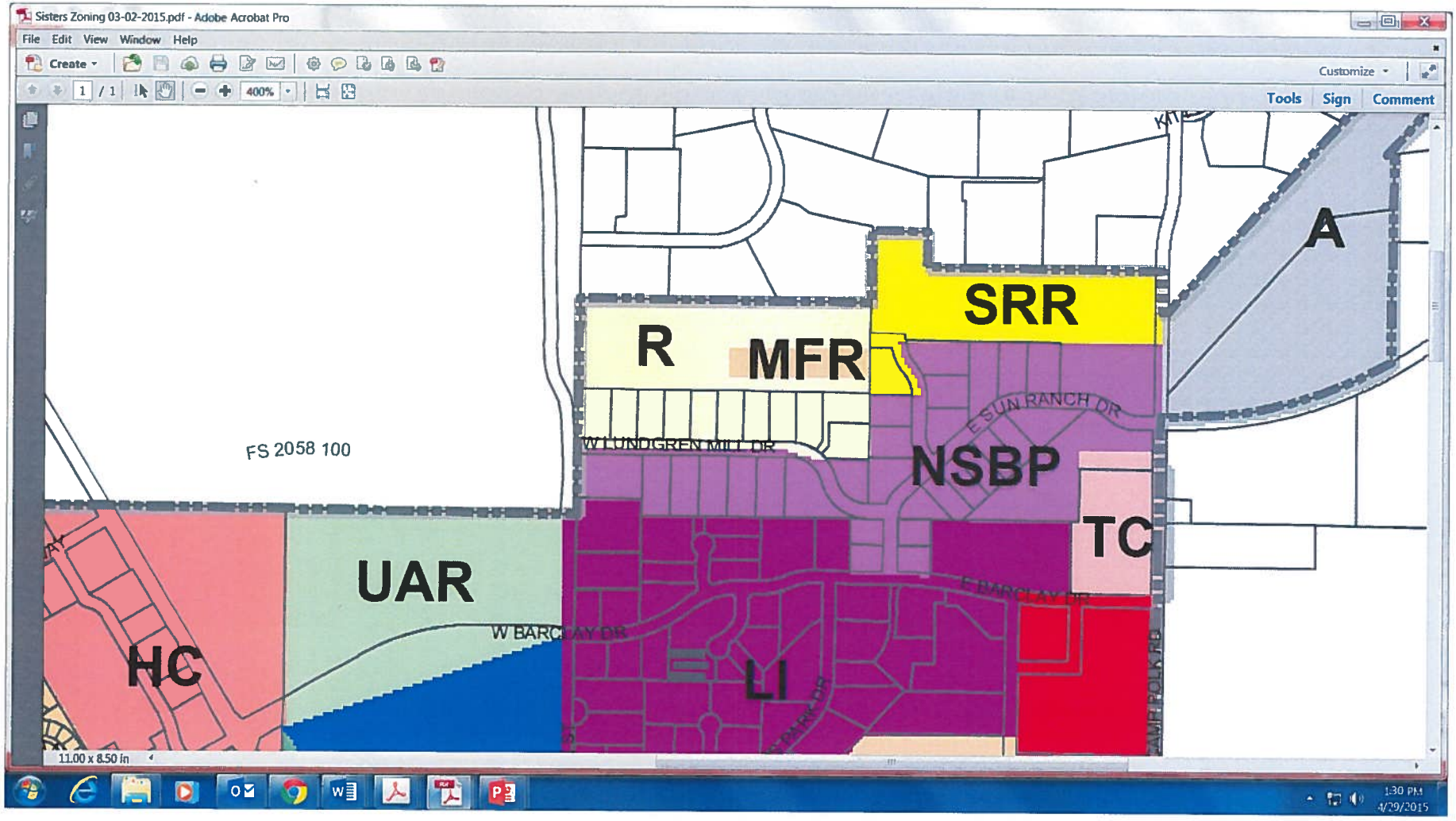
VI. ADJOURN

MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

Brief History

- Former sawmill site known as the Lundgren Mill.
- Sisters School District purchased the property in 1986.
- The site was brought into the city limits and rezoned from EFU to IL Light Industrial through County files no. PA 99-5 and ZC 99-3 on December 27, 2000.
- Development Agreement (copy in packet) adopted by the City Council on April 12, 2001 via Ordinance No. 317
- January 19, 2006, Planning Commission approved city file no. SUB 05-07, which created 19 lots within the Three Sisters Business Park
- On June 14, 2007, the applicant and City signed a Development Agreement (copy in packet) that applied to the Three Sisters Business Park lots, as well as the unplatted North Park Subdivision ('Tract A').
- October 22, 2007, the City approved files no. MP07-02, CU07-03, SUB07-04, which resulted in the tentative plat approval of 'North Park', a residential master plan, subdivision and conditional use permit that affected the northern 12.58 acre portion of the parent parcel. These decisions approved 62 residential dwelling units on 57 residential lots.
- July 10, 2014, City Council approved Comp. Plan revision and Rezoning for subject property

N JANTZEN LN
W LUNDGREN MILL DR
N CURTIS CT
TRAPPER POINT RD
DESCHUTES COUNTY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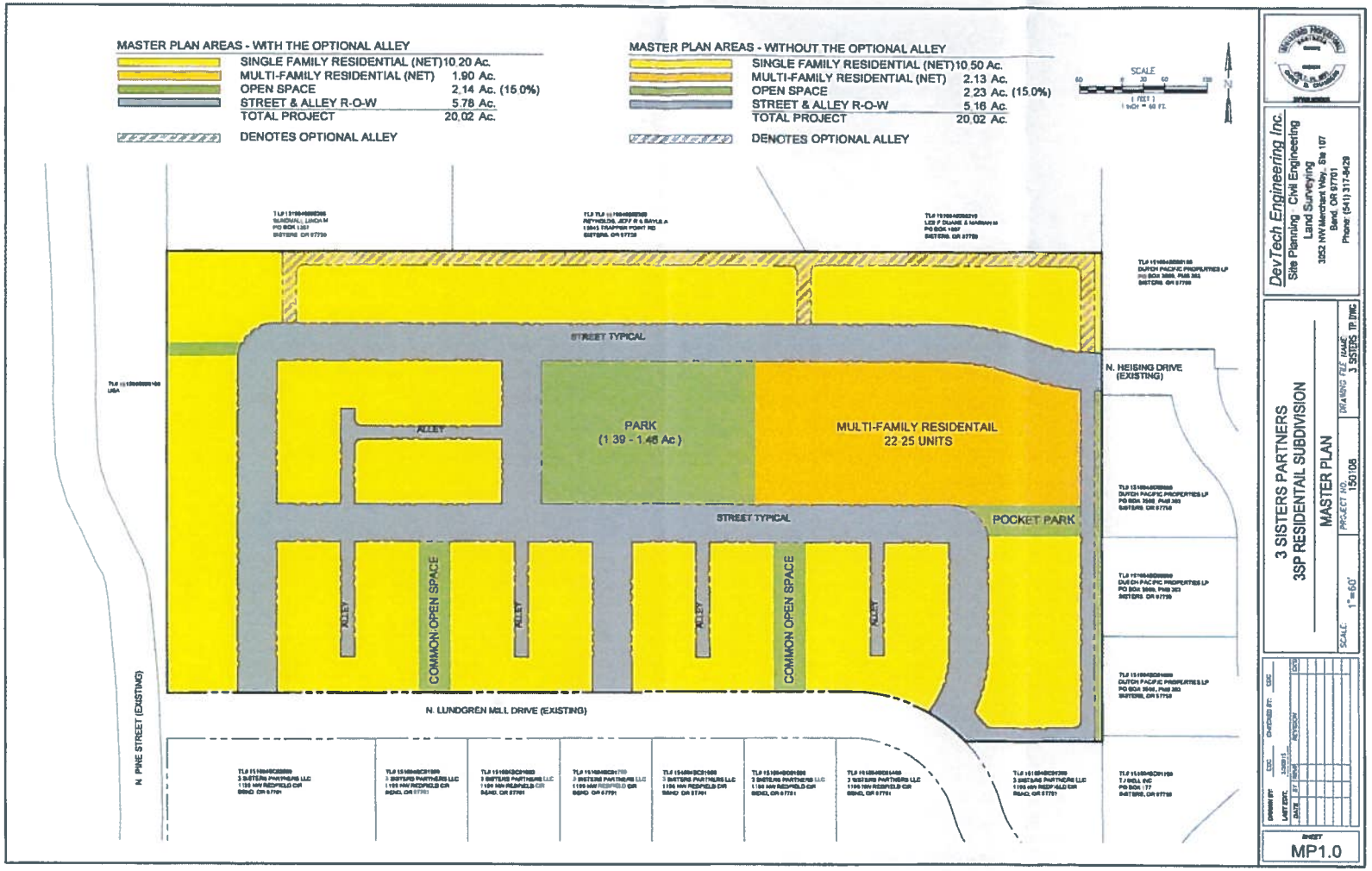
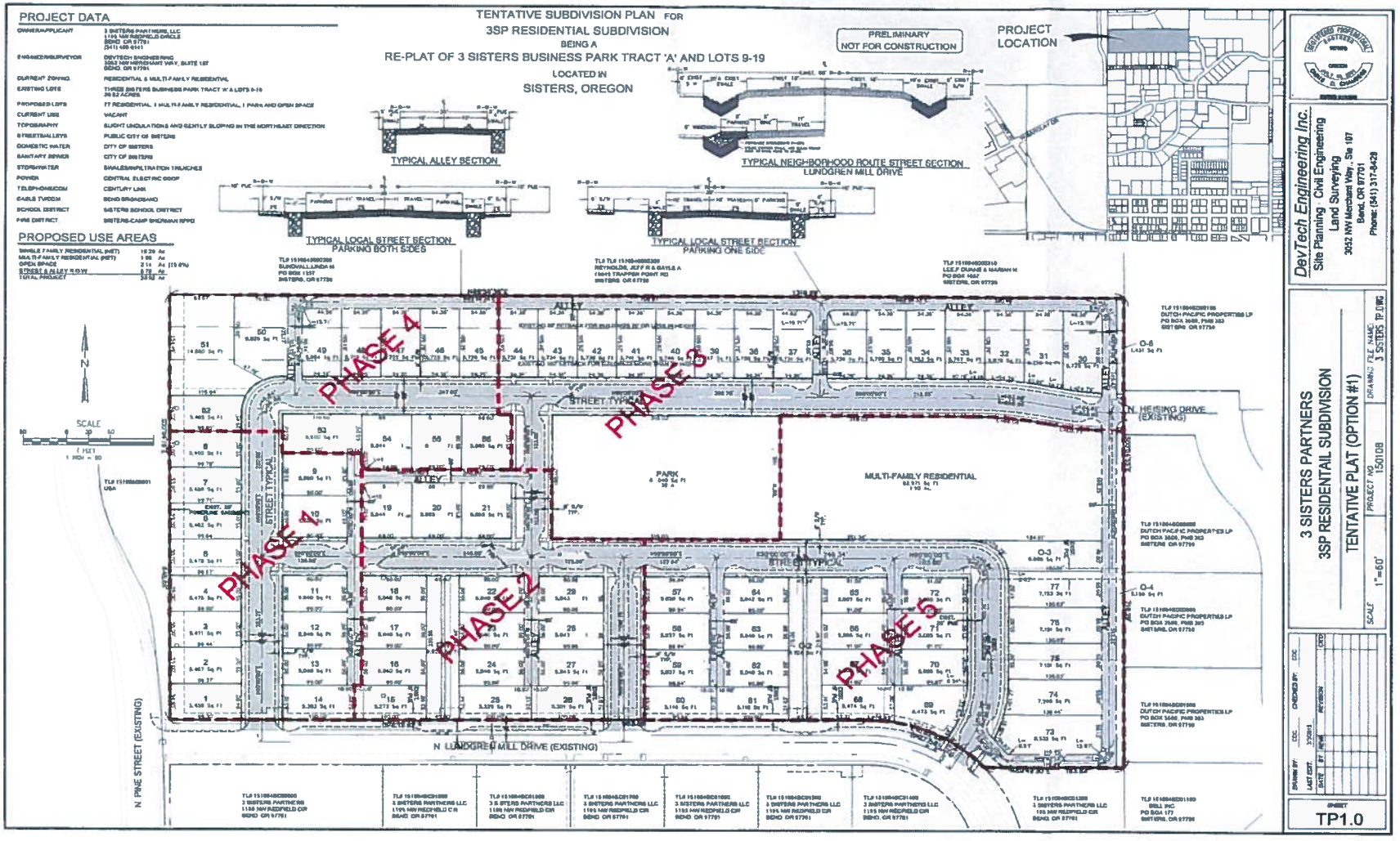
11.00 x 8.50 in
1:30 PM
4/29/2015

MASTER PLAN

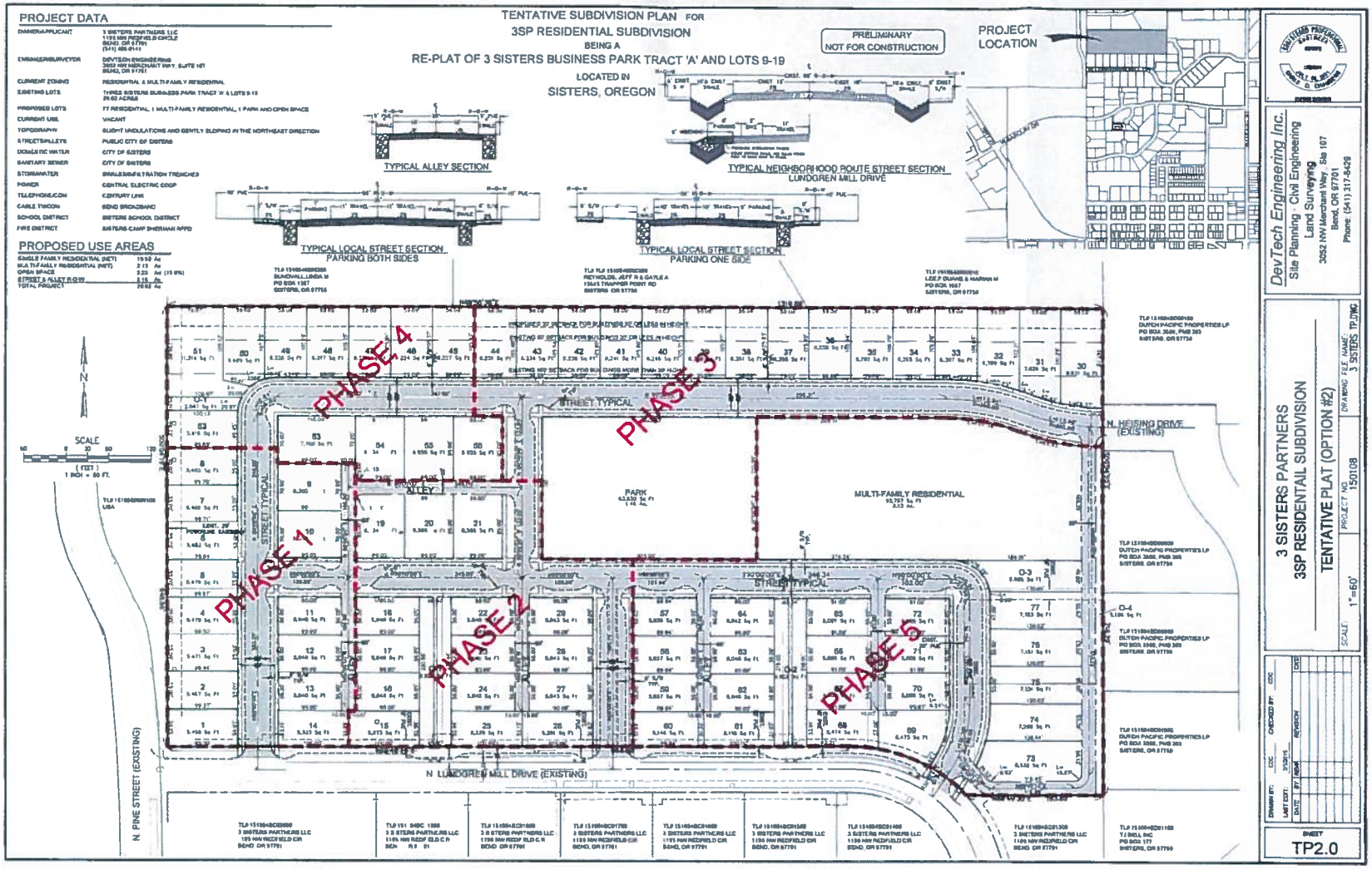


MASTER PLAN AREAS - WITH THE OPTIONAL ALLEY
SINGLE FAMILY RESIDENTIAL (NET) 10.20 Ac.
MULTI-FAMILY RESIDENTIAL (NET) 1.90 Ac.
OPEN SPACE 2.14 Ac. (15.0%)
STREET & ALLEY R-O-W 5.78 Ac.
TOTAL PROJECT 20.02 Ac.
DENOTES OPTIONAL ALLEY
MASTER PLAN AREAS - WITHOUT THE OPTIONAL ALLEY
SINGLE FAMILY RESIDENTIAL (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.
DENOTES OPTIONAL ALLEY
SCALE
STREET TYPICAL
ALLEY
PARK
(1.39 - 1.46 Ac.)
MULTI-FAMILY RESIDENTAIL
22.25 UNITS
POCKET PARK
COMMON OPEN SPACE
N. HEISING DRIVE (EXISTING)
N. LUNDGREN MILL DRIVE (EXISTING)
N. PINE STREET (EXISTING)
DevTech Engineering Inc.
Site Planning · Civil Engineering
Land Surveying
3052 NW Merchant Way, Ste 107
Bend, OR 97701
Phone: (541) 317-8429
3 SISTERS PARTNERS
3SP RESIDENTAIL SUBDIVISION
MASTER PLAN
SCALE: 1"=60'
PROJECT NO. 150108
DRAWING FILE NAME 3 SISTERS TP.DWG
SHEET
MP1.0

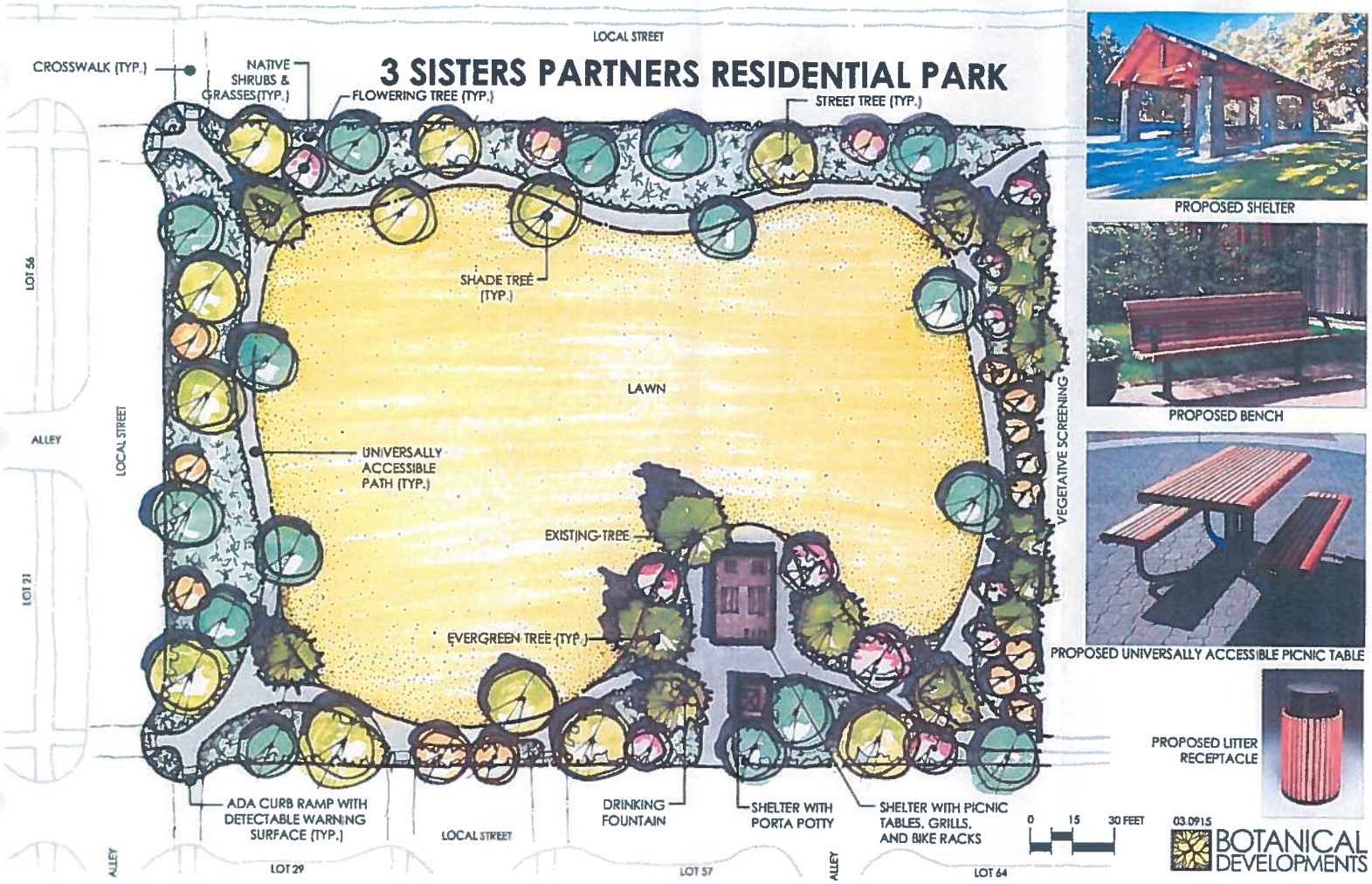
TENTATIVE SUBDIVISION OPTION 1



TENTATIVE SUBDIVISION OPTION 2



3 SISTERS PARTNERS RESIDENTIAL PARK



PROPOSED SHELTER

PROPOSED BENCH

PROPOSED UNIVERSALLY ACCESSIBLE PICNIC TABLE

PROPOSED LITTER RECEPTACLE

MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Brief History

MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- The Brand

CLEARPINE

Sisters, Oregon

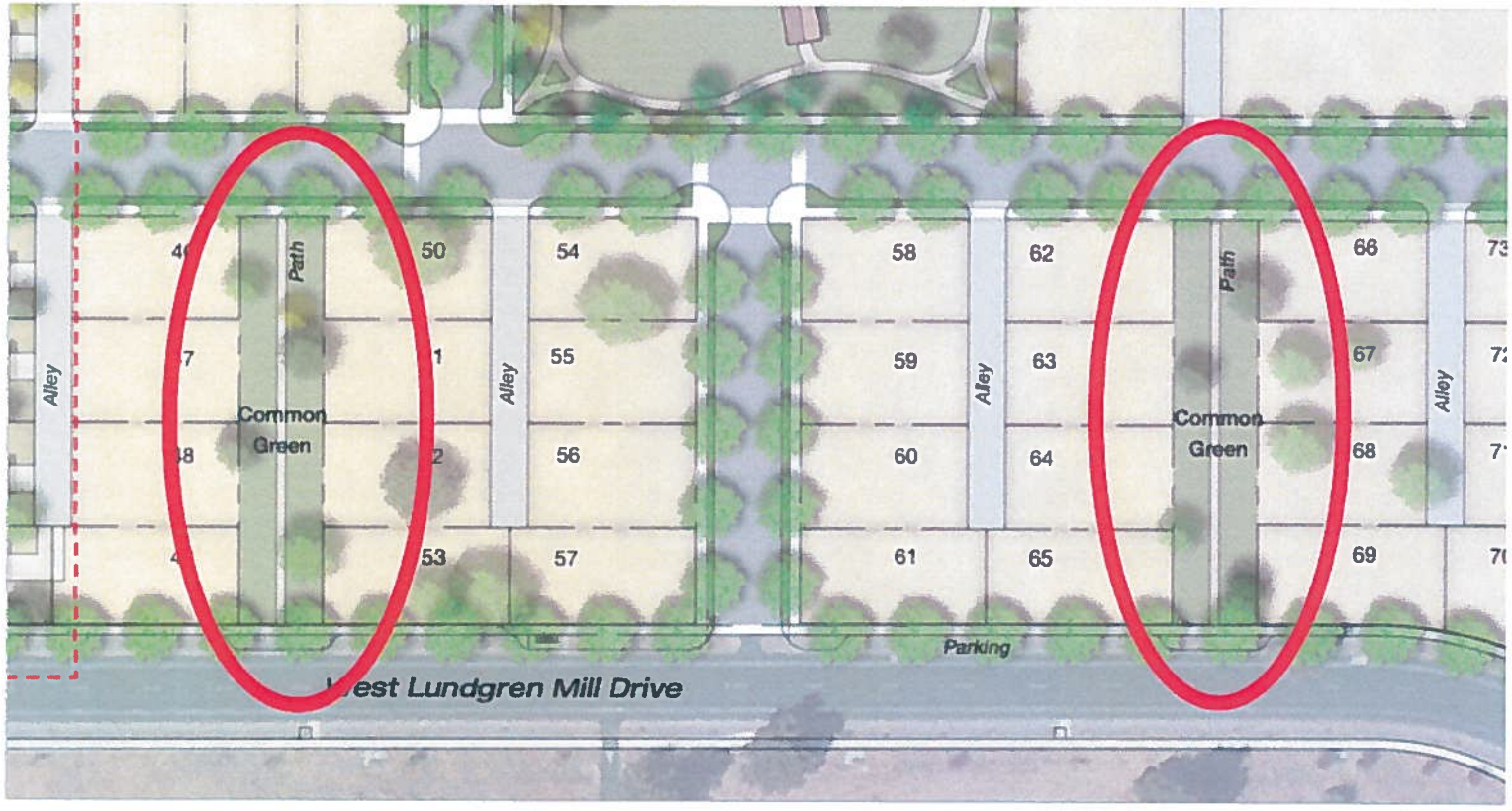
www.clearpine-sisters.com

MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Master Plan

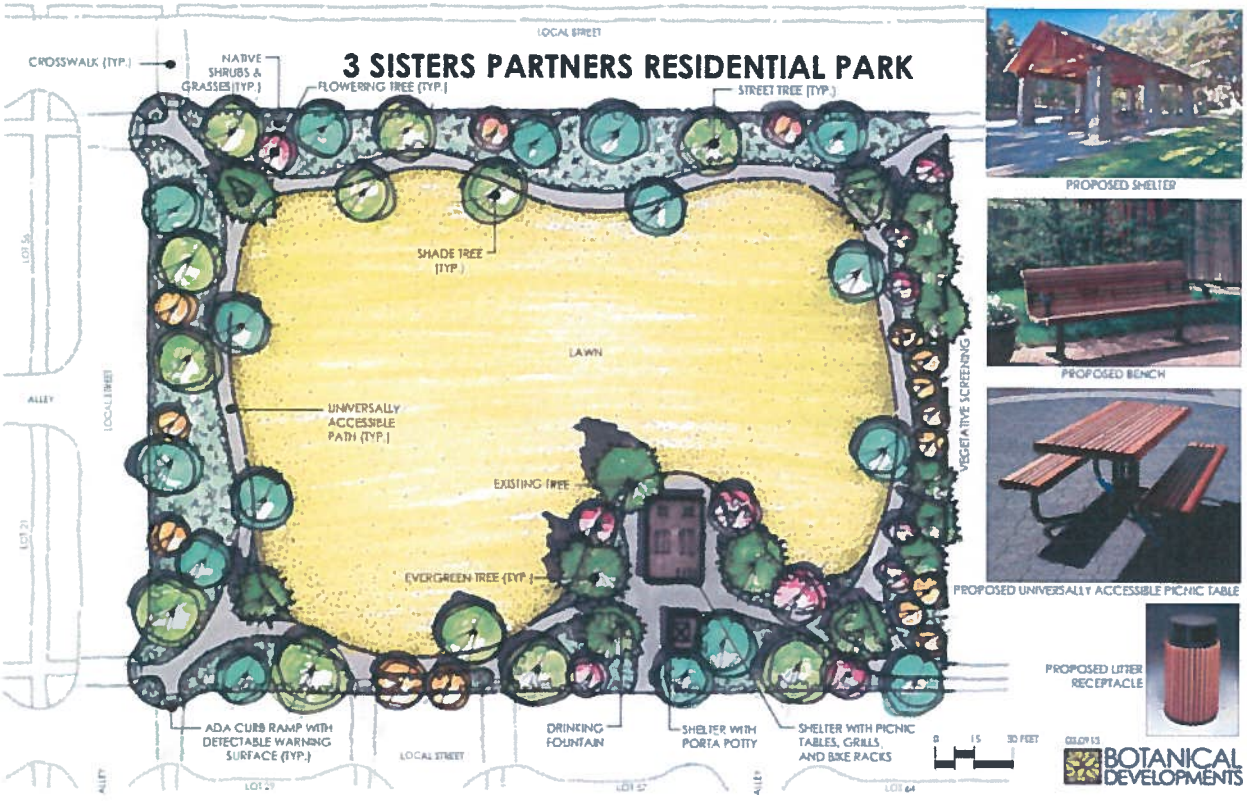
MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Common Greens



MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Park Concept



PROPOSED SHELTER

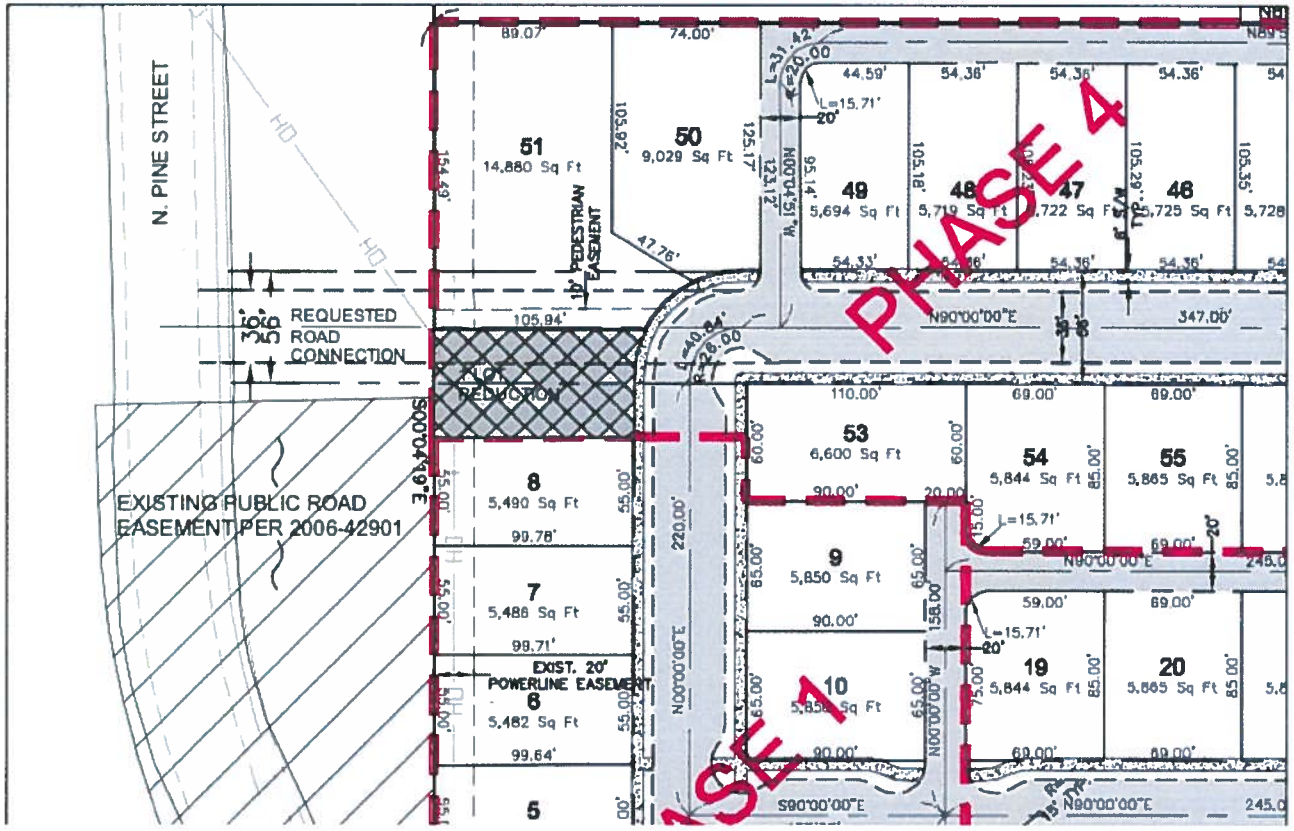
PROPOSED BENCH

PROPOSED UNIVERSALLY ACCESSIBLE PICNIC TABLE

PROPOSED LITTER RECEPTACLE

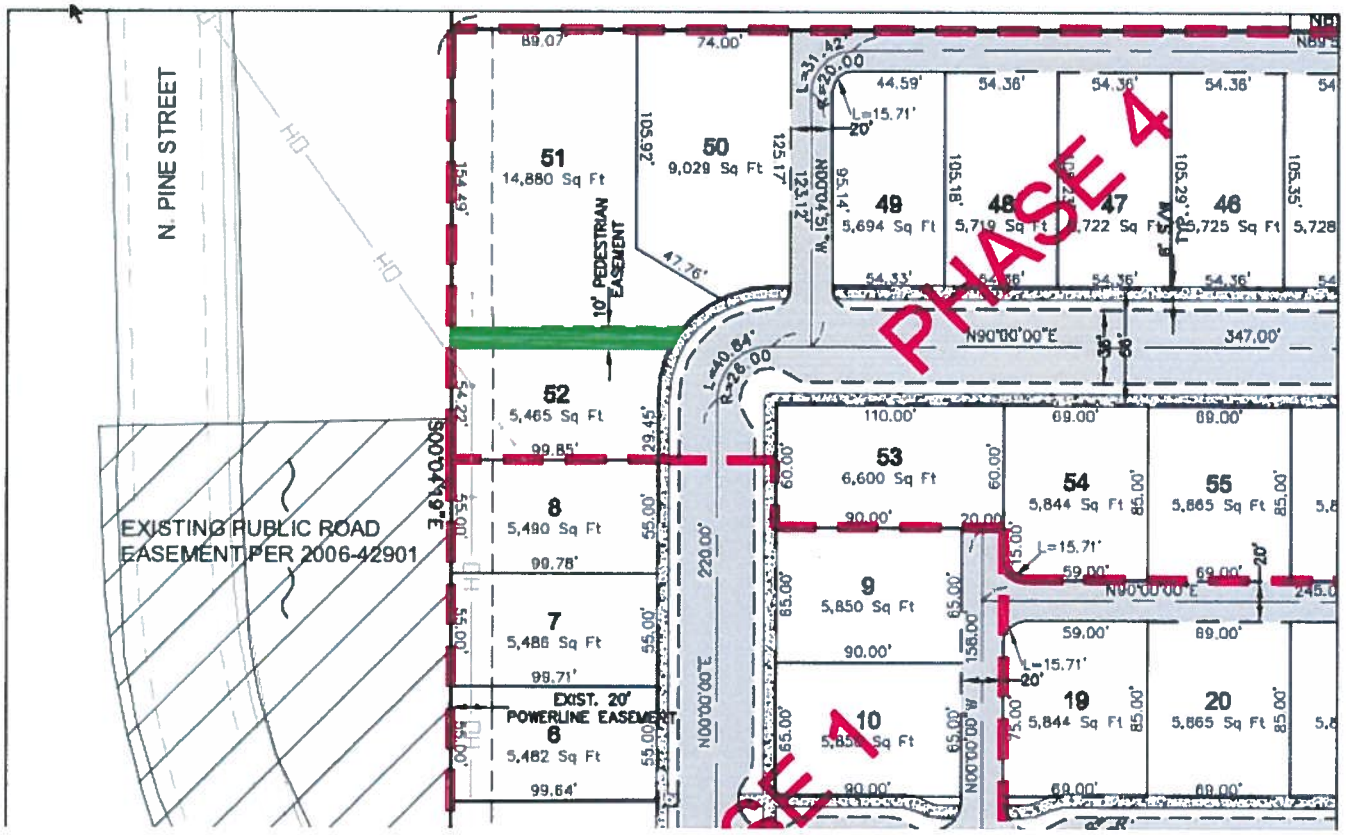
MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Possible Street Extension



MP 15-01 3 Sisters Partners, LLC/Clear Pine Subdivision

APPLICANT'S PRESENTATION- Proposed Public ROW



E

Patrick Davenport

From: Ed Protas <EdProtas@nwlink.com>
Sent: Friday, May 22, 2015 9:08 AM
To: Chris Frye; David Asson; Wendy Holzman; Nancy Connolly; wkhall@bendbroadband.com; Kathy Nelson; Patrick Davenport; Andrew Gorayeb; Carol Jenkins
Cc: 'morgan'; 'Sharlene Weed'; editor@nuggetnews.com
Subject: Immediate Action Required: More problems in the Planning Department

Importance: High

Mayor Frye and Sisters City Councilors,

Considering the still fresh in our memories events related to the Brad Boyd Food Cart decision, it is beyond frustrating, and certainly beyond reasonable comprehension, that "Planning", the Community Development Department, is once again the center of controversy related to a lack of compliance with the requirements of the Sisters Development Code (SDC).

Surely you must recall that at the center of the Boyd Food Cart issue was the lack of proper notification of the decision to all parties who were "entitled to notice by law". And while the City Council communicated to the public that the cause of this issue was going to be fixed, the events related to the MP 15-01 and SUB 15-01 (3 Sisters Partners, LLC) land use applications clearly indicate that the "fix" turned out to be meaningless.

I believe that my communication with Planning Director Davenport on 4/24, in which ***I formally requested a copy of the application and staff report for the above identified applications***, and my communication with Planning Director Davenport on 5/9, in which ***I formally requested a copy of the Decision Notice,*** qualifies me as a lawful party to these land use processes. It appears Director Davenport has made what can only be described as a very narrow interpretation of the code to exclude me from this process. It appears to be his interpretation that since I did not appear on the night of the Planning Commission meeting, and therefore did not give testimony, I was NOT lawfully entitled to notice as I specifically requested. He considers that my request was simply a Public Records Request, and he therefore had no requirement to comply. I received no decision notification.

To be blunt, my interest in this land use application and decision was because ***the applicant was attempting to modify his longstanding agreement with the City of Sisters regarding a requirement to provide affordable housing as a component of this development***. As you must be aware, we have a shortage of affordable housing in Sisters, and this has an impact on economic development and the decline of the student population in the Sisters School District. Changes to this agreement, part of this land use process, should be of concern to the City Council.

It was my hope, as well as the hope of Mike Morgan, that caused us to make our various requests to be included in this process. It was our hope to provide analysis and insight to this process for the members of the council so that you would be able to understand the impacts, and therefore properly review and if necessary "call-up" this decision if you felt that the decision as approved was inconsistent with your goals as they relate to affordable housing.

Once again, it appears from the outside that the involvement of the council, as well as concerned citizens, was going to be minimized and/or circumvented. Was it incompetence or deliberate? The end result is the same in either case - the decision goes under the radar and it minimizes the ability for a lawful review to occur. In other words, nothing was fixed.

You must take action today if you intend to have a say in what occurred. The SDC requires that two members of the council must formally request a call-up review before the close of business today. If you do not, whatever changes to the existing agreement were made will go into effect, and the impact will go unconsidered.

I urge you to take action TODAY, and exercise your right and responsibility to act on behalf of the community.

Ed Protas

F

Patrick Davenport

From: Chris Frye
Sent: Friday, May 22, 2015 11:03 AM
To: Darcy Reed
Cc: Patrick Davenport; Andrew Gorayeb; Kathy Nelson

Hello Darcy:

I would like to call up MP 15-01. Thank you.

Chris

F

May 22, 2015

I call up MP 1501

+ SUB 1501, for review

Nancy Connolly

3:40 pm

RECEIVED
MAY 22 2015
CITY OF SISTERS

Patrick Davenport

G

From: Patrick Davenport
Sent: Thursday, June 18, 2015 10:54 AM
To: 'Ed Protas'
Cc: Kathy Nelson; Carol Jenkins; Darcy Reed
Subject: RE: Testimony in Opposition to 3 Sisters Partners / Peter Hall

Ed,

I will include your comments in the staff report and part of the official record.

Patrick

From: Ed Protas [mailto:EdProtas@nwlink.com]
Sent: Thursday, June 18, 2015 8:57 AM
To: Patrick Davenport
Cc: Kathy Nelson; Carol Jenkins; Darcy Reed
Subject: Testimony in Opposition to 3 Sisters Partners / Peter Hall

Patrick,

Attached is my testimony to be presented to the City Council for their call-up on MP 15-01, and SUB 15-01. It should become a part of the record and included with the documents provided to the City Council for their review prior to the 6/25/15 council meeting.

Thanks,

Ed Protas
575 S Oak St
Sisters, OR 97759

Testimony in Opposition to Approval of 3 Sisters Partners / Peter Hall MP 15-01, SUB 15-01

G

The Planning Commission decision of April 30th, 2015, on applications MP 15-01 and SUB 15-01, aka 3 Sisters Partners, should be overturned and denied for the following reasons:

1. Planning Commission approval violates the terms of the Conditions of Approval Agreement between the applicants and the City of Sisters, signed and dated in June of 2007.
2. The timeline and quantity of affordable housing units required in the 2007 agreement are being circumvented.
3. The language in the current decision renders the terms of the Affordable Housing and Multi-Family unit provisions unenforceable.
4. Approval of this application is inconsistent with the stated City Council Goal of making Affordable Housing a priority.

To begin with, it needs to be clarified what is meant by the term "Affordable Housing", which has a very specific definition in Oregon, and this specific language is contained in the 2007 agreement between 3 Sisters Partners and the City of Sisters, which states:

> Affordable housing is housing affordable to households earning 80% of Area Median Income (AMI) or lower as designated on a yearly basis for Deschutes County by the federal department of Housing and Urban Development (HUD). Housing is affordable when no more than 30% of annual household income is spent on housing (principal, interest, taxes and insurance).

This definition is also in the Sisters Development Code (SDC), Chapter 1.3.200:

> Affordable housing – Affordable housing is defined as housing in which low income residents spend no more than 30 percent of their gross household incomes on housing-related expenses. Households are considered "cost-burdened" if they pay more than 30 percent of total household income on housing costs. Housing-related expenses are defined by HUD as follows:
> • For homebuyers, housing-related expenses include mortgage principle and interest, taxes, property insurance, mortgage insurance, and essential utilities;
> • For renters, housing-related expenses include rent and utilities.

There seems to be a somewhat common misperception that some homes recently built by one local developer, priced in the lower half of the $200,000 range are "affordable". While they may be reasonably priced in the minds of some individuals, this is a personal opinion relative to their own economic status and has no connection to what is defined as "Affordable Housing". You should be guided only by the legal definition.

Current Area Median Income for Deschutes County is $59,400, 80% of which is $47,500. This means that housing is affordable to a qualifying family only if total annual housing costs do not exceed $14,256, or $1,188 per month (30% of household income), including principal, interest, taxes, insurance, and utilities. At the current low interest rates (4.5%), we are talking about a home with a $200,000 mortgage. This is what is meant by affordable. In a recent presentation by Housing Works you should have learned that 46%, almost half of all Sisters households have incomes less than $47,500.

The Goal of Affordable Housing

The Sisters City Council has declared the pursuit of affordable housing as one of its goals. The City of Sisters has had a Housing Plan which lays out various potential strategies to make more affordable housing available. This Housing Plan has sat dormant for 5 years. Since the Tamarack Village Apartments was constructed in 2003, the only Affordable Housing built in Sisters was constructed by Habitat for Humanity. Not a single unit of affordable housing has been built by anyone else in the last 12 years. This reality is reflected in the declining student population in the Sisters School District. Housing which is affordable to younger families with school-age children is not being built in Sisters, and the

rental market has grown increasingly tighter since the economic decline, and especially tighter as the recovery gains momentum. Stemming the continual decline in student population cannot be achieved without housing that is affordable to younger families.

You must demonstrate whether or not Affordable Housing is really a priority, and this land use application is one way of doing so. Providing developers a doorway so they can opt out of their contractual obligations does not make any sense from a community needs perspective.

The 2007 Conditions of Approval Agreement

The original Conditions of Approval Agreement, signed on behalf of the City of Sisters on 6/14/2007, contains the following language:

> This Development Agreement, hereinafter referred to as "Agreement", is made and entered into by and between the City of Sisters, hereafter referred to as "City", and 3 Sisters Partners, LLC, hereafter referred to as "3 Sisters".
>
> Item 13 of this agreement states:
>
> ***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 uses, development limitations, or monetary contributions shall require a public hearing before the parties may execute an amendment.***

The "FINAL Conditions of Approval" in the current application states that the 2007 Conditions of Approval (14 terms) remain in effect. This statement is false. The 2007 Conditions of Approval, with respect to Affordable Housing, has in effect been significantly altered. ***The Sisters Planning Commission is NOT a party to the 2007 agreement, and is NOT authorized to amend or circumvent the agreement during a land use process.***

2007 Agreement - Timeline and Quantity of Affordable Housing

The Agreement, signed by then Mayor Brad Boyd for the City of Sisters on 6/14/2007, contains the following language:

> **Recitals - 4.** At the request of the City Council, 3 Sisters has **agreed to provide 8 units** within the approved Tract A of the Three Sisters Business Park for development **with affordable housing units**. As no subdivision was proposed as part of the 3 Sisters applications, ***it is appropriate to assure the provision of such lots when the property is subdivided through this agreement.***
>
> **Agreement - 5.** Three Sisters Partners has agreed to construct affordable housing units within Tract A of Three Sisters Business Park based on obtaining approval to construct 62 residential units in Tract A. ***In the event 3 Sisters is approved for the development of 62 residential units in Tract A, 3 Sisters will provide eight (8) affordable housing units within Tract A. The number of affordable housing units shall be reduced on a proportional basis in the event 3 Sisters is approved for the development of less than 62 residential units in Tract A.***
>
> 3 Sisters will work with Housing Works, Neighbor Impact, Habitat for Humanity, or such other affordable housing program provider(s) ***that is approved by the City of Sisters in writing.***

There is no language in the approved land use decision which will "assure the provision [of the affordable housing units]", and this directly circumvents the intent and language of the 2007 agreement.

The agreement establishes a ratio of 8 affordable units within the 62 unit total - a 13% ratio. The agreement stipulates that if less than the 62 units are approved, the number of affordable units shall be reduced on a proportional basis. It is logical that the reverse of this condition should also apply; if the applicant is approved for more than 62 units, the number of affordable units should be increased on a proportional basis.

MP 15-01 and SUB 15-01 contain approval for 77 Single Family Residences. Actually, the site plan shows 78 single family lots - an increase of 16 units. The number of lots has been increased because this approval grants a reduction in the

minimum lot size allowable in the code (SDC 2.2.2, Development Standards in the Residential District), from 6,000 SF to 4,800 SF. This represents the granting of a density bonus that was added to the code specifically for Affordable Housing.

> **SDC 2.15.800 E, Affordable Housing Density Bonus**: Housing developments that meet the eligibility requirements of this section may be up to 125% as dense as is otherwise allowed within the applicable district. This density bonus may be translated into the creation of new lots that are no smaller than 80% of the permissible lot size in any residential zone.

Essentially this amounts to a giveaway. ***The density bonus was added to the Sisters Development Code to help promote Affordable Housing, not to increase profits for developers.*** Whether or not it is appropriate to grant this density bonus should be a deliberate policy decision by the Council. At a minimum, it would seem appropriate, given the nature of our current housing shortage, that such a grant, if given at all, be tied to early provision of the affordable housing units.

The Staff Report's "Conclusionary Findings" supporting this decision contains the following statement:

> The Master Planned development includes areas where multifamily dwellings **could** be developed, **however specific development plans for multi-family buildings are not proposed at this time**.

According to the Planning Commission's conditions of approval, ALL affordable housing is planned for the MFR (Multi-Family Residential) portion of the development included in Phase 5, or the LAST phase of the development. ***It basically means the affordable housing could be built, if and when the multifamily dwellings are built. But this decision does not contain any language making it a requirement - EVER.*** This is an unacceptable condition in a community which states affordable housing is a goal.

Contained in the current Planning Commission decision is a badly worded condition of approval addressing the timeline:

> **3.** Timing of provision of Affordable Housing Units: No later than 24 months from the date applicant obtains a building permit for Phase 1 of the Subdivision, the applicant or third party affordable housing developer shall submit a site plan for the MFR zoned area of the development which includes an illustration of provision of affordable housing units per Condition #2. Within 24 months after this decision, the applicant or third party affordable housing developer shall make the 8 affordable housing units available for rent or sale per the terms of Condition #2.

This section says BOTH that the site plan for the MFR shall be applied for AND the affordable units shall be available for rent or sale at the same time. This is not possible, and the ambiguity of this condition might preclude enforcement. The reality is there is no enforceable requirement. All 77 or 78 single family units can be built without any of the MFR / Affordable units EVER being constructed.

In closing, the Council should take a 40,000 ft elevation perspective on this matter. The 2007 agreement is essentially a contract between the applicants and the City of Sisters. The decision approved by the Planning Commission permits significant changes to that contract which exacerbate the affordable housing crisis in our community. This decision should be rejected.

Ed Protas
575 S Oak St
Sisters, OR 97759

H

Patrick Davenport

From: Hall Peter <peterhall@bendbroadband.com>
Sent: Wednesday, May 27, 2015 11:40 AM
To: Chris Frye; McKibben Womack; David Asson; Wendy Holzman; Nancy Connolly
Cc: Andrew Gorayeb; Patrick Davenport
Subject: MP 15-01, SUB 15-01
Attachments: Clear Pine COA_05 07 15.pdf; ATT00001..htm

Dear Councilors:

Over the last 1.5 years, I have worked very hard, and closely with Staff, to make the new ClearPine masterplanned community a realty in Sisters. On April 30, the Planning Commission voted unanimously to approve my application, an important milestone. As you may be aware, I have presented at numerous public hearings and worked with three different Planning staff members to date, due to employee turnover.

The application that was approved April 30 was submitted at 192 pages in length, which made it a great deal of work for the Applicant (me), but also for review by City Staff. From my perspective, Patrick did a really thorough job summarizing the Findings, presenting to the PC, and scripting the necessary Conditions of Approval to be fair and complete in the approval decision. He hit the ground running with his new job, and because my application was a Master Plan, it was somewhat challenging, though fairly routine in nature.

At the April 30 hearing, Mike Morgan took an extraordinary amount of time to push the affordable housing agenda (along with Charlene Weed), adding at least one extra hour to the 2.5 hour hearing. Due to an earlier 2007 land use decision, we were required to provide 8 affordable housing units. His discussion points were largely unnecessary, as the PC was already committed to affordable housing (see Conditions 2 & 3 from attached document COA for the details).

Now to my point. I really don't know Ed Protas or Mike Morgan, and I have never had a disagreement with either. I strongly believe that Ed Prota's 5/22 email to City Councilors is primarily a distraction, and a waste of your collective time. The indictment of the professionalism of City Staff (and by association- the members of the Planning Commission), as well as the lack of confidence in the Sisters land use system are notable. I believe that calling a special hearing to review these decisions encourages these individuals to repeat this ploy again and again, with other land use decisions to come in the future. I could also argue this undermines the work of Patrick Davenport and the decision of the PC, and hurts morale in both camps. This could lead to more staff and PC member turnover, which is unhealthy for the community of Sisters.

I encourage you to speak with staff, review the COA for MP 15-01 and SUB 15-01 if you desire, then take the June 25 special meeting off your agenda, as I believe it will be clear to you another hearing is not warranted.

Sincerely,

Peter Hall
3 Sisters Partners, LLC

Attachment I

Agreement

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

1. This Agreement shall be effective upon signing by the parties and shall last until such time as all conditions of approval have been satisfied by 3 Sisters or until a residential subdivision plat is approved and recorded for Tract A of Three Sisters Business Park. When Tract A of the Three Sisters Business Park is subdivided, the requirements of this Agreement, shall have been met or assured.

2. The permitted uses, density, and height within the residential portion of Three Sisters Business Park (Tract A) are regulated by the City Development Code as amended by this series of applications, and any subsequent changes adopted by the City of Sisters.

3. The City Engineer has calculated the impact of the 3 Sisters development proposals on the City water system based on the approval of 62 residential living units in Tract A of Three Sisters Business Park and the construction of a maximum of 57 second story loft units on industrial lots 1-19 of the Three Sisters Business Park. Based on this proposed density, the City Engineer has required 3 Sisters to provide the City with 11.58 acres of pre-1892 water rights. 3 Sisters shall be required to provide such water rights to the City as a condition of any subdivision approval for residential development in Tract A of the Three Sisters Business Park. In the event the City approves a tentative residential subdivision plan for Tract A with densities lower than set forth above, the obligation of 3 Sisters to convey water rights to the City shall be reduced on a proportional basis.

4. The City Engineer has required 3 Sisters to make a proportionate share contribution to the costs of improvements to a sewer pump station constructed on the adjacent Dutch Pacific property. 3 Sisters has deposited approximately $27,000 with the City which shall be released to Dutch Pacific upon the dedication of sewer pump station #1 to the City.

5. 3 Sisters has agreed to construct affordable housing units within Tract A of Three Sisters Business Park based on obtaining approval to construct 62 residential units in Tract A. In the event 3 Sisters is approved for the development of 62 residential units in Tract A, 3 Sisters will provide eight (8) affordable housing units within Tract A. The number of affordable housing units shall be reduced on a proportional basis in the event 3 Sisters is approved for the development of less than 62 residential units in Tract A. 3 Sisters will work with Housing Works, Neighbor Impact, Habitat for Humanity, or such other affordable housing program provider(s) that is approved by the City of Sisters in writing, to assure that the units/lots are affordable as detailed below. Affordable housing is housing affordable to households earning 80% of Area Median Income (AMI) or lower as designated on a yearly basis for Deschutes County by the federal department of Housing and Urban Development (HUD). Housing is affordable when no more than 30% of annual household income is spent on housing

Attachment A

Conditions of Approval Agreement

This Development Agreement, hereinafter referred to as "Agreement", is made and entered into by and between the City of Sisters, hereafter referred to as "City", and 3 Sisters Partners, LLC, hereafter referred to as "3 Sisters".

Recitals

1. This Agreement is a conditions of approval agreement with 3 Sisters Partners, LLC, the owners of the approximately 29-acres of real property that is legally described in Exhibit A attached hereto (hereafter the "Property"). The Property includes lots 1 through 19 (inclusive) and Tract A as depicted on the recorded plat for Three Sisters Business Park, Phase 1, Deschutes County, Oregon.

2. 3 Sisters received Comprehensive Plan Text Amendment, Development Code Text Amendment, Comprehensive Plan Map Amendment and Zoning Map Amendment land use approvals from the City on June 14, 2007. The approvals are for the development proposed in City land use permit files C-06-04, CP06-03, Z06-02.

3. The Findings and Recommendation of the Sisters Planning Commission signed February 27, 2007 recommended two conditions of approval.

4. At the request of the City Council, 3 Sisters has agreed to provide 8 units within the approved Tract A of the Three Sisters Business Park for development with affordable housing units. As no subdivision was proposed as part of the 3 Sisters applications, it is appropriate to assure the provision of such lots when the property is subdivided through this agreement.

5. The intent of this Agreement is to require 3 Sisters to comply with the two conditions of approval specified in the Planning Commission's Findings and Recommendation and to voluntarily amend the proposal to provide affordable housing as part of any future development proposal for Tract A of the Three Sisters Business Park.

6. This Agreement was authorized by the City Council as part of the land use decision approving the Comprehensive Plan Amendments, Development Code Amendments, Comprehensive Plan Map and Zoning Map Amendments proposed by 3 Sisters in connection with the above referenced land use applications. A public hearing was held before the City Council on May 24, 2007 after notice to the public was provided.

7. The execution of this Agreement is in the best interest of the public health, safety and welfare and is consistent with the Sisters Urban Area Comprehensive Plan and implementing ordinances.

#5 cont'd

(principal, interest, taxes and insurance). The units to be constructed shall also meet any covenants, conditions and restrictions developed by 3 Sisters for Tract A. 3 Sisters may choose to construct the dwelling units and work with one of the affordable housing providers to implement the affordability component. The program, as proposed shall include the following:

- The anticipated 6-unit rental complex shall remain affordable for a period of at least 50 years.
- The anticipated 2 attached townhomes shall remain affordable for a period of at least 20 years.
- The square footage of all the affordable units provided under this agreement shall sum to a minimum of 7000 square feet in size.
- In the event a mini-storage facility with second story loft apartments is constructed on either of Lots 4, 5, 6 and/or 7 of the Three Sisters Business Park, the second story loft units shall be constructed to meet applicable Housing Quality Standards as defined for the HUD Voucher program.

6. 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 than 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. If, because of a change in policy, law or circumstance, the Agreement fails of its essential purpose, 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 rights and conditions, as set forth herein, notwithstanding any change in local ordinance or policy.

7. The following shall constitute defaults on the part of a party:

   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 give 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 time granted by the non-breaching party; or.

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.

8. 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.

9. This Agreement is not assignable and does not run with the land. If any property subject to this agreement is sold, the obligations of 3 Sisters under this Agreement shall remain obligations of 3 Sisters until satisfied.

10. All future discretionary approvals for Three Sisters Business Park and lots within shall be as lawfully established at the time such approvals are requested.

11. All City obligations to expend moneys under this Agreement are contingent upon future appropriations as part of the local budget process. Nothing in this Agreement obligates the City to appropriate money to fund the obligations undertaken in this Agreement.

12. The City assumes that the Three Sisters Business Park development will be served with City services like any other property in the City.

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

14. The City may, at its election, record this Agreement at the office of the Deschutes County Clerk no later than 10 days following the execution of this Agreement. The Agreement does not, however, bind subsequent owners of land or Lots within the Three Sisters Business Park, including the land designated as Tract A.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year hereinafter written.

CITY OF SISTERS

By _____

Title Mayor

Date June 14, 2007

OFFICIAL SEAL
KATHRYN NELSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 410050
MY COMMISSION EXPIRES SEPTEMBER 19, 2010

State of Oregon)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Brad Boyd, as Mayor for the City of Sisters, this 14 day of June, 2007.

Kathryn Nelson
Notary Public for Oregon
My commission expires: September 19, 2010

3 SISTERS PARTNERS, LLC

By _____

Title Managing Member

Date 6/20/07

OFFICIAL SEAL
KATHRYN NELSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 410050
MY COMMISSION EXPIRES SEPTEMBER 19, 2010

State of Oregon)
) ss.
County of Deschutes)

The foregoing was acknowledged before me by Peter B Hall, as Managing Member for 3 Sisters Partners, LLC this 20 day of June, 2007.

Kathryn Nelson
Notary Public for Oregon
My commission expires: September 19, 2010

TRAPPER POINT RD
Tract A'
N JANTZEN LN
W LUNDGREN MILL DR
N CURTIS CT
W BARCLAY DR
TAYLOR CT
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Deschutes County GIS

Attachment "I"

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

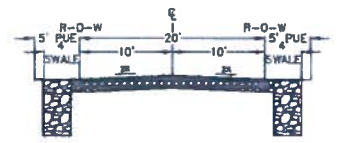
PRELIMINARY
NOT FOR CONSTRUCTION

PROJECT DATA

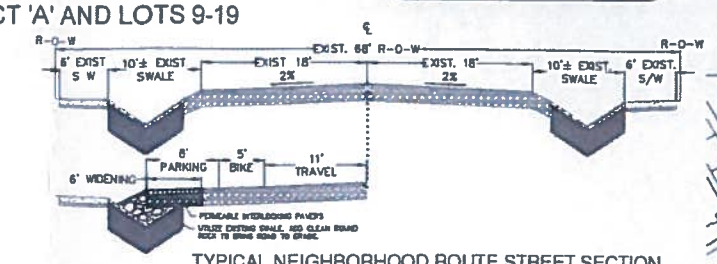
OWNER/APPLICANT	3 SISTERS PARTNERS, LLC 1195 NW REDFIELD CIRCLE BEND, OR 97701 (541) 408-0141
ENGINEER/SURVEYOR	DEVTECH ENGINEERING 3052 NW MERCHANT WAY, SUITE 107 BEND, OR 97701
CURRENT ZONING	RESIDENTIAL & MULTI-FAMILY RESIDENTIAL
EXISTING LOTS	THREE SISTERS BUSINESS PARK TRACT 'A' & LOTS 9-19 20.02 ACRES
PROPOSED LOTS	77 RESIDENTIAL, 1 MULTI-FAMILY RESIDENTIAL, 1 PARK AND OPEN SPACE
CURRENT USE	VACANT
TOPOGRAPHY	SLIGHT UNDULATIONS AND GENTLY SLOPING IN THE NORTHEAST DIRECTION
STREETS/ALLEYS	PUBLIC CITY OF SISTERS
DOMESTIC WATER	CITY OF SISTERS
SANITARY SEWER	CITY OF SISTERS
STORMWATER	SWALES/INFILTRATION TRENCHES
POWER	CENTRAL ELECTRIC COOP
TELEPHONE/COM	CENTURY LINK
CABLE TV/COM	BEND BROADBAND
SCHOOL DISTRICT	SISTERS SCHOOL DISTRICT
FIRE DISTRICT	SISTERS-CAMP SHERMAN RFPD

PROPOSED USE AREAS

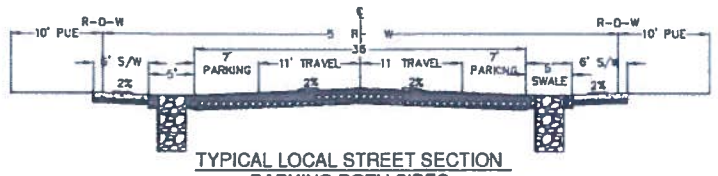
SINGLE FAMILY RESIDENTIAL (NET)	10.20 Ac	
MULTI-FAMILY RESIDENTIAL (NET)	1.90 Ac	
OPEN SPACE	2.14 Ac	(15.0%)
STREET & ALLEY R-O-W	5.78 Ac	
TOTAL PROJECT	20.02 Ac	



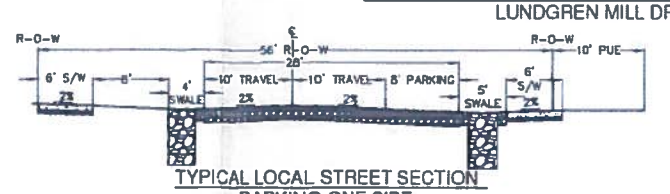
TYPICAL ALLEY SECTION



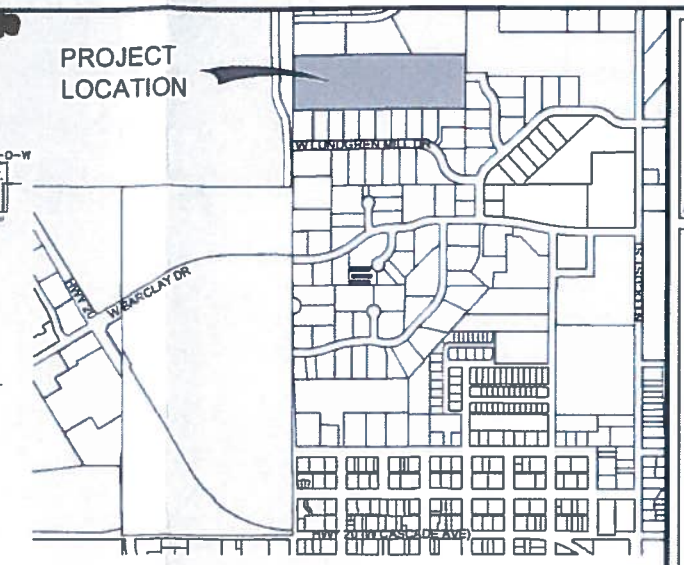
TYPICAL NEIGHBORHOOD ROUTE STREET SECTION
LUNDGREN MILL DRIVE



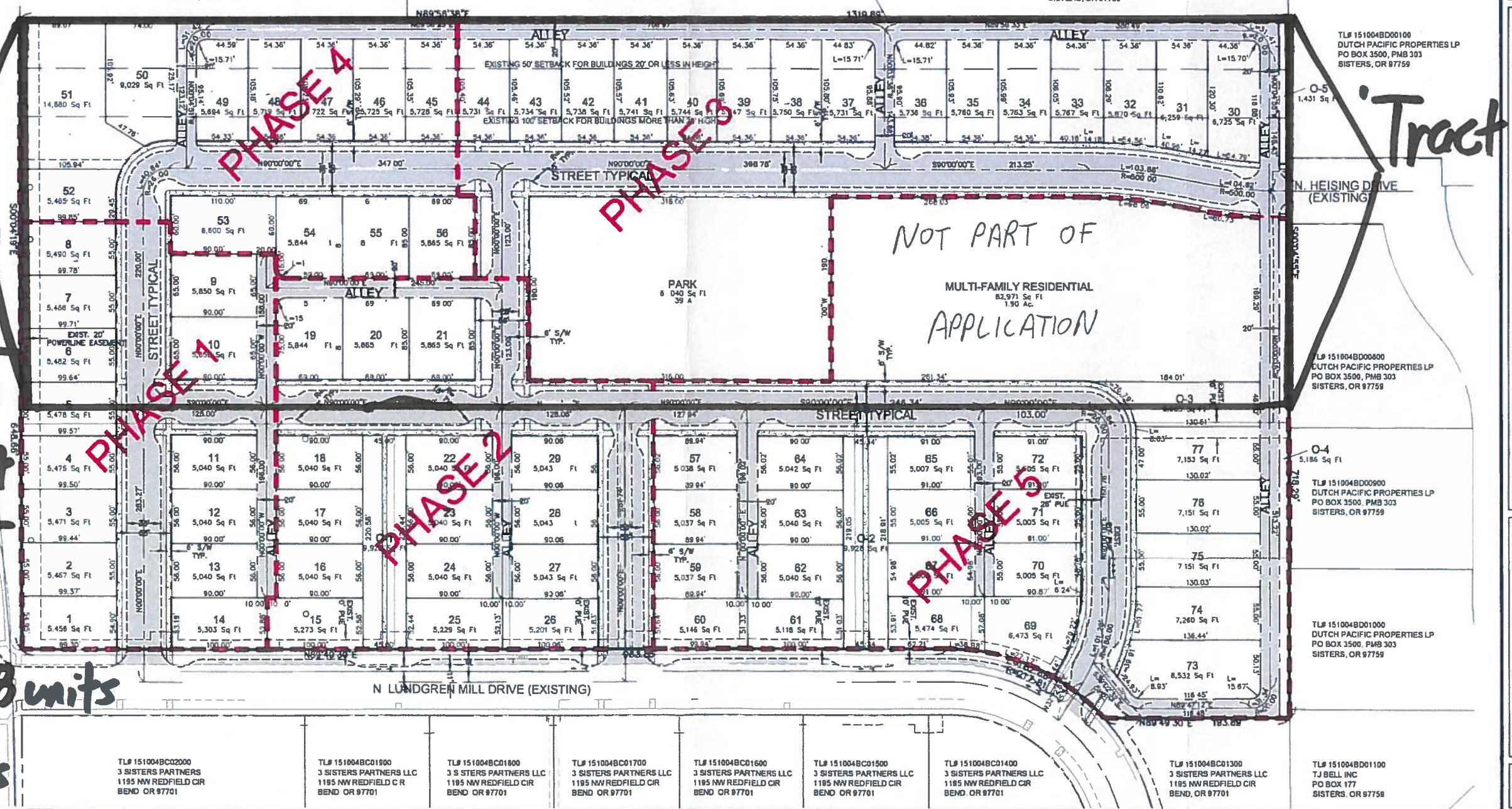
TYPICAL LOCAL STREET SECTION
PARKING BOTH SIDES



TYPICAL LOCAL STREET SECTION
PARKING ONE SIDE



Appx. Location of



'Tract A'

'Tract A'

≈ 36 lots
R-District

MFR District
1.90 ac
≈ 15 du/ac
64 lots/units
in "Tract A"

>28 units

REGISTERED PROFESSIONAL ENGINEER
OREGON
JULY 09, 2001
CHRIS D. CHAMBERS
EXPIRES 12/31/2015

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

3 SISTERS PARTNERS
3SP RESIDENTAIL SUBDIVISION

TENTATIVE PLAT (OPTION #1)

SCALE: 1"=60'	PROJECT NO. 150108
DRAWN BY: CDC	DRAWING FILE NAME: 3 SISTERS TP.DWG
LAST EDIT: 3/3/2015	CHECKED BY: CDC

DATE	BY	REVISION	CKD

SHEET
TP1.0

IMMEDIATE OPPORTUNITY FUND AGREEMENT
East Barclay Drive
City of Sisters

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CITY OF SISTERS, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. The Oregon Transportation Commission ("OTC") at its July 15, 1988, meeting approved establishing an Immediate Opportunity Fund ("IOF") to support primary economic development in Oregon through the construction and improvement of streets and roads. The OTC, at its meeting on March 19, 2015, revised the guidelines for the use of this fund. IOF funds are limited to: Type A) specific economic development projects that affirm job retention and job creation opportunities; Type B) revitalization of business or industrial centers to support economic development; Type C) preparation of Oregon certified project-ready industrial sites; and Type D) Preparation of regionally significant industrial areas.

2. The OTC at is March 19, 2015, meeting approved a Type B Immediate Opportunity Grant in the amount of $150,066 to the City of Sister for the purpose of reconstructing Barclay Drive to city standards to facilitate economic development at the Sisters Airport.

3. East Barclay is a part of the city street system under the jurisdiction and control of Agency.

4. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Agency agrees to make roadway improvements near the future development of Sisters Airport that meet the IOF criteria. The improvements will consist of the reconstruction of approximately 1,600 feet of East Barclay Drive between Camp Polk Road and the Sisters Airport to include a 26 foot wide paved roadbed and six foot wide property tight pedestrian paths buffered from the roadway by 11 foot landscaped drainage swales, *to bring the street up to city design standards and*

facilitate economic development at the Sisters Airport, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Oregon Business Development Department (OBDD) recommends use of Immediate Opportunity Funds for this Project. State agrees to provide Immediate Opportunity Funds not to exceed $150,066 to help finance the road construction portion of this Project. Agency and/or others will provide the remaining Project funding.

3. This Agreement is effective on the date all required signatures are obtained and shall terminate upon completion of the Project and receipt of documentation of filled and created positions outlined under Agency obligations or ten (10) calendar years whichever is sooner.

STATE OBLIGATIONS

1. State shall, at its own expense, assign a Project liaison to monitor work performed. State shall review all environmental documents, Project plans, specifications, and cost estimates prepared by Agency or its consultants within twenty (20) working days of submittal by Agency and before advertisement of construction bids.

2. Once construction is underway, State shall as soon as practically possible and within 45 days following receipt of approved monthly itemized invoices, reimburse Agency for 50 percent of the eligible Project construction costs incurred until the total of $150,066 of approved IOF Funds has been paid to Agency or until Project is completed, whichever occurs first. Travel expenses will not be reimbursed.

3. State certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of State, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind State.

4. State's Project Manager for this Project is Darrell Newton - Local Agency Programs Coordinator, 63055 N. Highway 97, Bldg M, Bend, OR 97701, (541) 388-6272, darrell.r.newton@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; provide Project management services, and other necessary functions for sole administration of the contract.

2. Agency shall advertise and award all contracts, and pay all contractor costs. Within two (2) years after the Agreement execution date, unless granted an extension by State, Agency shall award a contract for construction of Project. Construction must be completed within five (5) years of the Agreement date. If either time limit expires, this Agreement shall terminate immediately with all Parties.

3. Agency shall ensure that State's contribution of fifty (50) percent of the actual road construction costs, not to exceed $ 150,066, will be applied to preliminary engineering, right of way acquisition and construction only. Agency shall be responsible for funding the remaining Project costs.

4. Agency shall submit to the assigned State Project Liaison all environmental documents, Project plans, specifications and cost estimates before advertisement for construction bids.

5. Agency shall lay out and paint the necessary lane lines and erect the required directional and traffic control signing for the Project.

6. Agency shall be responsible for 100 percent of power costs associated with the luminaries installed as a part of this Project. The power company shall send power bills directly to Agency.

7. Agency shall be responsible for and pay to the power company 100 percent of the power costs for the traffic signal. The power company shall send power bills directly to Agency.

8. Agency shall obtain all required state and federal permits, including any environmental permits, and shall comply with all terms of said permits.

9. Agency agrees and understands that Agency will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual if right-of-way acquisition is necessary.

10. Agency or its consultant shall acquire all necessary right of way in accordance with and in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the ODOT Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 4 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.

11. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:

    a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.

    b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.

    c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than $ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than $ 2,000,000.

    d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than $1,000,000.

    e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.

    f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

12. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt

under ORS 656.126. Employers Liability insurance with coverage limits of not less than $500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.

13. Agency shall keep accurate cost accounting records. Agency shall prepare and submit monthly itemized, progress reports and invoices for construction directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Travel expenses will not be reimbursed

14. Agency agrees that should any environmental or land-use issues arise at any time during the development or construction of the Project, State may, at its discretion and when exercised in good faith, suspend payments until it is satisfied that the issue has been resolved. However, Agency may use its own funds to continue the Project and shall be reimbursed by State as provided for in this Agreement once State is satisfied that the issue has been resolved.

15. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand. Maintenance responsibilities shall survive termination of this Agreement.

16. Agency shall submit to State any change orders that substantially change the plans and specifications or the submitted scope of work as approved by the OTC and as identified in this Agreement.

17. Agency shall provide to State permanent mylar "as constructed" plans for work on state highways.

18. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.

19. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The

State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

20. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Agency that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Agency shall retain and keep all files and records for a minimum of six (6) years after completion of the Project.

21. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

22. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.

23. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

24. Agency's Project Manager for this Project is Paul Bertagna – Director of Public Works, 520 E. Cascade Ave, Sisters, OR 97759, (541) 323-5212, pbertagna@ci.sisters.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.

2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

c. If Agency fails to provide payment of its share of the cost of the Project.

d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or

settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

8. Agency agrees to refund to State all Immediate Opportunity Funds paid to Agency in connection with this Project if this Agreement is terminated for any reason prior to completion of Project and receipt of job assessment documentation. Refund to State shall be within three (3) months from termination date.

9. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

11. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure

of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key #17618) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP). This Project was approved by the OTC at their March 19, 2015 meeting.

SIGNATURE PAGE FOLLOWS

CITY OF SISTERS, by and through its elected officials

By _____
Mayor

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

Agency Contact:
Paul Bertagna – Director of Public Works
520 E. Cascade Ave
Sisters, OR 97759
(541) 323-5212
pbertagna@ci.sisters.or.us

State Contact:
Darrell Newton - Local Agency Programs Coordinator
63055 N. Highway 97, Bldg M
Bend OR, 97701-5765
(541) 388-6272
darrell.r.newton@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By_____
Region 4 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Central Oregon Area Manager

Date _____

By _____
Region 4 Planning – Environmental Manager

Date _____

By_____
Region 4 Right of Way Manager

Date_____

APPROVED AS TO LEGAL SUFFICIENCY

By Approved by Bonnie Heitschvia email
Assistant Attorney General

Date 5/15/2015

EXHIBIT A – Project Location Map

City of Sister/ODOT
Agreemetn No. 30645

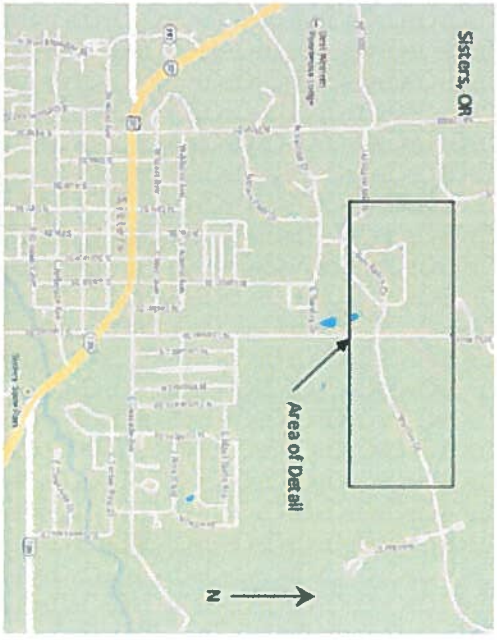
EXHIBIT A

City of Sisters, Oregon

Immediate Opportunity Fund Proposal

East Barclay Drive Improvements

Approximate Project Limits



AGENDA ITEM

SUMMARY

CITY OF SISTERS
SISTERS CITY COUNCIL

Meeting Date: June 25, 2015

Staff: Paul Bertagna

Type: Regular Meeting

Dept: PW

Subject: Public Improvement Acceptance – Adams Street Commons

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Action Requested:
Motion to accept public improvements for Adams Street Commons

---

Summary Points:

- As one of the final steps in the construction of public improvements, the City Council formally accepts the improvements.
- The Public Works Department goes through a detailed checklist to ensure the Developer has met the requirements of the land use approval process as well as the Public Works requirements.
- The public improvements are ready to be accepted by the City of Sisters for operation and maintenance and start the one year warranty period.

Financial Impact:
Accepting these improvements means the City will perpetually operate and maintain this infrastructure.

Attachment(s):
A. Final Acceptance Checklist

Concurrence: ____ CM ____ F&A PD CDD _____ PW

City of Sisters

Subdivision/Public Works Improvements
Final Acceptance Checklist

Subdivision Name: Adams Street Commons

Developer: Sam Blackwell

Contractor: Robinson & Owen Heavy Construction

Checked Item	Approved	N/A	Comments
1. Easements			
A) Accurate	Yes		checked in Final Plat Review
B) Special Items Installed	Yes		Public access/utility easements
C) Recorded	Yes		Final Plat Recordation
2. Public Works Requirements			
A) R.O.W. Dedications	Yes		Final Plat Recordation
B) Cost of Improvements			
1) Water	Yes		submitted 6/11/15
2) Sewer	Yes		"
3) Streets	Yes		"
4) Sidewalks/curbs	Yes		"
5) Pumpstations		N/A	
6) Others		N/A	
C) DEQ UIC Approval letter		N/A	No UIC's
D) Development Agreement		N/A	
E) Pre-Construction	12/11/14		
3. Water System			
A) Water Mains			
1) Correct Sizes	Yes		226' of 8" C900
2) Chlorinated	Yes		2/16/15 HD Fowler(HDF) 65 ppm
3) Flushed	Yes		2/17/15 HDF 65 ppm
4) Bacti Test Pass	Yes		2/18/15 HDF
5) Pressure Test Pass	Yes		2/19/15 HDF
B) Valves			
1) Nut Centered in Can	Yes		checked prior to paving

Checked Item	Approved	N/A	Comments
2) Open Position	Yes		field verified by PW's Dept.
3) Quantity/Size	OK		per plans
4) Locations	OK		per plans
C) Services			
1) Meter Locations	OK		10
2) Meter Sizes	OK		1"
3) Meter Boxes (Types)	OK		Carson 1320's
4) Meter Height	OK		
5) Tracer Wire	OK		
D) Fire Hydrants			
1) Pressure Rating	Ok		150 psi
2) Make/Model	OK		M & H
3) Hydrant Valve Open	Yes		field verified prior to paving
4) Correct Height	Yes		
5) Bollards	Yes		
6) Snow Flags	Yes		
E) Irrigation Systems			
1) Locations		N/A	
2) Water Service(s)		N/A	
3) Backflow(s)		N/A	
F) Hot Taps		N/A	
4. Sewer System			
A) Sewer Mains			
1) Correct Sizing	Yes		210' of 8" D3034
2) Cleaned and Flushed	Yes		R&O
3) Air Test/Passed	Yes		R&O
4) T.V. Test/Passed	Yes		City of Sisters
5) Mandrel/Passed	Yes		R & O
B) Manholes			
1) Quantity	OK		2- 48"
2) Locations	OK		Fir St. & Tall Fir Ct.
3) Grouted	Yes		
4) Cleaned	Yes		
5) Locate Wire(s)	Yes		
6) Vacumn Test/Passed	Yes		HDF 6/18/15
C) Laterals			
1) Correct Sizing	Yes		(10) 4" services
2) Cleaned and Flushed	Yes		R&O
3) Every lot is served	Yes		
4) Brooks Boxes	Yes		

Checked Item	Approved	N/A	Comments
5) Locate Wire(s)	Yes		
6) Locations	OK		per plan
7) T.V. Test	Yes		City of Sisters
D) Mainline Cleanouts			
1) Quantity		N/A	
2) Locations		N/A	
3) Concrete Poured		N/A	
4) Locate Wire		N/A	
5. Stormwater			
A) Drainage Swails			
1) Depth/Width	OK		Per Plan
2) Drain Material	OK		18" Topsoil verified
3) Cover Material			2-4" Drain rock
B) Detention Areas			
1) Capacity		N/A	
2) Geo-Fabric		N/A	
3) Areas Cleaned		N/A	
4) Access for Maint.		N/A	
C) Curb Inlets/Outlets			
1) Locations	OK		
2) Quantity	OK		(4) Fir St.
3) Clean of Debris	Yes		
D) Catch Basins			
1) Locations	OK		
2) Quantity/Size	OK		(1) Fir St.
3) Cleaned	Yes		
E) Drywells			
1) Locations		N/A	
2) Quantity		N/A	
3) Cleaned		N/A	
4) Grouted		N/A	
5) Tested		N/A	
6. Streets			
A) Sidewalks/Curbs			
1) Quantity	OK		435 Type II cur(1565 sf) Bonded
2) Alignment	OK		to be installed per plan
3) Joint Spacing	OK		"
4) Backfilled Edge	Yes		
5) Clean	Yes		
6) ADA Ramps	OK		
B) Asphalt			

Checked Item	Approved	N/A	Comments
1) Quantity	OK		3935 Square Feet
2) Laying Temps	"		
3) Infra-red Patches		N/A	
4) Edge Rock	OK		
5) Clean	OK		
C) Street Trees			
1) Quantity	OK		(13) Bonded
2) Locations	TBD		"
7. Final Walk-Thru			
A) Punchlist	Yes		06/10/2015
B) Punchlist Items fixed	Yes		06/18/2015
8. As-Builts			
A) Accuracy	OK		06/10/2015
B) Special Items Installed		N/A	
C) Re-submitted/Approved		N/A	
9. Letter of Completion	OK		06/10/2015
A. Bond Reduction	Yes		$19,328.40
B. 10% Warrant Bond Rec'd	Yes		$8,423.40
C. 1yr Warranty Begins	Pending		Council acceptance
10. Warranty Approval			
A. 11 month walkthru			May-16
B. 11 month T.V.			May-16
C. Warrany Items fixed			TBD
D. 10% Bond Released			TBD

CONDUIT LICENSE AGREEMENT

THIS CONDUIT LICENSE AGREEMENT (this "Agreement") is made and entered into as of the date last executed by a party below ("Effective Date"), by and between the city of Sisters, Oregon a municipality existing under the laws of the State of Oregon, with an address of 520 East Cascade Avenue, P. O. Box 39, Sisters, OR 97759 (hereinafter called "Licensor") and TDS Baja Broadband LLC d/b/a BendBroadband, a limited liability company organized and existing under the laws of Delaware, having its principle office at 525 Junction Road, Madison, Wisconsin 53717 (hereinafter called "Licensee" and together the "Parties").

RECITALS

A. Licensor has constructed and owns fiber optic communications plant in the city of Sisters, Oregon.

B. Licensor desires to grant to the Licensee, the right to use certain conduit within such Licensor's System.

C. Licensor hereby desires to set forth the terms and conditions for the Licensee to use certain conduit within the Licensor's System.

NOW THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.01 "Affiliate" shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person ("control," "controlled by" and "under common control with" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise).

1.02 "Conduit Order" shall mean the document that formally licenses Licensee conduit within the Licensor's System.

1.03 "Governmental Authority" shall mean any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and sewer authorities.

1.04 "Licensor's System" shall mean all licensed conduit granted by a Licensor to a Licensee from time to time pursuant to this Agreement may be referred to herein, individually and collectively, as the "Licensor Conduit".

1.05 "Person" shall mean any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company, Governmental Authority or other entity.

1.06 "Required Right(s)" shall mean those rights of Licensor which are contingent on other existing provisions or conditions.

ARTICLE 2
GRANT OF LICENSE

2.01 In the event that Licensee desires to obtain a license for access to conduit within the Licensor's system, then the Parties shall work together in good faith to complete a "Conduit Order" for such use of conduit. If and when such a Conduit Order is completed and executed by authorized representatives of the respective Parties, then the Conduit Order shall become an integral part of this Agreement and shall incorporate the terms and conditions set forth herein. In the event of any conflict or inconsistency between the provisions of a properly executed Conduit Order and the terms of this Agreement, then the conflicting or inconsistent terms under this Agreement shall prevail.

2.02 Licensor hereby grants to Licensee, a non-exclusive license to use, solely as permitted under this Agreement, the conduit described on the applicable Conduit Order(s) for the term specified in the Agreement. The license does not include any right of a Licensee to own, control, maintain, modify or physically handle the Licensor Conduit (as defined), physically access, encumber in any manner, or otherwise use the Licensor's System, except as expressly set forth herein.

2.03 Licensee acknowledges and agrees that Licensor's rights in all or a portion of the Licensor Conduit and/or access thereto may be subject to certain rights, licenses, deeds, leases, permits, authorizations, franchises, rights of way, easements and other consents, rights, authorizations and approvals (each a "Required Right"), and as such the rights granted to Licensee hereunder are subject to the terms, conditions and limitations of such Required Rights. In its use of and access to the Licensor Conduit, Licensee agrees to comply with the terms of all applicable Required Rights of which it is made aware or that are reasonably accessible to the public.

ARTICLE 3
TERM

3.01 The initial term for this Agreement shall be ten (10 years) and shall commence on the Effective Date. This Agreement shall automatically be extended for two (2) additional five (5) year terms unless the Licensee terminates it at the end of the current term by giving Licensor written notice of the intent to terminate at least ninety (90) days prior to the end of the then current term or renewal term.

3.02 Upon the expiration date or termination of each Conduit Order, all rights to the use of the respective Licensor Conduit shall revert to the respective Licensor without reimbursement to the Licensee of any license fees (if any) previously made with respect thereto, and from and after such time Licensee shall have no further rights with respect to such Licensor Conduit, unless such rights are provided herein to survive the License Term.

3.04 Licensee shall, at its sole expense, remove all of its cable and other property from the applicable Licensor Conduit within sixty (60) days following the expiration or termination of the applicable License Term. Licensee shall repair, or have repaired, any damage to the Licensor Conduit and the Licensor's System caused by Licensee or its agents or contractors during the License Term for such Licensor

Conduit, including without limitation resulting from Licensee's removal of such Licensee cable and other property from the Licensor Conduit.

ARTICLE 4
CONSIDERATION

4.01 Licensee will pre-pay Licensor a sum of Ten Thousand Dollars ($10,000.00) for the initial term and prepay a sum of Five Thousand Dollars ($5,000.00) upon any renewal term.

ARTICLE 5
ACCESS TO LICENSOR CONDUIT; FIBER INSTALLATION; MAINTENANCE

5.01 Subject to Section 5.02, Licensor shall provide Licensee with such access as is reasonably necessary to allow Licensee to construct, install, operate, repair, remove, maintain and upgrade its fiber optic cable and/or other related equipment in the Licensor Conduit as may be permitted under this Agreement, subject to the restrictions of any applicable Required Rights. All facility entrance, exit and route plans that specifically pertain to Licensor's conduit shall be included in Schedule 1 of the Conduit Order.

5.02 Licensee acknowledges Licensor's need to protect the integrity of Licensor's other conduits and facilities in the Licensor's System. Accordingly, Licensee represents, warrants and covenants that during the Term, Licensee will not, under any circumstance, directly or indirectly, physically access the Licensor Conduit through Licensor's manholes, handholes, facility space or any other location, except as permitted herein, without Licensor's prior consent, which shall not be unreasonably withheld, conditioned or delayed.

5.03 Licensee acknowledges and agrees that Licensor is not supplying nor is Licensor obligated to supply to Licensee any fiber, optronic or electronic equipment or related facilities, all of which are the sole responsibility of Licensee, nor is Licensor responsible for performing any work other than as specified in this Agreement.

5.04 Unless otherwise agreed by the Parties in the applicable Conduit Order(s), Licensor shall be free to perform all scheduled and unscheduled maintenance of and repairs with respect to its system including its Licensor Conduit. Notwithstanding the foregoing, each Party shall use commercially reasonable efforts to provide at least seven (7) days prior written notice to the other Party in the event that it intends to perform any scheduled maintenance affecting the Licensor Conduit, and as much notice as may be practicable under the circumstances in the event it intends to perform any emergency maintenance, that is reasonably likely to impact Licensor Conduit and/or the performance of the Licensee's fiber optic segments within the affected Licensor Conduit.

ARTICLE 6
USE OF LICENSOR SYSTEM

6.01 Licensee represents and warrants that it will use the Licensor Conduit and the licenses granted by Licensor hereunder in compliance with all applicable government codes, ordinances, laws, rules and regulations.

6.02 Licensee shall use the Licensor Conduit for lawful business purposes only. Licensee shall keep Licensor's System free from any liens, rights or claims of any third party attributable to Licensee.

6.03 Licensee shall not use the Licensor Conduit in a way which physically interferes in any way with or otherwise adversely affects the use of the fibers, cable or conduit of any other licensee within the Licensor Conduit, including Licensor.

6.04 Licensor shall promptly notify Licensee of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to or loss of the Licensor Conduit or Licensee's property therein.

6.05 The Parties agree to reasonably cooperate with and support each other in complying with any material requirements applicable to their respective rights and obligations hereunder by any Governmental Authority.

ARTICLE 7
INDEMNIFICATION

7.01 Licensor hereby agrees to indemnify, defend, protect and hold harmless Licensee and its Affiliates, and their respective shareholders, members, managers, employees, officers, directors, successors and assigns from and against, and assumes liability for any and all liabilities, claims (including those for personal injury and death), damages, costs and expenses, including reasonable attorney's fees with respect to any claims brought by any third Person arising out of or resulting from (i) the negligence or willful misconduct of or by Licensor in connection with the performance by Licensor of its obligations (or failure to perform such obligations) under this Agreement, or (ii) any material non-compliance of or by Licensor with applicable government codes, ordinances, laws, rules and regulations.

7.02 Licensee hereby agrees to indemnify, defend, protect and hold harmless Licensor and its Affiliates, and their respective shareholders, members, managers, employees, officers, directors, successors and assigns from and against, and assumes liability for any and all liabilities, claims (including those for personal injury and death), damages, costs and expenses, including reasonable attorney's fees with respect to any claims brought by any third Person arising out of or resulting from (i) the negligence or willful misconduct of or by Licensee in connection with the performance by Licensee of its obligations (or failure to perform such obligations) under this Agreement, or (ii) any material non-compliance of or by Licensee with applicable government codes, ordinances, laws, rules and regulations.

7.03 The Parties agree to promptly provide each other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying Party will be permitted to assume primary control of the defense with counsel of the indemnifying Party's choice, and the indemnified Party will cooperate fully in defense of the claim as requested by the indemnifying Party. The indemnifying Party may defend such claim with counsel of its own choosing; provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified Party, which consent shall not be unreasonably withheld or delayed.

7.04 The indemnification obligations contained in this Article 7 shall survive the expiration or termination of this Agreement.

ARTICLE 8
LIMITATION OF LIABILITY

8.01 NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT WITH RESPECT TO ARTICLE 7 (INDEMNIFICATION) ~~AND SECTION 14 (CONFIDENTIALITY),~~ NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RELATING TO THE LICENSOR CONDUIT, THE LICENSES GRANTED HEREUNDER OR OTHERWISE RELATING TO THIS AGREEMENT AND THE PARTIES' RIGHTS AND OBLIGATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, DAMAGES OR CLAIMS RELATING TO LOSS OF PROFITS OR REVENUE (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE) OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY CONSTRUCTION, RECONSTRUCTION, RELOCATION, REPAIR OR MAINTENANCE PERFORMED BY, OR FAILED TO BE PERFORMED BY, THE OTHER PARTY OR ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, ALL CLAIMS FOR WHICH DAMAGES ARE HEREBY SPECIFICALLY WAIVED.

ARTICLE 9
INSURANCE

9.01 During the term of this Agreement, Licensee shall obtain and maintain the following insurance: (i) Commercial General Liability including coverage for (a) premises/operations, (b) independent contractors, (c) products/completed operations, (d) personal and advertising injury, (e) contractual liability, and (f) explosion, collapse and underground hazards, with combined single limit of not less than $1,000,000.00 each occurrence or its equivalent; (ii) Worker's Compensation in amounts required by applicable law and Employer's Liability with a limit of at least $1,000,000.00 each accident; (iii) Automobile Liability including coverage for owned/leased, non-owned or hired automobiles with combined single limit of not less than $1,000,000.00 each accident.

9.02 During the Term of this Agreement, Licensee shall obtain and maintain "all risk" property insurance in an amount equal to the replacement cost of all electronic, optronic and other equipment utilized by Licensee in connection with the Licensor Conduit.

9.03 Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damage to their respective real or personal property at the Premises or the building of which the Premises are a part, and the parties each agree to waive the right of subrogation of their respective insurers and to have all fire or property insurance policies covering such property contain a provision or endorsement to that effect.

9.04 In the event any Licensee fails to maintain the required insurance coverage and a claim is made or suffered, such Licensee shall indemnify and hold harmless Licensor from any and all claims for which the required insurance would have provided coverage.

ARTICLE 10
FORCE MAJEURE

Neither Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; lack of or delay in transportation; war, act of terrorism or civil disorder; any other cause beyond the reasonable control of such Party (each a "Force Majeure Event"). The Party claiming relief under this Article 10 shall notify the other in writing of the existence of the event relied on and the cessation or termination of said event. If failure of performance by a Licensor hereunder due to Force Majeure Events continues beyond thirty (30) days then, thereafter upon ten (10) days written notice to Licensor, the Licensee may terminate any affected Conduit Order(s), without incurring any penalty or further obligation to the Licensor.

ARTICLE 11
DEFAULT

11.01 Neither Party shall be in default under this Agreement or in breach of any provisions thereof unless and until it has been given written notice of such default by the other Party and shall have failed to cure such default within thirty (30) calendar days after receipt of such notice. Where a default cannot reasonably be cured within thirty (30) calendar days, if the defaulting Party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall be extended for such period of time, not to exceed an additional thirty (30) days, as may be necessary to complete such cure. Upon the failure to cure any such default within the above time frames, the Party giving notice of the default may thereupon terminate this Agreement. The non-defaulting Party shall, in addition to any other remedies herein, have the right to pursue any or all remedies available at law and/or equity.

11.02 Upon the occurrence of an event of default on the part of either Party under this Agreement or any Conduit Order(s), the non-defaulting Party, shall have a right to (i) terminate this Agreement and/or any affected Conduit Orders; (ii) in the event of a unilateral breach, terminate the rights of the breaching Party under any Conduit Order(s), but retain rights to certain Licensor Conduit(s) under this Agreement by having paid the license fee described in Section 4.01; and/or (iii) pursue any legal remedies it may have under applicable law or principles of equity relating to such default. The pursuit of any of the foregoing remedies shall not be exclusive.

ARTICLE 12
ASSIGNMENT AND TRANSFER RESTRICTIONS

12.01 Neither Party may assign, or otherwise transfer this Agreement to any other Person without the prior written consent of the other Party, such consent to be given or withheld in such non-assigning Party's sole discretion; except that a Party may assign the Agreement upon prior written notice to (i) an Affiliate; or (ii) any entity that purchases all or substantially all of that portion of the assigning Party's stock, assets or business to which this Agreement relates. Any attempted or purported assignment or transfer in contravention of the foregoing is null and void.

12.02 This Agreement and each of the Parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES

13.01 Each Party represents and warrants that: (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and (iv) its execution of and performance under this Agreement shall not violate any Required Right or any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

13.02 EXCEPT AS SET FORTH IN THE FOREGOING SECTION 13.01, LICENSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSOR CONDUIT OR LICENSOR'S SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. ALL LICENSOR CONDUIT SHALL BE DELIVERED TO LICENSEE AS IS, WHERE IS AND WITH ALL FAULTS. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE LICENSOR CONDUIT WILL MEET LICENSEE'S OR ANY SUBSCRIBER'S REQUIREMENTS.

ARTICLE 14
INTENTIONALLY OMITTED

ARTICLE 15
NOTICES

All notices or other communications which are required or permitted herein (other than payment remittance) shall be in writing and sufficient if delivered personally, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

IF TO TDS:	TDS Baja Broadband LLC d/b/a BendBroadband 525 Junction Road Madison, WI 53717 Attention: Carrier Relations
With a copy to:	TDS Baja Broadband LLC d/b/a BendBroadband 525 Junction Road Madison, WI 53717 Attention: Legal Counsel

If to city of Sisters: City of Sisters
520 E. Cascade Avenue
Sisters, OR 97759
Attention: City Manager

or at such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

ARTICLE 16
MISCELLANEOUS

16.01 Governing Law. This Agreement shall be interpreted, construed and governed by the laws of the State of Oregon, without regard to conflict of law provisions.

16.02 Modification. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each Party.

16.03 Relationship of Parties. Each Party to this Agreement is an independent contractor and this Agreement does not, and shall not be construed to, create an employer-employee relationship, agency, joint venture, or partnership between the Parties. Neither Party shall have any authority to act for or to bind the other Party in any way, to warrant or execute agreements on behalf of the other Party, or to represent that it is in any way responsible for the acts, debts, liabilities, or omissions of the other Party.

16.04 Headings. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content.

16.05 Execution. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. This Agreement may be duly executed and delivered by a Party by execution and facsimile delivery of the signature page of a counterpart to the other party, provided that, if delivery is made by facsimile, the executing party shall promptly deliver a complete counterpart that it has executed to the other Party.

16.06 Entire Agreement. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, representations, statements, negotiations and undertakings written or oral. This Agreement and any of the provisions hereof may not be amended, altered or added to in any manner except by a document in writing and signed by an authorized representative of each Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

TDS BAJA BROADBAND LLC d/b/a BENDBROADBAND

By:_____

Name: Joel Dohmeier
Title: Director, Reg. Revenue, Strategy & Compliance

Date: _____

CITY OF SISTERS, OREGON

By:_____

Name: Andrew Gorayeb
Title: City of Sisters Manager

Date: _____

EXHIBIT A

SAMPLE CONDUIT ORDER

I. CONTACT INFORMATION			
City of Sisters, Oregon Address		**TDS Baja Broadband LLC d/b/a BendBroadband**	
City of Sisters, Oregon 525 E. Cascade Avenue Sisters, OR 97759		TDS Baja Broadband LLC d/b/a BendBroadband 525 Junction Road Madison, WI 53717	
CONTACT:	**PHONE:**	**CONTACT:**	**PHONE:**

II. DESCRIPTION OF ROUTE
DESCRIPTION OF CONDUIT (AND IDENTIFICATION OF LICENSOR):
EXPECTED DELIVERY DATE: **LICENSE FEE (if any)**

III. GRANT
This Conduit Order is entered into between the Parties as of _____, 20___ (the "Acceptance Date"), and is subject to all of the terms and conditions of the Conduit License Agreement dated _____, 2015 (the "Agreement"). Licensor hereby grants to Licensee a non-exclusive license to use the specific conduit described in Schedule 1 ("Map, Construction and Route Descriptions"), commencing upon the Acceptance Date and continuing until the expiration of the License Term, unless or until earlier terminated in accordance with the terms of the Agreement.

CITY OF SISTERS, OREGON

By: _____

Name: _____

Title: _____

Date: _____

TDS BAJA BROADBAND LLC d/b/a Bendbroadband

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 1 TO CONDUIT ORDER

MAP, CONSTRUCTION AND ROUTE DESCRIPTIONS

Map:

Construction of Facilities and Access Points Description:

Entrance, Exit and Route Description:

Other Information:

AGENDA ITEM SUMMARY

CITY OF SISTERS
SISTERS CITY COUNCIL

Meeting Date: June 25, 2015 **Staff:** Lynne Fujita-Conrads

Type: Regular Meeting **Dept:** Finance

Subject: 5310 Grant for Cascades East Transit Program

Action Requested: Discussion and Consideration of a Motion to Approve an Agreement with the Oregon Department of Transportation for the Cascade East Transit Program.

Summary:

The 5310 Grant program is administered for the City of Sisters by Central Oregon Intergovernmental Council and is used to fund the Cascades East Transit Program. The agreement will be effective July 1, 2015 through June 30, 2017. Matching funds for the City will be $6,600 over the next two fiscal years. Payment to COIC for CET program services will be $64,265, State reimbursement in grant funds will be $57,665.

Financial Impact:

$3,300 per year for the next two fiscal years. These funds have been included in the FY 2015/16 budget.

Attachment(s):
Attachment A – Agreement No. 30764

Concurrence: CM: _____ FIN: _____ PW: _____ CDD: _____

PUBLIC TRANSIT DIVISION
OREGON DEPARTMENT OF TRANSPORTATION

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, Public Transit Division, hereinafter referred to as "State," and **City of Sisters**, hereinafter referred to as "Recipient," and collectively referred to as the "Parties."

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **July 1, 2015** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before **June 30, 2017** (Expiration Date). No Grant Funds are available for any expenditures after the Expiration Date. State's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

   Exhibit A: Project Description and Budget
   Exhibit B: Financial Information
   Exhibit C: Subcontractor Insurance
   Exhibit D: Summary of Federal Requirements, incorporating by reference Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement
   Exhibit E: Information required by 2 CFR 200.331(a), may be accessed at http://www.oregon.gov/odot/pt/, Oregon Public Transit Information System (OPTIS), as the information becomes available

   In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit D; this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit E.

3. **Project Cost; Grant Funds; Match.** The total project cost is estimated at **$64,265.00**. In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed **$57,665.00** in Grant Funds for eligible costs described in Section 6 hereof. Recipient shall provide matching funds for all Project Costs as described in Exhibit A.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.d hereof.

5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at http://www.oregon.gov/odot/pt/. If Recipient is unable to access OPTIS, reports must be delivered to ODOTPTDReporting@odot.state.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. State reserves the right to request such additional information as may be necessary to comply with federal or state reporting requirements.

6. **Disbursement and Recovery of Grant Funds.**

   a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or sent to ODOTPTDReporting@odot.state.or.us. Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a result of financial review or audit.

   b. **Conditions Precedent to Disbursement.** State's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

      i. State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.

      ii. Recipient is in compliance with the terms of this Agreement including, without limitation, Exhibit D and the requirements incorporated by reference in Exhibit D.

      iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

      iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.

   c. **Recovery of Grant Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to State. Recipient shall return all Misexpended Funds to State promptly after State's written demand and no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 14 days after the earlier of expiration or termination of this Agreement.

7. **Representations and Warranties of Recipient.** Recipient represents and warrants to State as follows:

   a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

   b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other

similar laws affecting the enforcement of creditors' rights generally.

c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from this federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded from this federally-assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **Records Maintenance and Access; Audit.**

a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.

b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.

c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by State under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit State to verify how the Grant Funds were expended.

d. **Audit Requirements.**

i. Recipients receiving federal funds in excess of $750,000 are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at Recipient's own expense submit to State, Public Transit Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDReporting@odot.state.or.us, a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted, the annual

audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.

ii. Recipient shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

9. **Recipient Subagreements and Procurements**

a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.

i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.

ii. Recipient agrees to provide State with a copy of any signed subagreement upon request by State. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Recipient to State within ten (10) days of its being discovered.

Recipient shall review the *Best Practices Procurement Manual*, a technical assistance manual prepared by the FTA, available on the FTA website: www.fta.dot.gov/grants/13054_6037.html

b. **Subagreement indemnity; insurance.**

Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subrecipients"), nor any attorney engaged by Recipient's Subrecipient(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's Subrecipient is prohibited from defending State or that Recipient's Subrecipient is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Recipient's Subrecipient if State elects to assume its own defense.

Recipient may require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

Any insurance obtained by the other party to Recipient's subagreements, if any, shall not relieve Recipient of the requirements of Section 11.j of this Agreement. The other party to any subagreement with Recipient, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit C.

c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, and in conformance to FTA Circular 4220.1F, Third Party Contracting Requirements including:

i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;

ii. all procurement transactions are conducted in a manner providing full and open competition;

iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements);

iv. construction, architectural and engineering procurements are based on Brooks Act procedures unless the procurement is subject to ORS 279C.100 to 279C. 125.

10. **Termination**

a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:

i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or

ii. State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or

iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or

iv. The Project would not produce results commensurate with the further expenditure of funds; or

v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the approval of State.

b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be established by Recipient in such written notice, if:

i. The requisite local funding to continue the Project becomes unavailable to Recipient; or

ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. **General Provisions**

a. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which State is jointly liable with Recipient (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

With respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

c. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with State, shall assume sole liability for that Recipient's breach of the conditions of this Agreement, and shall, upon Recipient's breach of conditions that requires State to return funds to the FTA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of

duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

f. **No Third Party Beneficiaries.** State and Recipient 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, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Recipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Recipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.g. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.

i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit D. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

j. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than $500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with

these requirements.

k. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

n. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Parties, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on October 20, 2010, approved Delegation Order Number OTC-01, which authorizes the Director of the Oregon Department of Transportation to administer programs related to public transit.

On March 1, 2012, the Director approved Delegation Order Number DIR-04, which delegates the authority to approve this Agreement to the Public Transit Division Administrator.

SIGNATURE PAGE TO FOLLOW

City of Sisters, by and through its

_____

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required in local process)

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:
Andrew Gorayeb
PO Box 39
Sisters, OR 97759
1 (541) 323-5205
agorayeb@ci.sisters.or.us

State Contact:
Joni Bramlett
555 13th Street NE
Salem, OR 97301-4179
1 (541) 388-6185
Joni.D.BRAMLETT@odot.state.or.us

State of Oregon, by and through its
Department of Transportation

By _____
H. A. (Hal) Gard
Rail and Public Transit Division Administrator

Date _____

APPROVAL RECOMMENDED

By Joni Bramlett

Date 6/3/2015

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(For funding over $150,000)

By _____
Assistant Attorney General

Name N/A
(printed)

Date _____

EXHIBIT A

Project Description and Budget

Project Description/Statement of Work

Project Title: 2015-17 Sisters, City of 30764 E&D 5310 Program *Purchase Service*				
Item #1: Contracted Service (5310 only)				
	Total	Grant Amount	Local Match	Match Type(s)
	$64,265.00	$57,665.00	$6,600.00	Local
Sub Total	$64,265.00	$57,665.00	$6,600.00	
Grand Total	**$64,265.00**	**$57,665.00**	**$6,600.00**	

- *1. PROJECT DESCRIPTION*

Provides funding to purchase service to provide public transportation to seniors and individuals with disabilities, and the general public, in the Sisters area. The local service is demand-response, open Tuesday only from 9:30 am to 2:00 pm, and passengers are picked up at their origin and dropped off at their destination. Local service is within the Sisters UGB as well as a broad area outside the City. Passengers may transfer to the Community Connector shuttles to Redmond (and from there to Bend, La Pine, Madras, or Prineville). The shuttle operates Monday through Friday with 3 round-trips to Redmond. This project also supports the administrative costs required to manage the service contract.

2. PROJECT DELIVERABLES, TASKS and PERFORMANCE MEASURES

The purchased service will be provided by a contractor or pass-through sub-recipient selected by Recipient, and will be designed to benefit seniors and individuals with disabilities, and may also be made available to the general public.

The service, schedule, days, hours, and service type (demand responsive, fixed route or other) will be designed to meet the needs of seniors and individuals with disabilities as determined by Recipient in consultation with the operator of service, the affected community members, and stakeholders identified by Recipient.

Services will be provided in accordance with the locally adopted Human Services and Transportation Coordinated Plan. Recipient and contractor or pass-through sub-recipient will coordinate the delivery of transportation services with other public and private transportation providers to enhance regional services and to avoid duplication of services. Coordinated service may be made available to a variety of potential users, including the general public.

Recipient may amend the service design at any time in accordance with local demand, funding issues, changes in the Coordinated Plan, or any other situation that requires service to be changed.

Recipient will actively market the services to the target users.

Recipient will oversee and monitor the services and performance of the contractor or pass-through sub-recipient.

The following performance measure will be used to evaluate the effectiveness of the project:

Ridership: The actual or estimated one-way passenger trips provided to seniors and individuals with disabilities. A passenger trip is a unit of service counted each time a passenger enters the vehicle, is transported, then exits the vehicle. Each unique destination constitutes a passenger trip.

A ridership goal is established for this project as follows.

For 2015-17: Unduplicated individuals 50

For 2015-17: One-way rides is 7,579

3. PROJECT ACCOUNTING, MATCH and SPENDING PLAN

This Agreement covers transit operations, which are defined under the 49 USC § 5310 program, as described in Circular 9070.1F, Section III-9-c. Generally accepted accounting principles and the Recipient's accounting system determine those costs that are to be accounted for as operating costs. Recipient may not count the same costs twice if they have multiple agreements for which these costs may be eligible. The service provider may use capital equipment funded under USDOT- or State-source agreements when performing services rendered through a contract or sub-agreement funded by this Agreement. Depreciation of capital equipment funded from USDOT- or State-source grants is not an eligible expense.

Recipient's current indirect cost rate as it pertains to this Agreement is 0.0 percent. Changes to Recipient's indirect cost rate must be approved by State.

Sources of funding that may be used as match for this Agreement include Special Transportation Formula Funds, other local funds, service contract revenue, advertisement income, other earned income, cash donations, and other verifiable in-kind contributions that are integral to the project budget. Recipient may not use passenger fares as match.

Recipient will subtract income from fares, tickets, and passes whether pre-paid or post-paid, from the gross operating expenses of the service. All administrative and operating expenses incurred by the contractor or pass-through sub-recipient are reimbursable as operating expenses. The required local match share will be subtracted from the project expenses to determine the Agreement share of the project expense.

Recipients may not use assets acquired under this Agreement to compete unfairly with the private sector.

EXHIBIT B

FINANCIAL INFORMATION

The information below will assist auditors to prepare a report in compliance with the requirements of 2 CFR part 200, subpart F.

This Agreement is financed by the funding source indicated below:

Federal Program	**Federal Funding Agency**	**Federal Catalog**	**Total Federal Funding**
49 U.S.C. 5310	U.S. Department of Transportation Federal Transit Administration 915 Second Avenue, Suite 3142 Seattle, WA 98174	**20.513 (5310)**	**$57,665.00**

Administered By
Public Transit Division 555 13th Street NE Salem, OR 97301-4179

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than $500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include State, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made"

coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and State may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

EXHIBIT D

Summary of Federal Requirements and Incorporating by Reference Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement ("Master Agreement")

Recipient and Recipient's subrecipient(s), contractor(s), or subcontractor(s), at any tier, if any, must comply with all applicable federal requirements contained in the Certifications and Assurances available at http://www.fta.dot.gov/grants/12825_93.html. The Certifications and Assurances, including as they may be changed during the term of this Agreement, are by this reference incorporated herein.

Recipient must submit to State on or before July 1 of each year during the term of this Agreement an executed copy of the Certifications and Assurances by either (1) printing the form available at http://www.fta.dot.gov/grants/12825_93.html, completing the form and sending it to State or (2) logging in to FTA's TEAMWeb system, at https://ftateamweb.fta.dot.gov/teamweb/teamLogin.asp? and completing the form and sending to State a screen print of the submitted page.

Recipient further agrees to comply with all applicable requirements included in the Master Agreement that is signed and attested to by State. This Master Agreement is incorporated by reference and made part of this Agreement. Said Master Agreement is available upon request from State by calling (503) 986-3300, or at http://www.fta.dot.gov/documents/21-Master.pdf. Without limiting the foregoing, the following is a summary of some requirements applicable to transactions covered by this Agreement and the funds described in Exhibit A:

1. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (78 State 252, 42 U.S.C. § 2000d) and the regulations of the United States Department of Transportation (49 CFR 21, Subtitle A). Recipient shall exclude no person on the grounds of race, religion, color, sex, age, national origin, or disability from the benefits of aid received under this Agreement. Recipient will report to State on at least an annual basis the following information: any active lawsuits or complaints, including dates, summary of allegation, status of lawsuit or complaint including whether the Parties entered into a consent decree.
2. Recipient shall comply with FTA regulations in Title 49 CFR 27 Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance which implements the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 49 CFR 37, and 49 CFR 38.
3. Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Recipient's DBE program, if applicable, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to State of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
4. Recipient must include the following language in each subagreement Recipient signs with a subcontractor or subrecipient:

   The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor, subrecipient, or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor, subrecipient, or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Recipient deems appropriate.

5. Recipient and contractors receiving in excess of $100,000 in federal funds, other than Indian tribes, must certify to State that they have not and will not use federal funds to pay for influencing or attempting to influence an officer or employee of any federal department or Agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement or any other federal award. If non-federal funds have been used to support lobbying activities in connection with the Project, Recipient shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.

RECEIVED
JUN 02 2015
CITY OF SISTERS

In-City

CITY OF SISTERS

PLANNING COMMISSION APPLICATION

1. Name: Terwalt Daryl R
   (Last) (First) (Middle) (I go by...)
   Address: 447 Jefferson/Po Box 171 Sisters OR 97759
   Street, P. O. Box City State Zip Code
2. Telephone No.: 541 419 5172 E-mail Address: _____
3. Occupation: Construction Work Phone: 541 419 5172
4. Do you reside within the city limits of Sisters? ✓ Yes _____ No
5. Statement indicating reason you would like to serve on the Sisters Planning Commission:
   I have been serving for almost 10 yrs and would like to continue
6. Special skills, interests, hobbies that you believe would bring special value to your ability to serve on this committee:
   _____
7. Other volunteer, committee, board, commission experience:

   From _____(Mo/Yr) Organization _____
   To _____(Mo/Yr) Address _____
   Type of Organization _____ Telephone No. _____
   Role: _____

   If you are still serving in this capacity, do you foresee any conflicts between this committee and the position you currently hold? ___Yes ✓ No

   From _____(Mo/Yr) Organization _____
   To _____(Mo/Yr) Address _____
   Type of Organization _____ Telephone No. _____
   Role _____

   If you are still serving in this capacity do you foresee any conflicts between this committee and the position you currently hold ___ Yes ___ No

CITY OF SISTERS

From: _____(Mo/Yr) Organization _____
To: _____(Mo/Yr) Address _____
Type of organization _____
Role: _____

If you are still serving in this capacity, do you foresee an conflicts between this committee and the position you currently hold? ___Yes ___No

8. How did you hear about this position? _____

9. Would you be interested in serving on advisory committee in the future? Yes

References: _____ _____

_____ _____

My signature affirms that the information in this application is true to the best of my knowledge. I understand that misrepresentation and/or omission of facts are cause for removal from any advisory committee, board or commission I may be appointed to. All information/documentation related to service on this committee is subject to public record disclosure.

Date: 5/24/15 Signature: _____

Please return this application to the City of Sisters, 520 E Cascade Avenue, P. O. Box 39, Sisters, Oregon 97759. For more information, please call the Community Development Department, (541) 549-6022

Out of City

RECEIVED

JUN 05 2015

CITY OF SISTERS

ADVISORY COMMITTEE APPLICATION

CITY OF SISTERS

1. Committee Applying For: PLANNING COMMISSION
2. Name: CLEM (Last) TIMOTHY (First) LANE (Middle) TIM (I go by ...)
   Address: 14844 BLUEGRASS LOOP (Street, P. O. Box) SISTERS (City) OR (State) 97759 (Zip Code)
3. Telephone No.: 541-241-0054 E-mail Address: TIMOTHYLCLEM@LIVE.COM
4. Occupation: ARCHITECT Work Phone: 541-383-9897
5. Do you reside within the city limits of Sisters? Yes _____ No X
6. Statement indicating reason you would like to serve on this voluntary Advisory Committee:
   MY FAMILY IS NEW TO THE AREA. SERVING ON A LOCAL COMMITTEE WILL CONNECT ME TO MY COMMUNITY. AS AN ARCHITECT, THE PLANNING COMMISSION SEEMS MOST APPROPRIATE FOR MY TRAINING AND SOUNDS THE MOST INTERESTING.
7. Special skills, interests, hobbies that you believe would bring special value to your ability to serve on this committee:
   LICENSED ARCHITECT PAST 16 YEARS
8. Other volunteer, committee, board, commission experience:

From 5/15 (Mo/Yr) Organization SISTERS CITY PARKS ADVISORY BOARD
To 8/15 (Mo/Yr) Address _____
Type of Organization _____ Telephone No. _____
Role: MEMBER
If you are still serving in this capacity, do you foresee any conflicts between this committee and the position you currently hold? ___ Yes X No

ADVISORY COMMITTEE APPLICATION

CITY OF SISTERS

From 4/08 (Mo/Yr) Organization ASSOCIACION EMI PARA AMERICA LATINA
To 1/14 (Mo/Yr) Address 130 E. KIOWA ST, SUITE 200, COLORADO SPRINGS
Type of Organization NON-PROFIT Telephone No. 719-633-2078 80903
Role: VICE PRESIDENT
If you are still serving in this capacity, do you foresee any conflicts between this committee and the position you currently hold? ___Yes ___No

From _____(Mo/Yr) Organization _____
To _____(Mo/Yr) Address _____
Type of Organization _____ Telephone No. _____
Role: _____
If you are still serving in this capacity, do you foresee any conflicts between this committee and the position you currently hold? ___Yes ___No

9. How did you hear about this position? PATRICK DAVENPORT

10. Would you be interested in serving on advisory committee in the future? YES

References: HERB GIFFIN 503-223-0992
KEVIN CAMPBELL-WHITE 541-460-3024

My signature affirms that the information in this application is true to the best of my knowledge. I understand that misrepresentation and/or omission of facts are cause for removal from any advisory committee, board or commission I may be appointed to. All information/documentation related to service on this committee is subject to public record disclosure.

Date: 3 JUNE 2015 Signature: [signature]

Please return this application to the City of Sisters, 520 E. Cascade Avenue, P. O. Box 39, Sisters, OR. 97759. For more information, please call the City Manager's office, (541) 549-6022 Ext. 1

Out of City

RECEIVED
JUN 18 2015
CITY OF SISTERS

CITY OF SISTERS

PLANNING COMMISSION APPLICATION

1. Name: Duey (Last) Trevin (First) Lee (Middle) (I go by ...)
   Address: 17441 Kent Rd (Street, P. O. Box) Sisters (City) OR (State) 97759 (Zip Code)
2. Telephone No. (541)815-0404 E-mail Address: trevin@dueybrothers.com
3. Occupation: Contractor Work Phone: Same
4. Do you reside within the city limits of Sisters? _____ Yes X No
5. Statement indicating reason you would like to serve on the Sisters Planning Commission:
   See Attached
6. Special skills, interests, hobbies that you believe would bring special value to your ability to serve on this committee:
   See Attached
7. Other volunteer, committee, board, commission experience:

   From _____(Mo/Yr) Organization _____
   To _____(Mo/Yr) Address _____
   Type of Organization _____ Telephone No. _____
   Role: _____

   If you are still serving in this capacity, do you foresee any conflicts between this committee and the position you currently hold? ___Yes ___No

   From _____(Mo/Yr) Organization _____
   To _____(Mo/Yr) Address _____
   Type of Organization _____ Telephone No. _____
   Role _____

   If you are still serving in this capacity do you foresee any conflicts between this committee and the position you currently hold ___ Yes X No

CITY OF SISTERS

From: _____(Mo/Yr) Organization _____
To: _____(Mo/Yr) Address _____
Type of organization _____
Role: _____

If you are still serving in this capacity, do you foresee an conflicts between this committee and the position you currently hold? ___Yes X No

8. How did you hear about this position? Announcement in The Nugget
9. Would you be interested in serving on advisory committee in the future? Yes

References: Jeff Seymour (541)647-8639 | Eric Huffman (503) 789-9773
Paul Bertagna Tyler Hoyt (541)549-8141

My signature affirms that the information in this application is true to the best of my knowledge. I understand that misrepresentation and/or omission of facts are cause for removal from any advisory committee, board or commission I may be appointed to. All information/documentation related to service on this committee is subject to public record disclosure.

Date: 6/17/15 Signature: Jaren Duey

Please return this application to the City of Sisters, 520 E Cascade Avenue, P. O. Box 39, Sisters, Oregon 97759. For more information, please call the Community Development Department, (541) 549-6022

June 18, 2015

Qualifications Summary-Sisters Planning Commission

To whom it may concern:

My name is Trevin Lee Duey and I am interested in serving as a volunteer on the Sisters Planning Commission. I have lived on Kent Road in the Cloverdale area for over 16 years and consider Sisters my home. I have two children attending Sisters Elementary School. My wife works as a hairstylist within Sisters. Additionally, I have been the owner of ,Sisters based, Duey Brothers Custom Homes and Remodeling for over 15 years. My company focuses on building custom residential projects for clients.

I am interested in serving as a volunteer on the planning commission because it is a way for me to give back to the community that I consider home. I am also interested in being a part of the decision making process that drives our future. My experience as a builder and connection with the culture of Sisters, Oregon will be and asset to the planning commission. I have been a volunteer coach for both Sisters little league and SPRD youth soccer for the last 7 years. I have also completed several custom home projects within the city of Bend which have required planning commission approval. So, I am familiar with the process by which these decisions are made.

Thank you in advance for your consideration of me for the vacant seat on the Sisters Planning Commission. If you would like any further information about my qualifications or experience, please don't hesitate to contact me.

Best Regards,

Trevin Duey

541.815.0404

www.dueybrothers.com

Out of City

RECEIVED
JUN 19 2015
CITY OF SISTERS

CITY OF SISTERS

PLANNING COMMISSION APPLICATION

1. Name: Detweiler (Last) John (First) Roger (Middle) Roger (I go by ...)
   Address: 17539 Paladin Dr. (Street, P. O. Box) Bend (City) Oregon (State) 97703 (Zip Code)
2. Telephone No.: 541-617-5336 E-mail Address: erdtwlr@earthlink.net
3. Occupation: Retired Work Phone: _____
4. Do you reside within the city limits of Sisters? _____ Yes ✓ No
5. Statement indicating reason you would like to serve on the Sisters Planning Commission:

   An interest in urban planning, a desire for community involvement in Sisters, and the opportunity to have some say in the future of Sisters development.
6. Special skills, interests, hobbies that you believe would bring special value to your ability to serve on this committee:

   Experience with addressing zoning issues and ~~experience in~~ involvement with various aspects of community development.
7. Other volunteer, committee, board, commission experience:

From 5/2010 (Mo/Yr) Organization Sisters School District Budget Committee
To 11/2013 (Mo/Yr) Address 525 E. Cascade Ave., Sisters OR 97759
Type of Organization K-12 Education Telephone No. 541-549-8521
Role: Served as member and vice chair of school district budget committee

If you are still serving in this capacity, do you foresee any conflicts between this committee and the position you currently hold? ___ Yes ✓ No

From 1/12 (Mo/Yr) Organization Hispanic Coalition of Sisters
To 1/14 (Mo/Yr) Address 1750 McKinney Butte Rd. Sisters, OR 97759
Type of Organization Minority Assistance Telephone No. 541/549-2091
Role Served as board member and board chair

If you are still serving in this capacity do you foresee any conflicts between this committee and the position you currently hold ___ Yes ✓ No

CITY OF SISTERS

From: 5/14 (Mo/Yr) Organization Sisters Park and Recreation District Budget Committee
To: present (Mo/Yr) Address 1750 McKinney Butte Rd., Sisters OR 97759
Type of organization Community recreation
Role: Chair, Committee providing annual budget review & approval

If you are still serving in this capacity, do you foresee an conflicts between this committee and the position you currently hold? ___Yes ✓No

8. How did you hear about this position? Announcement in the Nugget Newspaper
9. Would you be interested in serving on advisory committee in the future? Yes

References: Bob Norin 541-504-4183 Melissa Ward 541-549-0361

My signature affirms that the information in this application is true to the best of my knowledge. I understand that misrepresentation and/or omission of facts are cause for removal from any advisory committee, board or commission I may be appointed to. All information/documentation related to service on this committee is subject to public record disclosure.

Date: 6/19/15 Signature: [signature]

Please return this application to the City of Sisters, 520 E Cascade Avenue, P. O. Box 39, Sisters, Oregon 97759. For more information, please call the Community Development Department, (541) 549-6022

J. ROGER DETWEILER

17539 Paladin Dr.
Bend, OR 97701

541/617-5336
rdtwlr@earthlink.net

Experience

American Association of Neuroscience Nurses — Chicago

National nonprofit specialty nurses organization, founded by neurosurgical nurses to enhance the growth and improve the neuroscience nursing profession by offering comprehensive educational offerings and professional certification. (10 years)

Executive Director
First full-time chief executive, reporting to board of directors. Responsible for all aspects of governance, personnel and office management, member services, marketing, publications, budget, finance, and conference and exhibition event planning. Also Executive Director for the American Board of Neuroscience Nursing (certification board) and the Neuroscience Nursing Foundation.

- Developed and implemented marketing plan, more than tripling membership and doubling the number of chapters.
- Doubled annual revenues by increasing non-dues income to 77%.
- Increased education program attendance 40% by adding a second annual scientific conference and exhibition.
- Realized annual revenue surplus 10 consecutive years, accumulating a reserve of $1.3 million.
- Produced quality programs and services with a highly motivated staff half the size at comparable organizations.
- Improved quality while reducing costs by bringing journal, newsletter, text and promotional material development, production and ad sales in-house.
- Negotiated hotel, transportation and vendor convention contracts resulting in up to 43% reduction in cost to attendees.
- Facilitated improved policy-making through board and committee restructuring and implemented orientation, strategic planning, and chapter leadership programs.
- Restructured certification program and facilitated creation of a foundation.

State Bar of Nevada — Reno

Statewide bar association created by the Nevada Legislature and administered independently in accordance with rules of the Nevada Supreme Court, responsible for attorney licensing and discipline, improving the profession and assisting with access by the public to legal services. (5 years)

Executive Director
First management professional serving full-time as chief executive, reporting to board of directors. Responsible for administering bar examinations and attorney discipline program, staff and office, governance, budget, finance, continuing legal education, and legal service consumer programs.

Administered fee dispute resolution, client's security and medical malpractice panels and lobbied for bar sponsored programs in the Nevada Legislature.

- Expanded services and accessibility by staffing and equipping offices in Reno and Las Vegas.
- Held down costs and met increased demand for services while membership doubled.
- Brought legitimacy to attorney discipline by implementing a restructured disciplinary system.
- Simplified administrative procedures, streamlining bar examination process.
- Facilitated creation and instituted mandatory continuing legal education program to improve quality of legal representation.
- Enhanced communication to members by reformatting journal and newsletter.
- Improved public access to attorneys and the judicial system by instituting a self-sustaining statewide lawyer referral service program.

Construction Education Foundation of Georgia **Atlanta**

Statewide nonprofit construction industry consortium implementing a craft-training program in Georgia's secondary and postsecondary schools and providing management and safety adult education. (3 years)

Executive/Education Director

Responsible for education program development and implementation for industry professionals and for establishing an industry produced construction skills curriculum in high schools and technical institutes. Duties included board and committee administration, office and budget management, fundraising, marketing including creation of promotional materials, and development of collaborative relationships between industry and education.

- Coordinated annual fundraisers netting over $250,000 per event.
- Facilitated negotiations resulting in largest state contractor association becoming a partner and endorsements by heads of Georgia education and labor departments.
- Completed industry self-assessment and acquired accreditation; tripled the number of certified instructors by conducting high school and technical institute certification program and teacher in-service training.

Central Oregon Strategic Training & Education Partnership (COSTEP) **Bend**

Regional nonprofit partnership of education, business, and government to enhance the delivery of education to at-risk and K-12 youth utilizing high technology and distance learning to foster workforce improvement and economic development. (2 years)

Executive Director

First chief executive, reporting to board of directors. Responsible for program development and implementation, fundraising and grant management, facilitating regional collaborative relationships and projects, marketing, public relations, governance, budget, and finance.

- Finalized agreements with school districts in 5000 square-mile region to join COSTEP initiatives.
- Developed board fundraising training and secured operations funding from local foundations, business, government, and education sources.
- Collaborated with Internet provider to acquire funding and to establish regional data level network connecting entire regional education community.
- In collaboration with community college, served as project director to develop and conduct regional telecommunication conferences.

Education

B.A., Political Science-History Minor, The College of Idaho, Caldwell

J.D., The George Washington University School of Law, Washington, D.C

M.N.A. with Distinction, (Master of Nonprofit Administration), School of Business and Nonprofit Management, North Park University, Chicago

Certificate in Business Administration for Nonprofit Managers, DePaul University College of Commerce, Chicago

Graduate Certificates in:

- Nonprofit Management
- Nonprofit Governance
- Nonprofit Finance
- Fundraising Management

School of Business and Nonprofit Management, North Park University, Chicago

Professional Affiliations

- Commonwealth of Virginia and District of Columbia Bar Associations
- American Bar Association
- American Society of Association Executives
- Association of Fundraising Professionals, Chicago Chapter
- Meeting Professionals International
- American Society for Training and Development

PERSONAL SERVICES CONTRACT

THIS CONTRACT made and entered into this 1st day of July, 2015, by and between the **CITY of SISTERS**, a municipal corporation of the state of Oregon, hereinafter referred to as "City", and **BRYANT EMERSON, LLP**, operating as an Independent Contractor, hereinafter referred to as "Attorney".

WITNESSETH:

WHEREAS, the City desires to retain Bryant Emerson, LLP to perform the duties and professional services required as legal counsel to the City; and

WHEREAS, it is the purpose of this Agreement to establish the terms and conditions of employment of Bryant Emerson, LLP under this Agreement to act as attorneys for and to fulfill the duties of legal counsel to the City;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES DO AGREE AS FOLLOWS:

1. **Legal Counsel:** The firm of Bryant Emerson, LLP are appointed as and agree to act as Legal Counsel to City.

2. **Effective Date and Duration:** This Contract commences July 1, 2015 and continues thereafter until June 30, 2018, at which point it may be extended for one two-year extension.

3. **Scope of Services:** Attorney agrees to provide the following legal services to the City:

   3.1 Review Council agenda and meeting documents and attend all regularly scheduled meetings of the City Council and other meetings as requested or when necessary (these may include land use public hearings, neighborhood meetings, land purchase/sale meetings, etc.).

   3.2 Provide appropriate oral or written legal advice and opinions as required or requested by the City Council, City Manager, or Department Directors.

   3.3 Review minutes, findings and decisions documents, motions, resolutions, ordinances, contracts, leases, and other legally binding agreements, for conformity with existing laws, statutes, administrative rules and regulations.

   3.4 Provide such assistance and legal advice as may be required by the City Council, City Manager, and other designated individuals for the administration of the City.

3.5 Represent the City in litigation where appropriate and assist and cooperate with special counsel as necessary. Attorney shall assist in identifying those areas where special counsel may be required and to assist the City in the selection of special counsel.

3.6 Advise and assist the City in matters involving Municipal corporation law, local budget law, elections, and state laws governing public leasing, purchasing and contracting.

3.7 Maintain all of its records relating to this Contract not otherwise maintained by the City, in accordance with the requirements of state law. Attorney shall allow the City or its authorized representative to inspect and review all records to this Contract whenever so requested by the City. Attorney shall retain and keep accessible all such records for a minimum of three (3) years.

3.8 Comply with all federal, state and local laws and ordinances applicable to public contracts and the work to be performed under this Contract.

3.9 Each person signing this Contract represents and warrants that they are authorized and have legal capacity to execute this Contract. Each party represents and warrants to the other that the execution and delivery of the Contract and the performance of such party's obligations have been authorized and that the Contract is valid and legal agreement binding on such party and enforceable in accordance with its terms.

3.10 Attorney shall coordinate services, progress reports and this Contract through the following authorized City employee:

Name:	Andrew Gorayeb, City Manager
Contact Phone Number:	(541) 323-5205

4. Restrictions:

4.1 Attorney shall make prompt payments as due to all persons supplying labor or materials for the work provided under this Contract. City shall make prompt payments as due to Attorney.

4.2 During the course of this Contract Attorney may have access to confidential information of City and may participate in confidential discussions with City. Attorney shall not disclose confidential City information to any third party during the term of this Contract or after its termination except as required by a court of competent jurisdiction or with the consent of City.

5. Fee for Services:

5.2 City shall pay Attorney for legal services to be billed at an hourly rate as follows:

a.	Regular City Council meetings (There would be no charge for travel time for these meetings).	$120.00 per hour
b.	All other legal services.	$140.00 per hour
c.	All other travel time.	$120.00 per hour

d. There will be no charge for paralegal or legal assistant time.

5.2 All billing shall be in 1/10 hour increments. Billing for hourly services and expenses will be monthly and will be identified by the specific matter and/or department. The billing will include the following:

A. Date
B. Hours
C. Topic or area of service
D. Description of service
E. Charge

5.3 In the event that a dispute arises regarding Attorney's billing, City shall pay any amounts it agrees it owes and shall withhold payment of disputed amounts pending resolution of those disputes. Attorney shall provide any necessary documentation to support its billing to City.

6. **Insurance:** Attorney shall obtain the insurance specified in this Section prior to performing under this Contract and shall maintain it in full force and at Attorney's own expense throughout the duration of this Contract. Attorney shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the City.

6.1 Workers Compensation. All employers, including Attorney, that employ subject workers who work under this Contract in State shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless the employers are exempt under ORS 656.126(2). Attorney shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

6.2 Professional Liability. Professional Liability Insurance with a combined single limit, or the equivalent, of not less than $1,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

6.3 Certificate(s) of Insurance. The Attorney shall provide to the City Certificate(s) of

Insurance for all required insurance before performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). The Attorney shall pay for all deductibles, self-insured retention and self-insurance, if any.

7. **Workers Compensation:** Attorney, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are either subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage to employees and obtain Employer's Liability Insurance coverage limits of not less than $500,000 for each accident or are employers that are exempt under ORS 656.126. Out-of-State employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage.

8. **Independent Contractor:** Attorney, for the purpose of this Contract, shall be considered an independent contractor. As an independent contractor, Attorney agrees as follows:

8.1 Attorney will be solely responsible for payment of Federal or State taxes required as a result of this Contract;

8.2 Attorney is not entitled to any benefits generally granted to city employees;

8.3 Attorney is solely liable for any Workers Compensation coverage under this contract. If Attorney has the assistance of other persons in the performance of this contract, Attorney shall qualify and remain qualified for the term of this contract as a direct responsibility employer under Oregon Workers' Compensation law.

8.4 Attorney shall comply with the requirements of a Contractor under Oregon Revised Statutes.

9. **Non-Discrimination: Attorney** agrees that it shall not discriminate on the grounds of race, color, creed, national origin, sex, marital status, age, or disability in Attorney's performance of this Contract. Attorney agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statues, rules and regulations.

Attorney shall also comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Attorney agrees to comply with ADA in its employment and nondiscrimination practices, and that it shall perform its contractual obligations consistent with ADA federal requirements/regulations, state disability and accessibility law and requirements, and applicable regulation and administrative rules established pursuant to those laws.

10. **Assignment:** Neither Attorney nor City may assign this Contract without the prior written consent of the other. Attorney may, however, employ any other party or entity it deems necessary or proper for any part of the Services required to be performed by Attorney under the terms of this Contract.

11. **Representations and Warranties:** Attorney warrants with and represents to City that:

11.1 Attorney is, and at all times during the course of this Contract will be, duly licensed, authorized and qualified to perform and provide the services that are the subject of this agreement.

11.2 Attorney will perform the services that are the subject of this Contract in conformance with the prevailing standards of professional due care and quality, and that the work product described in this Contract will be useful for its intended purpose.

12. **Termination:**

12.1 City's Right to Terminate. At its sole discretion, City may terminate this Contract in whole or in part, by written notice by City to Attorney. The termination shall be effective upon receipt of the termination notice.

12.2 Attorney's Right to Terminate. Attorney may, at its sole discretion, terminate this Contract upon 30 days written notice to the City.

12.3 Mutual Consent. This Contract may be terminated at any time by mutual written consent of the parties.

12.4 No waiver of rights. The termination of this agreement shall not waive the rights of either party to the performance by the other party of any obligations due at the time of termination. Specifically, termination by the City for other than cause shall not discharge the City's obligation to pay Attorney for all services and reimbursable costs that may be due and payable as of the date of termination.

13. **Indemnification Hold Harmless:** The Attorney shall defend, save, hold harmless, and indemnify the city and its officers, employees and contractors from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including reasonable attorneys fees, to the extent caused by the negligent acts, errors or omissions of Attorney or its officers, employees, subcontractors, or contractors under this Contract. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the City and the Attorney, they shall be borne by each party in proportion to its negligence.

Attorney shall have control of the defense and settlement of any claim. However, neither Attorney nor any attorney engaged by Attorney shall defend the claim in the name of the City, or purport to act as legal representative without first receiving from the City authority

to do so, or shall Attorney settle any claim on behalf of the City without the approval of the City. The City may, at its election and expense, assume its own defense and settlement in the event that the City determines that Attorney is prohibited from defending the City, or is not adequately defending the City's interest of that an important governmental principle is at issue and the City desires to assume its own defense.

14. **Notice:** Any notices required under this Contract shall be effective when received at the following addresses:

City: City of Sisters
520 E. Cascade Avenue
PO Box 39
Sisters, OR 97759
(541) 549-6022

Attorney: Bryant Emerson, LLP
P.O. Box 457
888 W. Evergreen
Redmond, Oregon 97756
(541) 548-2151

15. **Waiver:** City's delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

16. **Attorney Fees:** If a suit or action is filed to enforce any term of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statue, any sum that a court, including any appellate court, may adjudge reasonable as attorney's fees.

17. **Jurisdiction:** This Contract is executed in Sisters, Oregon. Any litigation over this Contract shall be governed by the laws of the State of Oregon and shall be commenced in Deschutes County.

18. **No Third Party Beneficiaries:** City and the Attorney are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, 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 Contract.

19. **Severability:** If any term or provision of this Contract is declared illegal or in conflict with

any law by a court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

20. **Integration:** This Contract constitutes the entire agreement between City and Attorney regarding the services and supersedes all prior or contemporaneous oral or written representations or agreements. This Contract shall not be modified except by a document signed by both parties and in writing.

IN WITNESS WHEREOF the parties have caused this Contract to be executed the day and year first above written.

City of Sisters	**Bryant Emerson, LLP**
_____	_____
ANDREW GORAYEB, City Manager	STEVEN D. BRYANT, Member

#1

Kathy Nelson

From: morgan <morgan@bendcable.com>
Sent: Thursday, June 18, 2015 9:42 AM
To: Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc: Kathy Nelson; Editor
Subject: Bryant Flip-Flop

Kathy, this is the first of several emails that I'm sending to be included in the packet for next weeks Council meeting regarding the pending action of the Contract Review Board on a proposed contract for City Attorney.

Mike Morgan

Dear City Councilors:

The 2011 Question:
From: Pauline Hardie [mailto:phardie@ci.sisters.or.us]
Sent: Tuesday, September 27, 2011 2:26 PM
To: Steven Bryant
Subject: Temporary Uses

Hi Steve, below is the time limit established by the code. I also attached the entire section (2.15.1900) in case you want to look at it. It appears we need to make them remove it. What do you think? Should we give them a year since we haven't been enforcing Richards this entire time? I think it may catch Richard off-guard if we require he to move it now. Thanks

Time Limits: The temporary use or structure shall be 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, unless the permit is renewed pursuant to this Chapter.

Pauline Hardie, AICP

Community Development Director

The 2011 Answer:

From: Steven Bryant [mailto:SBryant@redmond-lawyers.com]
Sent: Wednesday, September 28, 2011 1:54 PM
To: Pauline Hardie
Subject: RE: Temporary Uses

Pauline,

First, you can decide if you want to enforce the code provisions or not. However, if it is a temporary building that the city did not require to be removed and someone gets hurt in or around the building (including someone trespassing – like children), the city will likely have some liability.

Second, the way I read the code is that the temporary building must be removed when the permit expires unless the apply for and receive another temporary use permit from the city. This means that both businesses could apply for a permit that runs from December 1, 2011 until May 31, 2012. The new permit would require a new application, a new fee, and would include whatever new conditions you believe are appropriate (e.g., the building will be secured, it will be checked at least once a week to make sure the security has not been breached, they will provide notice to the city of the check, no business activity will be conducted out of the building, no parking in the right of way, etc.). If they don't want to pay the fee and go through that process then they can remove the building.

During the winter you can talk with the council and see if they want to address temporary buildings in the code.

Steven D. Bryant

Attorney at Law

The News Story on the 2013 Flip-Flop:

2/26/2013 12:09:00 PM
Attorney: Advice on code was 'facetious'

By Jim Cornelius
News Editor

City Attorney Steve Bryant told City Planner Pauline Hardie she could decide whether or not to enforce code requirements on the Wild Mountain food stand - but, he says, he was just kidding.

Bryant wrote to the city council last week explaining his contradictory advice regarding code enforcement regarding Wild Mountain. The stand has been a point of contention between its owner and the city for a year and a half.

During the Thursday, February 14, city council meeting, Bryant advised that, "The planning director can't simply say 'I am not going to enforce the code.' The planning director has to enforce the code right up to the point that there is a pending change to the code ... then she can stop issuing citations simply because the code may be changing."

That statement, however, is at odds with advice Bryan offered to Planning Director Hardie in September 2011, before the planning commission or council took up the question of revising the code.

In that email exchange, discovered by Wild Mountain owner Ky Karnecki after a public records request, Hardie asked Bryant, "Should we give them (Wild Mountain) a year since we haven't been enforcing Richard's this entire time?"

Bryant responded: "First, you can decide if you want to enforce the code provisions or not." Bryant went on to note that "if it is a temporary building that the city did not require to be removed and someone gets hurt in or around the building ... the city would likely have some liability."

According to Bryant, the September email was "facetious."

"My statement to Pauline was not a recommendation about an acceptable course of action (if it were, then that would have been my recommendation to council a few weeks later - though my recollection is that I did tell the council they could order that the building remain in place but that they would probably be sued)," Bryant wrote to the council on February 21. "Likewise, the first paragraph of my email to Pauline was a facetious statement followed by a potential consequence for taking such action."

For Council President McKibben Womack, Bryant's response begged the question as to why the city attorney would respond to the planning director's request for advice on a course of action with a statement that "was not a recommendation about an acceptable course of action."

"I was very disturbed by Mr. Bryant's admittance that he was being 'facetious' in response to a direct question for advice," Womack told The Nugget. "Mr. Bryant's comments go against the expectations of serving our citizens with excellence, integrity and thoroughness. The city council expects to receive 'best practice' counsel and advice from its attorney, and not smart

remarks."

Bryant explained that such a "facetious" statement "would not have been a part of a formal legal opinion or brief, it is a part of my interaction with staff (primarily because I believe people learn and remember better with humor)."

In a separate note to City Manager Eileen Stein, Bryant expressed some chagrin:

"I guess I should not try to be funny in an email," he wrote. "Lesson learned."

On Thursday, February 21, Karnecki applied for a new temporary-use permit for the food stand located on the southeast corner of Highway 20 and Locust Street at the east end of Sisters. The building was to have been removed as of Sunday.

This was the last straw for Mr. Karnecki. He subsequently worked hard to find a civil rights attorney to take his case on a contingency. He found one and it resulted in a $2.5 million lawsuit against the City of Sisters. I guess Mr. Bryant's flip-flop wasn't so funny after all.

#2

Kathy Nelson

From:	morgan <morgan@bendcable.com>
Sent:	Thursday, June 18, 2015 9:57 AM
To:	Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc:	Kathy Nelson; Editor
Subject:	2nd email regarding Steve Bryant.
Attachments:	SP 14_07 Decision and Areas of Concern.pdf

Councilors, please read (or at least scan) the attached then compare it to what is highlighted in yellow below.

From: Sisters Voice
Sent: Wednesday, January 14, 2015 5:43 PM
To: Sisters Voice
Subject: Update on the food cart issue

The Busy Reader Summary: This Voice is an update on the food cart issue.

Greetings,

Food Carts in Sisters: The testimony is in, and all that remains is discussion and deliberation by the City Council, and their decision about how to address the ***problems*** with the SP 14-07 land use application and decision. We call your attention to the word "problems" because where we see they exist, the statements and opinions offered by those at City Hall conclude there are none.

On Monday morning we submitted to the Sisters City Council a comprehensive analysis of what we saw as the major defects in the recent planning decision concerning food carts. We have attached this document for your review. ***Prior to the decision and approval by Senior Planner Eric Porter, made solely on his own with no review by the Planning Director, City Manager, or the Planning Commission, all food cart vendors were required to pay a $100 per day fee for a transient merchant license.*** The Sisters Municipal code is clear in its definition of "transient merchants", and looking back over time, ***the City has ALWAYS treated food carts as transient merchants. The code and the precedent make it clear - food carts are, and have always been, transient merchants.***

This land use decision provides former Mayor Brad Boyd an exemption to what has existed for years. The food cart vendors on Mr. Boyd's Eurosports lot will only pay a $105 annual business license, and they can operate year round, and come and go as they please. ***His food cart vendors will be special - they will not be transient merchants.*** The former Mayor's land use decision grants this special dispensation. We can find no basis to support such a result.

The real question in all of this is whether or not the proper processes in the land use decision were followed, AND whether or not the opinions and judgments are sound, reasonable, and supported by code and historical practice. If they were not, what is the seriousness of the errors and omissions the city has made, and what can or should be done as a remedy?

Recent articles in the local papers quoting staff and the chair of the Sisters Planning Commission would lead you to believe that there were no real mistakes… well, perhaps some minor ones, maybe, but they were of little or no consequence. PC Chairman Holzman, spouse of City Councilor Wendy Holzman, has gone as far as saying that even if the decision had been reviewed by the Planning Commission they would not have found reason to question Porter's decision. They would have you believe it was all proper.

City Attorney Steve Bryant has taken it one step further by offering an opinion to the City Council that there were no mistakes and the City would have no legal basis for taking any corrective action. If one were to accept this opinion, which we do not, it means that the City could follow the exact same process the next time, and be on solid ground. No mistakes, no problems, no worries; move along folks, nothing to see here.

Ex-Mayor Boyd and his friends are telling anyone willing to listen that the issues we have raised are because of some personal vendetta or ulterior motive. We ask that you consider the validity of those claims as you review the 5 page, 2,400 word document provided to the city as our analysis of this decision. The City says "it's all good, nothing wrong here", but we see it very differently. We believe the problems are obvious and very serious.

We have no opposition to food carts in Sisters, but because allowing them will have a significant impact on the various stakeholders in our community, they should come about as the result of well considered policy by city leaders resulting from a solid public process, not by a seriously flawed decision by one person.

Word on the street (this is rumor coming from several sources), is that the City has been trying to terminate Eric Porter for some time, and that his employment has already gone beyond a date previously set. Rumor also says he may be represented by an attorney regarding his employment situation. More litigation?

If there is merit to this rumor, it beggars belief that those in a supervisory or management position would have allowed this decision to proceed without any review whatsoever. Given the applicant was the Mayor of Sisters it should have guaranteed that extra care would have been taken to insure that the process appeared above-board. If there is merit to this rumor, then the conclusions lead everywhere.

Well there it is. The ball has been dumped in the councilor's court and they will be the ones to decide what happens from here with regard to food carts in Sisters. We would not want to be in their shoes, but if we were we would refer the matter to competent outside legal council for a second opinion. And then we would take a hard look at why this crisis was dumped in our laps, why management oversight failed, and seek a remedy that would eliminate the probability of this happening again.

Mike Morgan and Ed Protas

Sisters Voice

Citizen Activists committed to providing unvarnished

information in support of good governance in Sisters, OR.

SP 14-07: Type II Administrative Decision and Areas of Concern.

We believe the above referenced land use decision, made solely by Eric Porter, without review as required by Sisters Development Code, Section 4.1.700 H, and General Provisions, 4.1.700 (E)(3)(b)(4), has resulted in several areas of concern. We feel that a proper review by the higher authority, the Sisters Planning Commission, would have identified several or possibly all of these omissions, and on that basis would have resulted in the staff decision being overturned by the commission. Each of these areas is serious in that they potentially set a flawed precedent for subsequent land use applications that could result in litigation if they are denied the same basis for approval.

It is our intention to lay out a context for each of these areas, and provide enough of a background for each councilor to understand the issue, and therefore the potential legal exposure, both today and in the future. We are not lawyers and do not pretend to be. You have legal council to address your concerns. Our desire is to describe the basis for those concerns, and pose the appropriate questions to ask to help define the risk.

Having said we are not lawyers, we wish to point out that we have years of experience in dealing with the Sisters Municipal Code, Development Code, and City Charter. We are also well versed in Oregon Statutes, and possess a solid understanding of how to read and interpret code. We feel well qualified to aid in your general understanding of the issues allowing you to ask the proper questions, and better understand the answers. It is not unreasonable to suggest that obtaining a second legal opinion may be warranted given the gravity of the situation.

Each section contains a list of the appropriate questions to be considered. We believe that many of the answers will seem obvious and logical, and therefore do not require extensive legal research. The answers to some questions may lead to other questions. Such is the nature of this exercise. We hope you find this analysis easy to follow and useful.

Mike Morgan and Ed Protas

Concern #1: License requirements for food cart vendors

- See Findings and Decision Document, Conditions of Approval, Page 33

  11. Each food cart shall obtain a City business license prior to occupancy.
  12.A. The carts must remain mobile at all times, they cannot remove their wheels and axles.

- **See City Municipal Code, Chapter 5.24**

  5.24.110 Definition. Transient merchant is a person who either carries goods, wares or merchandise from area to area (or City to City), selling or offering the same for retail sale; or who offers goods, wares, merchandise or services from a vehicle, trailer or cart, temporary apparatus, temporary location, or door to door without making the business permanent and continuous in the City.

There is nothing in either the Municipal Code or the Development Code that addresses "Food Carts" other than the word "cart" in the definition of a "transient merchant". The intent of Municipal Code 5.24.110 is to differentiate between businesses that are "transient" and those that are "permanent and continuous".

Consider that one of the conditions of approval is that the "the carts must remain mobile at all times" and there are no restrictions preventing any vendor who sets up on the Eurosports property from moving to any

other site in Sisters (where allowed) at any time, or moving to another community at any time for any reason. In other words, there is no language whatsoever requiring them to be permanent and continuous but there is in fact language requiring them to remain mobile at all times - which means they are transient, so to speak.

Solely on the basis of the 5.24.110 Definition, a food cart seems to fall under the definition of a "transient merchant". Condition of Approval 12.A. solidifies that conclusion.

QUESTION 1.1: Is there anything in the 5.24.110 Definition that would lead to the conclusion that it does not apply to food carts?

QUESTION 1.2: Is there anything in the 5.24.110 Definition or elsewhere that would lead to the conclusion that food carts should be specifically excluded from this definition?

QUESTION 1.3: Is there anything in the Development Code or elsewhere to suggest that a land use decision, like SP 14-07, can nullify, circumvent, or override language or requirements in the Municipal Code, or more specifically, the Definition at Section 5.24.110?

QUESTION 1.4: Does Condition of Approval, Item #11, to wit "Each food cart shall obtain a City business license prior to occupancy" define what type of City business license is required?

QUESTION 1.5: Is there anything in the SP 14-07 approval that states the type of license required shall be an Annual Business License?

QUESTION 1.6: If the definition at Municipal Code 5.24.110 defines food sales from a cart as transient merchant sales wouldn't the Transient Merchant's License apply and not the Annual Business License?

Concern #2: Food Carts are the same as Restaurants

- See Findings and Decision Document, Section 2.4.200 Uses, Page 12

  Eating and drinking establishments are outright permitted uses in the DC District. **Food carts are categorically considered as eating and drinking establishments**.

We have no disagreement with the first sentence: "Eating and drinking establishments are outright permitted uses in the DC District." ***Uses in the Downtown Commercial District are specified in the Development Code, Section 2.4.200. Table 2.4.1 defines each and every use for the district***, and Eating and drinking establishments are defined as Permitted.

The second sentence "Food carts are categorically considered as eating and drinking establishments" is not supported by any reference to any section of the Municipal or Development Code. It is presented without any support, documentation, code or statute. It is likewise not supported by reference to any other jurisdiction or research. It is merely an unsupported opinion, wholly unsubstantiated.

It is our opinion that "food carts", under the existing code, are not allowed in the Downtown Commercial District, and there is no reasonable basis to claim otherwise. Further, we don't believe multiple food carts on a single retail lot are close enough to a brick and mortar traditional eating and drinking establishment to be considered an equivalent use. We will present information below that other jurisdictions consider them to be very different requiring different laws and regulations unique to each business model.

Table 2.4.1 (following page) does not list "food carts" or carts of any type, as any of the type of uses (Permitted, Special Provision, Conditional, or Similar) allowed in the zone.

QUESTION 2.1: If a use is not explicitly defined in the Table of Uses (2.4.1), can such a use be allowed?

QUESTION 2.2: Does planning staff have the authority to add an unspecified use to the Table of Uses (2.4.1)?

QUESTION 2.3: Who has the authority to add additional uses to the Table of Uses (2.4.1), and what type of land use process is required to do so?

We believe the information above clearly establishes there is no factual, logical, or lawful basis to claim that food carts are allowed in the DC District. And, we have reviewed Deschutes County code and Oregon Statutes enough to state with certainty that neither jurisdiction treats food carts as equivalent to restaurants (eating and drinking establishments). In fact, there are separate sections and licensing for each, and in the licensing section for food carts (referred to as Mobile Units), there are 4 separate "Classes" of licenses that restrict the type of food and preparation allowable under each.

See: http://www.deschutes.org/Health-Services/Environmental-Health/Restaurant-Licensing-and-Plan-Review.aspx

QUESTION 2.4: If State and County jurisdictions clearly imply, by having separate sections of code and/or licensing requirements for each, that mobile units (trucks, carts, or similar) are not categorically considered as eating and drinking establishments, does a staff employee in the city of Sisters have the authority to simply declare them so and forever bind this opinion to future land use applications?

It seems that if you allow this applicant to proceed as currently approved, you must then follow one of two courses. The first would be to treat every future applicant to the same interpretation, even while knowing all the flaws imbedded in it; the second would be to amend the various sections of code to support a lawful denial of all future applications. Following the first accepts that staff is now empowered to create new rules at their sole discretion; following the second clearly invites litigation based upon the perception that the Mayor was granted "special consideration" where others are not.

QUESTION 2.5: What impact does allowing this "flawed" decision to stand have on the new rules currently under consideration regarding Temporary Use Permits, Transient Merchant Licenses, and Temporary Businesses Licenses?

QUESTION 2.6: It must not be overlooked that the applicant, Brad Boyd, was the Mayor and a member of the City Council at the time the application was submitted and the decision rendered. If it is determined that the decision in SP 14-07 contains significant errors and omissions, which directly benefit the applicant, while at the same time the applicant, in his role as Mayor, has led the meetings and discussions concerning Transient Vendors, and the like, that could restrict future competition for his personal business, has the result of this confluence of events given Brad Boyd, applicant and Mayor, an advantage not available to any other person?

QUESTION 2.7: If the answer to Question 2.6 is "yes", what legal risk does the City assume by allowing this decision to stand?

Concern #3: Outdoor Dining

- See Findings and Decision Document, Section 2.4.300 Development Standards, G. Outdoor Displays,

Sales, and Dining, Page 17

The applicant intends on having outdoor eating areas, which is permitted in this zone according to this subsection.

- **See Sisters Development Code, Section 2.4.300 H**

  Outdoor Displays, Sales, and Dining. Outdoor display, sale of merchandise, and dining associated with the primary use is permitted and shall be limited to the private property of that primary use.

The analysis of this area of concern should begin with the plain English interpretation of the above defining sentence. We suggest it is clear: "***dining associated with the primary use is permitted***".

Porter's decision does not include a statement as to what the primary use of Eurosports might be.

QUESTION 3.1: What is the primary use of the Eurosports applicant?

Below is a listing (Table 2.4.1, Sisters Development Code) of the Commercial Uses available in the Downtown Zone. The primary use of the Eurosports must be one of these, and we would suggest "Retail sales establishment" is the likely primary use, not "Eating and drinking establishment".

Commercial	
Amusement Uses	P
Artist studio	P
Assembly, Club	P
Concert Hall	P
Electric Car Charging Stations (regardless if accessory)	CU
Gallery	P
Hotel	P
Brewery and Distillery	MCU
Eating and drinking establishments	**P**
Retail sales establishment	**P**
Professional and personal services (dry cleaners, barber shops/salons, etc.)	P
Offices (medical, dental, professional)	P
Animal veterinary clinics	CU
Neighborhood market	P
Health club (e.g. gym, yoga studio, martial arts, etc.)	P
Small item repair services (e.g., jewelry, small appliances, etc.)	P

Next, one must consider the intent of the code in Section 2.4.300 H. We believe the intent is to apply restrictions or limitations to **Outdoor Displays, Sales, and Dining**. The intent is to restrict the activities associated with Outdoor Displays, Sales, and Dining and limit them to the "Primary Use". Without this language, any business operating in the DC District would be allowed to have unrestricted Outdoor Displays, Sales, and Dining. The restrictions provided by this section of the code seem obvious.

Currently the Eurosports business has outdoor displays associated with the sale and rental of bicycles, skis, and related merchandise.

QUESTION 3.2: Does the language in Sisters Development Code, Section 2.4.300 H, permit outdoor display and sales associated with one use (Retail sales establishment), while also allowing dining associated with another use (Eating and drinking establishment)?

QUESTION 3.3: Does staff have the authority to circumvent the language in Sisters Development Code, Section 2.4.300 H?

QUESTION 3.4: What is the common definition of the word "primary"?

QUESTION 3.5: Can any business on a single retail lot have multiple PRIMARY uses?

QUESTION 3.6: Does the placement and operation of food carts change the primary use of Eurosports, and if so, what would that primary use be (please select from Table 2.4.1 of the Sisters Development Code)?

Concern #4: Restroom facilities and outside agency referral.

This area of concern is in addition to the three that were previously identified in Mike Morgan's communication included in the City Councilor's meeting packet of 1/8/2015. We do not intend to get very deep into this area as we have limited knowledge of the laws and codes covering restroom facilities of eating and drinking establishments.

We are certain that within Deschutes County and the State of Oregon there are restroom facility requirements associate with the size of any food service operation. We also know from experience that the Sisters Planning Department has a history of referring land use applications to outside agencies for review and approval. These commonly include Sisters Department of Public Works, the local fire department or fire marshal, the Oregon Department of Transportation, the Federal Aviation Administration and others. In fact, referrals are required in the Development Code. **See General Provisions, 4.1.700 (E)(3)(b)(4)**:

> Coordinated Review. The City shall also submit the application for review and comment to City Engineer; ODOT, and other applicable County, State and federal agencies for review.

In the SP 14-07 decision document there is no reference whatsoever to the current Eurosports restroom facilities and no statement suggesting they are adequate given the number of persons expected to use the proposed outdoor dining area, the number of dining area seats available, and the number of allowed food carts.

QUESTION 4.1: Is it possible State and County laws and regulations were overlooked because this application was not referred to the Deschutes County Health Department?

QUESTION 4.2: Does staff have the authority to bypass State and County laws and regulations?

QUESTION 4.3: Is it possible that another jurisdiction could require the operation of the food carts to cease if their operation is found to be in violation of their laws or regulations?

QUESTION 4.4: Is there any liability or risk to the City of Sisters by allowing a business to operate in violation of State and County laws and regulations?

QUESTION 4.5: If the failure to refer the application to other jurisdictions resulted in damages to the applicant would the applicant have a cause of action against the city?

In closing, we ask the Sisters City Council to make this document and the answers to these questions a part of the record that provides the justification for whatever action the Council ultimately takes regarding SP 14-07.

Respectfully submitted,
Mike Morgan and Ed Protas

#3

Kathy Nelson

From:	morgan <morgan@bendcable.com>
Sent:	Thursday, June 18, 2015 10:16 AM
To:	Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc:	Kathy Nelson; Editor
Subject:	3rd email regarding Steve Bryant.
Attachments:	Council Opinion Letter 1-13-15.pdf

Councilors, if you study this document (see yellow) and the attached (specifically paragraph #2) you must conclude that Mr. Steve Bryant misrepresented in a letter to you the meaning, and intent of the authors, of of Section 4.1.400C of the Sisters Development code.

Mike Morgan

From: Sisters Voice
Sent: Friday, January 23, 2015 9:12 AM
To: Sisters Voice
Subject: City Attorney Steve Bryant must go.

The Busy Reader Summary: This Voice is about the misconduct of City Attorney Steve Bryant regarding the former Mayor's food carts.

Greetings:

Attached is the letter from City Attorney Steve Bryant regarding the former Mayor's food cart Type II land use decision. In this letter Mr. Bryant claims no mistakes were made regarding the staff interpretation of code or the staff's processing of the final decision. All of the news stories to date, including those in the Bend Bulletin and Nugget, have discussed the issue of a review by the Planning Commission. But, those stories suggest that such a review is not mandatory, that there is no requirement for the final **decision** to be forwarded to the members of the Planning Commission. This is simply not true.

On page two Mr. Bryant cites Development Code Section 4.1.400 C, to wit:

"... At the discretion of the Community Development Director or designee, any Type II **application** may be forwarded to the Planning Commission for **decision**."

This means staff does not have to make a **decision** on all Type II **applications** This part of the code says staff may, at its sole discretion, send any Type II **application** to the Planning Commission to have them make the **decision**.

Mr. Bryant then claims the section he cites does not require the Planning Commission's involvement or review of the **staff decision**. **DID YOU CATCH THAT?** Mr. Bryant switches from how applications can be processed to a conclusion regarding a final **staff decision.** However, the section of code he cites says **nothing** about what must happen when **staff** makes a Type II **decision**. The section he cites speaks only to the discretion staff has to defer the **application** to the Planning Commission for it to make the **decision**.

To find out what **must** happen when **staff** makes a Type II **decision, which staff did on the Mayor's food cart application**, we need to look at, and interpret, Development Code Section 4.1.700 H. However, this section of code is conveniently not mentioned anywhere in Mr. Bryant's letter. Was this an oversight, an omission, or a deliberate misdirection? Whatever the reason, he has provided what appears to be questionable legal advice.

4.1.700 Section H; Review by Planning Commission and City Council:

1. Three or more members of the Planning Commission may initiate review of a Type II decision.
2. Two or more members of the City Council may initiate review of a Type III Decision.
3. The review shall be initiated in writing and delivered to the Community Development Department within 14 calendar days of the date of the mailing of the final written decision.
4. Review shall be conducted in the same manner provided for in appeals, except that an appeal fee shall not be required.

This is crystal clear, three or more members of the Planning Commission may initiate review of a Type II decision and this review is the equivalent of an appeal. The decision document, under the signature of now terminated Senior Planner Eric Porter, said the decision was sent to the Planning Commission, it was not. None of them saw the decision until it was too late. Fourteen days after Porter issued his decision, the lawful appeal period came to a close, and the land use process was over. We've contacted four PC members and three said they have issues with the final decision and three is all that's needed to force a formal review and a public hearing. Was there an orchestrated effort to sneak the decision past the 14 day period? We can't prove anything; we can only speculate, and many in our community have expressed similar thoughts. That's exactly what people do when the public trust has been broken; people look for their own answers to make sense of things they can't understand.

When the public comes to suspect the worst of our elected and appointed officials, and their actions or lack thereof look questionable, the suspicion grows. The 60 seconds of due diligence at the council workshop fell far short of what Mayor Frye implied we could expect. Staff exonerated themselves of any wrongdoing, PC

Chair Alan Holzman misled all of us with egregious misinterpretations of due process and the requirements of code, and the City Attorney ties a ribbon around the whole thing and says it's a done deal.

We provided the city with a 5 page document outlining specific concerns in 4 areas of the code, and provided numerous questions that should have helped them see and understand these concerns. Mayor Frye said the issue would be considered from several angles, but there was no mention or discussion of our document or its contents. So, from the outside, and in light of the Mayor's statements, the only angle considered was the one viewed from City Hall. And the City Attorney gives them all the cover they need to say "game over".

It all good folks; run along boys and girls, we're busy doing important work. This is not the first time Mr. Bryant has spun a story to give cover to the City Council but it should be the last! Good attorneys give advice that reduces the likelihood of litigation; bad attorneys give advice that increases the likelihood of litigation. One can only conclude, given the number of lawsuits initiated on Mr. Bryant's watch, that he is in the latter category. He is a liability to the city and its taxpayers and should be replaced; the sooner the better!

Mike Morgan and Ed Protas

Sisters Voice

Citizen Activists committed to providing unvarnished

information in support of good governance in Sisters, OR.

BRYANT
EMERSON, LLP
Attorneys at Law

Steven D. Bryant
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Laurie Kendall
Paralegal
laurie@redmond-lawyers.com

January 13, 2015

Via Email Only to City Council Members and City Manager

Sisters City Council
P.O. Box 39
520 E. Cascade Avenue
Sisters, OR 97759

RE: Council Questions Regarding Sisters Community Development File #SP 14-07

Council:

You asked me to answer seven questions by Council Member Asson and one additional question by Council Member Connolly. I have clarified the questions with Council Member Asson and have included that clarification with my answers below. As part of my review I have reviewed the staff decision, the notice affidavits, the City Code, the Development Code, State Statute and Administrative Rules, and have spoken with staff about both the process and decision.

1. Was the decision as made by City Staff done in accordance with current City Code (was the administrative process correct under the current City Code)?

The administrative process used by staff to review and issue the decision in SP 14-07 was correct under the current City Code and Development Code. This application was subject to an administrative review under Development Code section 4.1.400 (Type II Procedure - Administrative). That Code section sets forth the application requirements and the decision process for staff. The lengthy decision by staff covers both the application materials submitted, the applicable Code provisions, and the staff's application of the Code to the application. Based on my review it appears that staff correctly followed the administrative process required by the City Development Code.

2. Was any violation made by failing to involve Planning Commission participation?

There was no violation of the City Code or Development Code by not involving the Planning Commission in the decision for this application. Neither the City Code or Development Code have any requirement that the Planning Commission be notified of a Type II decision by

planning staff. The Development Code does provide that:

> . . . At the discretion of the Community Development Director or designee, any Type II application may be forwarded to the Planning Commission for decision. 4.1.400.C.

This section allows planning staff to defer the type II decision to the Planning Commission for decision if they so chose. It does not require the Planning Commission's involvement or review of the staff decision. In this instance staff chose to make the decision.

3. Was proper notice given to all interested and involved parties (did the notice meet the requirements of the City Code)?

Staff provided all notices required under the Development Code to surrounding property owners and to interested parties.

The Development Code requires multiple notices as part of the administrative process. The purpose of the notice requirements are to:

> give nearby property owners and other interested people the opportunity to submit written comments about the application, before the Type II decision is made. The goal of this notice is to invite people to participate early in the decision-making process. 4.1.400.B.3.

The Development Code requires that notice of application for type II Administrative decision be mailed to the following:

a. All owners of record of real property within 250 feet (measured from the property line) of the subject site;

b. All City-recognized neighborhood groups or associations whose boundaries include the site;

c. Any person who submits a written request to receive a notice; and

d. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies; ODOT shall be notified when there is a land division abutting a State facility as appropriate, for review of the application.

In this instance, staff identified who was entitled to notice under the above requirements and mailed the notice of administrative application to those persons or entities. The Affidavit of Service includes the list of recipients of that notice. Moreover, because of minor errors in the

notice, staff made the decision to reissue the notice. The mailing of notice to those recipients occurred three separate times over an eight-day period. The notice was also posted on the property. That notice must be posted 14 days before the decision is issued. Staff did not issue the decision until 21 days after the posting.

In addition, the Development Code also requires staff to mail a Notice of Decision to certain other individuals and entities, including individuals who have requested notice or provided comments on the application. Staff mailed the Notice of Decision to the one individual who commented on the application. Staff also posted the Notice of Decision on the property as required by the Development Code. It appears that no other comments were received within the time allowed and no appeal of the decision was submitted to staff.

It is clear that staff provided all of the notice required by the Development Code and allowed an extended period beyond what was required by the Development Code for the submission of comments.

4. May City Council revisit this particular decision with the intent to deny its implementation (does the council have authority to deny or reverse the approval issued by staff)?

The short answer to this question is no; the City Council has no legal authority at this point to deny the application or reverse the decision of staff. The decision under discussion is a Land Use Decision. Those decisions are subject to a specific process under the City's Development Code and under State law. Those provisions provide the process for appeal and review of the Land Use Decision by various bodies beginning with the planning commission and continuing potentially to the Oregon Supreme Court. There are specific time lines to initiate those appeals. If those time lines are not met then the decision is final and is not subject to further review or modification without the consent of the applicant.

5. What may be the consequences should City Council overturn the decision or require Mr. Boyd to re-apply for a new decision, i.e., a redo (could such action by the Council result in claims by Mr. Boyd against the City)?

If the City Council were to overturn the decision or require Mr. Boyd to resubmit his application I would expect that Mr. Boyd would bring a lawsuit against the City to enforce the decision and seek damages from the City. I expect there is a high probability that Mr. Boyd would be successful in that lawsuit. Those damages could include lost profit from any delay in his business operations under the existing approval, a taking by the City of a portion of his right to use the property, attorney fees, and other potential damages. The City should expect that the financial consequences to the City would be significant and would likely not be covered by the City's insurance. There will most likely be some additional consequences associated with the public response to the City Council decision, which will likely include significant costs to the City for staff time to address issues and questions raised.

6. What may be the consequences should City Council allow the decision to remain in effect without any modifications (is the staff decision binding on future staff or planning commission decisions)?

The decision by staff on this application would be binding on staff decisions under the same facts. It would not necessarily be binding on the Planning Commission or City Council since neither body has had an opportunity to consider the issue and interpret the applicable code. The decision on this application does not prevent the Planning Commission from proposing and the City Council from adopting code amendments to the City Code or Development Code.

If the City Council takes no action on the Land Use Decision I do not anticipate any legal consequences to the City. The Land Use Decision is final and the public cannot compel the City to take action that is outside of its authority. There have been some financial consequences to the City based on the review process for this decision. There could be some additional financial costs to the City depending on whether there are further reviews or code interpretations associated with this decision. There will most likely be some additional consequences associated with the public response to the City Council decision, which will likely include significant costs to the City for staff time to address issues and questions raised.

7. Could the answers to questions 5 and 6 have any negative consequences to other pending matters facing the City (does this decision impact pending litigation)?

I have reviewed the pending litigation involving the City and do not see any negative consequences to any of the matters now pending. While a party may try to raise this decision, it does not appear to be relevant to the issues in any of the pending matters.

8. Is it correct that Oregon law does not consider mobile food carts the equivalent of an eating and drinking establishment or restaurant; and does this statute apply to the City's decision in this matter.

It is correct to say that the Oregon Health Authority (under ORS Chapter 624) has established different rules and license requirements for a restaurant, a railroad dining car, a bed and breakfast facility, an intermittent temporary restaurant, a seasonal temporary restaurant or single-event restaurant verses a "mobile unit." Neither the Oregon Statutes or Administrative Rules define the term "eating and drinking establishment" or "food cart" as a particular use. The phrase "eating and drinking establishment" is only used in ORS 624.077 concerning the Oregon Health Authority's responsibility to provide educational programs to encourage compliance with the regulations by employees of "eating and drinking establishments."

The critical part of this question is whether that statute applies to the City's interpretation of its own Code. The answer is that it does not. Local governments are give great latitude under Oregon law to draft and interpret their own Code as they deem appropriate. In this instance the question is what constitutes an eating and drinking establishment under the Development Code. Staff have answered that question and that answer is not contrary to the referenced Statutes. In fact, the Oregon Courts have said this about "eating and drinking establishments"

> The atmosphere of an eating and drinking establishment is not easy to describe. A Robert Service, Ernest Hemingway, or even Arlo Guthrie may do so, but such powers of articulation are not demanded of administrative agencies and judicial bodies. There are subjective considerations which are not easily articulated and the variety of possibilities defies specificity. *Cottrell v Oregon Liquor Control Commission*, 27 Or App 525, 556 P2d 982 (1976).

That statement continues to be true.

If you have any additional questions, please let me know.

Very truly yours,

STEVEN D. BRYANT

SDB:lk

#5

Kathy Nelson

From:	morgan <morgan@bendcable.com>
Sent:	Friday, June 19, 2015 5:52 PM
To:	Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc:	Kathy Nelson; Editor
Subject:	5th email on Steve Bryant.
Attachments:	Boyd Attorney Letter.pdf

Councilors:

Read the attached then proceed, focus on the yellow.

From: Sisters Voice
Sent: Sunday, March 01, 2015 5:04 PM
To: Sisters Voice
Subject: It's hard being a Sisters City Councilor

The Busy Reader Summary: This Voice addresses what the Sisters City Council must do regarding the ongoing food cart fiasco.

Greetings:

Being a city councilor is not an easy job but it's nearly impossible when staff distorts and lies to those who must make the tough decisions.

At the beginning of last week's City Council meeting visitors were encouraged to pick up a copy of a letter from former mayor Brad Boyd's attorney. That letter is attached. City Attorney Steve Bryant gave great weight to this letter since it agreed with his position - that everything was done right and if the city messed with Mr. Boyd there would be hell to pay; as much as $3.5 million. Both Mr. Bryant and this letter ignored the procedural issue raised by Bend attorney Michael Peterkin and mischaracterize what he suggested the city could do. Peterkin did not suggest revoking Boyd's approval, he simply advised issuing an amended approval that would have satisfied the review requirements of the Sisters Development Code.

Mr. Bryant did not provide council with any analysis or explanation of Boyd's letter and he never once mentioned Peterkin's analysis. The city is given a 5 page document from a respected local attorney identifying probable mistakes the city made in the processing of Boyd's food cart application and the City Attorney makes no mention of it, he offers no rebuttal, he says nothing. Curious!

The discussion began with a question from Councilor Nancy Connolly asking if the city should seek another independent legal opinion. City Attorney Steve Bryant made it clear he had no concern about getting another legal opinion. He added that doing so should not cause a concern or delay for the applicant (Boyd). He even suggested contacting the Oregon League of Cities for a list of possible land use attorneys. Less than one hour later Mr. Bryant did everything possible to scare the council off of that course of action and it worked.

Mr. Bryant has a history of saying things that ultimately turn out to be not true. The last time it happened he back peddled by claiming his advice was "facetious" and he was simply trying to be funny. Last Thursday he provided another example. Bryant emphatically said former mayor Boyd's land use decision, SP 14-07, required him to have his food carts on a one year lease, they could not just come and go, and if they did the city could take enforcement action. That was an utter fabrication. There is no language whatsoever in the findings and decision document that says anything even remotely close to what Mr. Bryant told the City Council. Was this incompetence or a deliberate lie? Maybe he was being facetious - again. The City Manager and the Community Development Director, who both know better, said nothing. Intentional silence is a form of lying.

We challenge anyone from City Hall to produce any language from the decision document that would support what Bryant said. His fabrication was then used to support his later erroneous conclusion that it was the duration of Boyd's lease agreements with his food cart vendors that made it possible for them to operate with an annual business license ($105/yr) and not a Transient Merchant License ($100/day) as required in the Sisters Municipal Code. Mr. Bryant should know that any and all agreements between Boyd and his vendors are beyond the scope of the city's land use decision. It gets worse, much worse...

The last part of the meeting was reserved for the scare tactics employed to get the council to back away from any consideration of getting another legal opinion. City Attorney Bryant made it very clear that the law and facts were on Boyd's side, and the city's liability insurance would not indemnify it from the judgment that would likely result, possibly running into the millions, from being sued by Boyd. If Mr. Bryant can lie about what's in the decision document how can he be believed when he says the city's liability insurance would not afford coverage? Mr. Bryant needs to go!

Whether or not Brad Boyd would prevail in a lawsuit is highly speculative at best and we will not add to it. But Mr. Bryant's statement that the city would be denied insurance coverage under the city's liability policy is just plain false.

The city's liability carrier has a fiduciary obligation to defend its client and provide the best defense possible. Anything less leaves it exposed to a claim of bad faith which insurers often lose at great cost to shareholders. The city's insurer MUST provide a defense, and if they believe the city council had clearly and wrongfully acted outside the scope of its authority and their actions would not be covered because of some specific policy exclusion, they would still be required to offer a defense. In such cases it is done under what is called a "Reservation of Rights". Mayor Frye said "trust but verify". Mr. Bryant's claims require verification, and if they are false he needs to go.

Mr. Bryant has told the city it has no options and liability coverage will be denied if it follows any course other than what he has advised. What if he is wrong? Michael Peterkin has provided information and analysis that reasonably counters Bryant's claim of no options and the issue of whether there is insurance coverage can be resolved with the insurer. ***Ask for a determination in writing. Do not allow the City Manager or the City Attorney to do this - their motives and judgment is suspect. This request must come from the Mayor.***

The food cart fight is not over. The public will not tolerate what appears to be a sweeping under the carpet of an issue that carries a serious taint of impropriety, orchestrated by a staff that is willing to distort, fabricate, and lie. There were many people at the meeting last week who were there to demand reconsideration and a public hearing. No one can be faulted for cautiously investigating options, but doing nothing, because they have been convinced by one individual that their only option is to do nothing, is indefensible. Therefore, we urge all of you to send emails to council through Kathy Nelson at: knelson@ci.sisters.or.us expressing what you think needs to be done to best serve the community.

Mike Morgan and Ed Protas.

Sisters Voice

Citizen Activists committed to providing unvarnished

information in support of good governance in Sisters, OR.

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t 541.617.1309
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February 26, 2015

Laura Craska Cooper
Also Admitted in California
lcooper@balljanik.com

Sisters City Council
520 E. Cascade Avenue
PO Box 39
Sisters, OR 97759

Re: Site Plan Approval for 223 Hood Ave. LLC

Dear Mayor Frye and City Councilors:

This firm represents 223 Hood Ave. LLC, the owner of the property located at 223 E. Hood Avenue in Sisters. I am writing in response to the letter you received from Michael Peterkin, on behalf of one or more anonymous "citizens" objecting to the site plan approval granted to my client on November 26, 2014 (the "Approval").

This letter is intended to advise you, with all due respect, that we disagree with Mr. Peterkin's letter and advise you that if the City takes any action that would revoke the Approval or that would otherwise prohibit or impede my client from developing and using its property pursuant to the Approval, my client will take legal action against the City. Such legal action would include a lawsuit for damages resulting from such revocation, prohibition or interference.

The Approval was a land use action under the City's code and Oregon law. It was processed properly, as a Type II application. The planner interpreted the City's code, and issued the site plan approval. Based upon my review of the decision and my conversation with the City's attorney, I believe notice of the decision was properly sent to all parties to whom notice was due, including the party who had commented during the review period. In fact, notice was made three separate times, and not once prior to the expiration of the third appeal period was any appeal filed. Once the appeal period expired, the decision became final and not appealable under the City's code and under applicable Oregon law.

While we certainly understand that some may not like the decision made in approving my client's site plan, the fact is that no appeal was filed. Mr. Peterkin's letter is simply an attempt to get around this fact.

Likewise, we understand that the City Council may not like the Approval. If so, the City should consider changes to its land use code. But revoking a properly approved, FINAL land use decision is not an option, and the City has no authority to do so.

#996606\1

My client has already taken steps to develop its property pursuant to the Approval. Current estimates are that annual revenue associated with the intended use will be between $12,000 and $15,000 a month. Thus if the City were to revoke the Approval or otherwise impede my client's rights under the Approval, my client would have no choice but to file a lawsuit, which would certainly include a claim for significant anticipated damages. Since the improvements my client is contemplating would have a useful life of at least twenty (20) years, we would seek damages of as much as three and a half million dollars.

My client certainly sympathizes with the desire of the City Council to minimize conflict and to give concerned citizens a hearing. But in doing so, it cannot ignore its own code, Oregon law and the rights of my client under a properly noticed and issued land use decision.

Sincerely,

Laura Craska Cooper

LCC:ljk

cc: Brad Boyd
Steve Bryant

#6

Kathy Nelson

From: morgan <morgan@bendcable.com>
Sent: Friday, June 19, 2015 5:52 PM
To: Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc: Kathy Nelson; Editor
Subject: 6th email onSteve Bryant.

Councilors, focus on the yellow.

From: Sisters Voice
Sent: Sunday, March 29, 2015 9:59 AM
To: Sisters Voice
Subject: Déjà vu - Is history repeating itself?

The Busy Reader Summary: This Voice examines the conflict between two proposed developments in Sisters; one by a local insider - the other by an outsider, and how city government may, or may not, be handling the situation.

Greetings:

This Voice starts with a little review of recent history. In 2011 a person new to the Sisters business scene applied for and was granted permission to set up a temporary business at the east end of town known as the Wild Mountain Jerky and Mushroom Stand. This business was, for all practical purposes, the same as the business known as Richards Produce at the west end of town that had been operating for at least 10 years. In fact, to help get the new business started, the city planning department gave the new proprietor a copy of Richard's land use application to use as a model for his own business.

Soon thereafter things started to go downhill. A city councilor did not like the new building located on Cascade at Locust. This councilor complained to the planner involved and relationships soured between the city and the owner of the new business. It soon became obvious that Richards Produce was being treated much more favorably than was the new business. Morgan and Protas became involved and spent well over a year listening to audio recordings of Planning Commission and City Council meetings. We ultimately wrote a rather long history of that saga and lobbied the city leadership to be equitable in the treatment of these two almost identical business models. We were ignored and the result is a $2.5 million Federal Civil Rights complaint against the City of Sisters and its leaders individually.

Recently we've been investigating the dramatic increase in city costs that result from current litigation and new litigation likely to occur. We count 7 currently active lawsuits. Sisters paid its City Attorney 50% more than

Redmond did in 2014 and it's the same person - Attorney Steve Bryant. We have called for him to be replaced twice in recent weeks. How will he handle the next big issue?

Fast forward to what is going on now. There are two developments currently in a land use process under review by the city. One is McKenzie Meadows Village (MMV) out by the high school and the other is the proposed Assisted Living (AL) facility by the Post Office. MMV is the local's project, AL is the outsider project. Assisted living was a part of what was originally approved for MMV and it was going to be provided by the same AL developer that's now by the Post Office. We don't know details but the outsider had a falling out with the locals and moved his project from MMV to the Post Office property. But, the MMV project was approved years ago and included an AL facility. That said, we understand the state licensing agency for AL facilities will only issue one permit for such a facility in our area and that permit is in the hands of the outsider. This puts MMV in a bind because AL was a requirement when this property was annexed into the city and the project approved

Last week we received a copy of a 19 page letter that went to the City Council and Planning Commission from the AL developer detailing what he considers many examples of favoritism towards MMV. We have not had time to investigate all of the allegations but this letter starts with: *"We want fair and equal treatment for all, government transparency, no favoritism, and consistency in following established procedures and due process"*. This is déjà vu.

This will play out in meetings over the next few weeks. The first will be a council workshop on April 2nd at 8 am; the second will be a regular council meeting on April 9th at 7 pm. We hope city leaders have learned a few lessons and move forward with extreme caution. Nineteen pages is a lot of detail and it must be evaluated and reasonably considered by those in charge. Having some people show up at these meetings will go a long way towards making sure this happens. We hope to see you there.

Mike Morgan and Ed Protas

Sisters Voice

Citizen Activists committed to providing unvarnished

information in support of good governance in Sisters, OR.

#7

Kathy Nelson

From:	morgan <morgan@bendcable.com>
Sent:	Thursday, June 18, 2015 3:09 PM
To:	Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc:	Kathy Nelson; Editor
Subject:	7th email on Steve Bryant.
Attachments:	City Data_Public Records.pdf; Record requests.__.eml

Councilors:

The first attachment is applicable to the part highlighted in yellow below. The curve represents the increase in legal costs to review public records requested because of litigation or pending litigation.

From: Sisters Voice
Sent: Sunday, April 05, 2015 9:27 AM
To: Sisters Voice
Subject: Public Records Requests - the rest of the story

The Busy Reader Summary: This Voice widens the perspective of a recent Nugget article on public record requests and paints a more accurate picture of the source of the difficulty.

According to an article in the March 18th issue of Nugget, the Sisters City Council will be reviewing the costs associated with public record requests and may consider policy changes with respect to how they will respond, how often they will respond, and what the charges might be to the requestor. ***We think the City Council should exercise caution in this regard; they may not have all the facts and there are other perspectives to be considered.***

To begin with, the data and records belong to us, the taxpayers. The City is the custodian of our data and any discussions regarding policy must begin from this perspective. Granted, city officials have a greater need and use for this information, but it is the taxpayers who have paid for it and own it. When taxpayers want to see some of it, they are entitled to do so by law, and the city should provide it - with few lawful exceptions and at little to no cost. There is a large body of law that mandates how cities are required to maintain this information and make it available to its owners - you and me.

There are times when bureaucracies, like the City, feel uncomfortable about people outside the organization looking under the covers; so they create obstacles. That approach usually takes the form of charging hefty fees and is generally effective in shutting off citizen requests - unless there is litigation or money on the table. There are times when such information exposes wrong-doing or liability on the part of the organization and there are times when it exposes how policies and procedures are, or are not, being followed. ***The more difficult the access to the information becomes, the more citizens begin to mistrust what their government is doing.*** The

more forthcoming the response, the more they are seen as open and transparent. Whatever changes the council makes will form the message it sends to the community.

City Manager Andrew Gorayeb is now attempting to make the case that such requests are placing an unreasonable burden on the city and its staff, but has produced no evidence to remotely suggest they are being burdened with frivolous and wasteful requests for information.

Let's add a little history and expand the perspective.

The Nugget story identifies 2011 as the apparent starting point for the city's plight. That year Mike Morgan and Ed Protas, implicated as "the serial requestors", began asking for data related to a proposed water rate increase over 5 years of more than 100%. The data we eventually obtained raised enough doubt that the city council voted to create a Water Technical Advisory Committee to dig into it. It took another year of wrangling, but the increase was scaled back to just 4%, where it remains today. ***Those record requests formed the basis for saving hundreds of thousands of dollars for rate payers*** - and that's many of you who are now reading this post. Exposing the city's own data undercut their claim, and it was possible ONLY because of our ability to get the necessary data.

There were two councilors who were taken in by the city manager's money grab and they came close to proposing a new ordinance to specifically ignore any records requests from Morgan and Protas - those pesky serial requestors. Cooler heads prevailed and the ordinance idea was dropped. Mr. Gorayeb wants another bite at that apple.

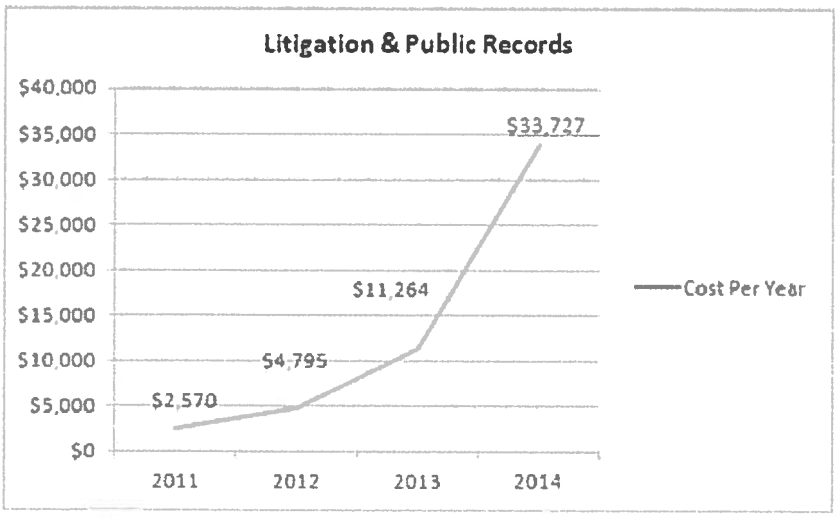
Fast forward. We began Sisters Voice because the folks in our community were not being told the real story - all the details below the propaganda being offered up. It began with the Creekside Campground renovation and the cutting of dozens of trees. We told the story about how fear over a medical marijuana dispensary resulted in an ill-thought out policy of taxes and fees being levied on our community's non-profits, and how laxity and favoritism has lead to inequitable enforcement. We told a story about how then Mayor Boyd and Mr. Gorayeb hatched a plan to go after a citizen in our community for being vocally opposed to some of their policies. We dug into and exposed the details of the food cart fiasco. Over the last several months we have been able to identify how much the city is paying for legal fees - which have dramatically increased due to litigation, and the details behind the money game dressed in the costume of Urban Renewal.

To enlarge the Urban Renewal Fund the city recently borrowed $1.25 million from a bank and they will pay about $40,000 in interest on that loan in the first year. They will spend another $18,000 to obtain a financial rating that the lender requires and they have given away over $142,000 to building and business owners in the downtown core. They are on-track to give away another $100,000 this year - all taxpayer money. Citizens have a right to know the details behind such policies and this is the very reason for Oregon Public Records law.

Little of what we have reported in the past, including this current Voice, would have been possible without public record requests. Given our success in exposing what lies beneath and reporting it you, the City Manager would like nothing better than to reduce or restrict our ability to get information from the city. This is the singular reason behind Mr. Gorayeb's current move. The question remains whether or not the City Council will be taken in by this ploy.

We have been trying to determine the actual burden on in-house staff, excluding the City Attorney's time, regarding record requests from ordinary citizens. Any request taking more that 15 to 20 minutes of staff time is subject to fees, but only once have we been charged fees other than for the CDs of public meeting recordings. Protas and Morgan, the citizens who make the greatest use of public record requests, are not the source of the current burden on city staff; it's litigation.

The data we have so far represents City Attorney Steve Bryant's charges related to records requested as part of litigation and the review of record requests related to that litigation or pending litigation. Often, plaintiffs request information under public records law prior to filing a lawsuit. It's not entirely clear, so we have attached the city's data for your own review. The graph below shows the dramatic increase over the last 2 years related to **legal review of records requested because of litigation or pending litigation**. Clearly something is wrong at City Hall.



Perhaps selecting a different city attorney, pursuing better policies, or more effective oversight of city staff would do more towards reducing the cost of running the show - all of which have increased since Mr. Gorayeb took the reins. City Councilors need to dig a little deeper and look critically at what is visible just below the surface. The dramatic increase in costs is, for the most part, the result of litigation. Currently there are 7 active lawsuits and, the worst part is, more are likely.

The second attachment is Mike's recent email to the Mayor and council regarding a plan to limit or make more difficult our access to public records. Stay tuned as there is more to follow.

Mike Morgan and Ed Protas

Sisters Voice

Citizen Activists committed to providing unvarnished

information in support of good governance in Sisters, OR.

By Reference						
Row Labels		Sum of Litigation		Sum of Public Records		Sum of Combined
2011	$	2,570			$	2,570
11-222 Marlow v. Sisters	$	2,300			$	2,300
Community Devel. Depart. General File Matters	$	190			$	190
General File Matters	$	80			$	80
2012	$	4,240	$	555	$	4,795
11-222 Marlow v. Sisters	$	1,680			$	1,680
CDD Matters - TS #20477	$	1,080	$	140	$	1,220
Finance Matters - TS #20478			$	65	$	65
General Matters - TS#20479	$	1,480	$	350	$	1,830
2013	$	10,523	$	741	$	11,264
Sisters-Appeal v. Vitek	$	754			$	754
Sisters-CDD 2012	$	286	$	182	$	468
Sisters-CDD 2013	$	1,105	$	351	$	1,456
Sisters-Finance 2013	$	104			$	104
Sisters-General 2012	$	156			$	156
Sisters-General 2013	$	1,378	$	208	$	1,586
Sisters-Karnecki CL	$	3,936			$	3,936
Sisters-Marlow	$	2,804			$	2,804
2014	$	30,191	$	3,536	$	33,727
Sisters, City of - Writ of Review	$	1,088			$	1,088
Sisters-CDD 2013	$	5,395	$	1,755	$	7,150
Sisters-CDD 2013-2014	$	533	$	429	$	962
Sisters-Finance 2013	$	390			$	390
Sisters-General 2013	$	2,556	$	1,248	$	3,804
Sisters-General 2013-2014	$	611	$	104	$	715
Sisters-Karnecki CL	$	6,519			$	6,519
Sisters-Kellington Public Records Request	$	1,716			$	1,716
Sisters-LUBA Appeal	$	299			$	299
Sisters-LUBA Appeal - Garden RV Resort	$	65			$	65
Sisters-Marlow	$	2,990			$	2,990
Sisters-Vitek CL	$	8,029			$	8,029
Grand Total	$	47,524	$	4,832	$	52,356

Kathy Nelson

From: morgan <morgan@bendcable.com>
Sent: Saturday, April 4, 2015 10:50 AM
To: Chris Frye; McKibben Womack; David Asson; Nancy Connolly; Wendy Holzman; Kathy Nelson
Cc: Editor; Sue Stafford; Richard Coe; Ed Protas
Subject: Record requests...

Importance: High

Mayor Frye:

At the last workshop I heard a lot of justification for limiting the number of free responses to public record requests to include answering simple questions from constituents and interested community members. In other words, the data you have been given on record requests includes answering simple questions. Questions are not subject to public record law.

The only justification I heard for making it more costly and difficult for interested persons to get information from the city is it takes some staff time and it's paid for by taxpayers (AKA the public). Well, it seems you don't understand that the records in City Hall are paid for and owned by the public and the purpose of Public Record Law (ORS Chapter 192) is to make sure the public has reasonable access to what it owns. Oregon Public Record Law was written to benefit and protect the public. It was not written to benefit the bureaucracy or elected officials. The public has a right to your records subject to certain specific exemptions. I don't think it is lawful to create obstacles to those records that target certain individuals.

Please spend some time reading and studying ORS Chapter 192. Pay special attention to ORS 192.440. Then pay extra special attention to subsections 4, 5, 6, and 7. You should then realize that putting up obstacles will likely result in more cost to the city because of the provision that allows any requestor to take any denial of a fee waiver request to the Deschutes County District Attorney for review. The city has been slammed once by the local DA, do you want that to happen again? There is a bucketful of case law that makes it clear that if the interest of the public is served then a waiver or reduction of fees is warranted. Keep in mind you and others are on a recording planning a scheme to restrict the serial requesters and we all know that means Morgan and Protas. We write a news letter that is dependent on getting public information and providing if for free to a wider distribution of the interested public. That's a point we would make on any communication with the District Attorney regarding a fee waiver request.

David Asson was right. Public Record Requests have gone up because the current council is less transparent, more problematic, with more litigation than its predecessor prior to the Boyd / Gorayeb regime. If you want to save the taxpayers some money spend some time trying to figure out why the city is embroiled in so much more litigation today than is was just 3-4 years ago. Then fix it! Chasing nickels and dimes when the flood gates are wide open does not make a lot of sense and is not good governance.

Lets put things into proper context and perspective. The vast majority of requests have been directly related to litigation and litigation likely to occur. Morgan and Protas have not caused any of that cost. That cost is orders of magnitude greater than the cost caused by Morgan and Protas. The data prepared by city staff makes that crystal clear! That's where your focus should be because it has the potential to save the taxpayers

a ton of money. During 2014, the total cost to the city for all requests for Morgan and Protas is roughly equivalent to the costs the city absorbed for the City Manager's "public outreach" lunches during that same period. Which of these costs do you think is more valuable to the general public; the one where important conversations occur that are not recorded and are private or the one that results in more openness and transparency?

Mike Morgan

Kathy Nelson

From: morgan <morgan@bendcable.com>
Sent: Friday, June 19, 2015 5:53 PM
To: Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc: Kathy Nelson; Editor
Subject: 8th and final email on Bryant.
Attachments: Steve Bryant Contract.pdf

Note: The 7th email was sent out of order so you already have it - Sorry - Mike

I understand Steve Bryant bid the lowest hourly rate by a substantial margin on the latest request for proposal for city attorney. Billing rate means nothing. All an attorney has to do to compensate for a low rate is bill more hours. There is absolutely no way to challenge an attorney on billed hours - the best you can do is negotiate a lower bill. If an attorney says he spent 10 hours on something there is no way to prove otherwise. So, don't use billing rate as a determining factor in selecting an attorney.

The below newsletter includes data that proves the City of Sisters is paying Mr. Bryant more than the City of Redmond for serving in the same capacity for both - City Attorney.

From: Sisters Voice
Sent: Friday, February 27, 2015 12:09 PM
To: Sisters Voice
Subject: City Attorney Bryant must go - Part II

Busy Reader Summary: This Voice continues the analysis of City Attorney Bryant's performance by comparing his billings as city attorney for Redmond to his billings for the same position in Sisters.

Greetings:

We have been getting information using records requests from both Sisters and Redmond regarding payments to Sisters City Attorney Steve Bryant and his law firm. Here are some highlights:

Jan. 1, 2015 through Feb. 4, 2015 **Sisters** paid Bryant $14,513

For all of calendar year 2014 **Sisters** paid Bryant $66,778

For all of calendar year 2011 **Sisters** paid Bryant $39,460

For all of calendar year 2014 **Redmond** paid Bryant $42,406

So, Bryant makes a lot more money off of Sisters than he does Redmond which is a lot bigger city with a regional airport, its own police department, and much more building and development activity. Redmond's population is 27,400 versus 2,200 for Sisters. In other words, Redmond is a city 12.5 times the population of Sisters. It's safe to assume that Redmond should have higher legal costs than Sisters but it does not. What's wrong? Here's a hint; in calendar year 2011, before the Boyd / Gorayeb regime, Sisters paid Bryant $39,460.

Legal costs for the city of Sisters were not good in 2011, were much worse by 2014, and this year is starting off with astronomically high legal costs.

It's not worth quibbling about the numbers because the picture from 30,000 feet is clear. Either Bryant is taking the city to the cleaners, or the management of the city is causing a lot of legal problems, or it's a little of both. This requires some study and oversight that results in an explanation to the community. Taxpayers have a right to know why legal costs for Sisters are so out of proportion to Redmond. Since Bryant has been around 20 years it might be worth consulting with another attorney regarding the reasonableness of his billings before taking any other action.

This Voice is really background for a forthcoming edition which will again focus on City Attorney Steve Bryant. His performance to date on the food cart issue has been appalling and last night's performance qualifies Bryant for a nomination as Best Supporting Actor Contributing to an Environment of Fear, Uncertainty, and Doubt. Stay tuned.

Mike Morgan and Ed Protas

Sisters Voice

Citizen Activists committed to providing unvarnished

information in support of good governance in Sisters, OR.

PERSONAL SERVICES CONTRACT

THIS CONTRACT made and entered into this 14th day of June, 2012, by and between the **CITY of SISTERS**, a municipal corporation of the state of Oregon, hereinafter referred to as "City", and **BRYANT EMERSON & FITCH, LLP**, operating as an Independent Contractor, hereinafter referred to as "Attorney".

WITNESSETH:

WHEREAS, the City desires to retain Bryant, Emerson & Fitch, LLP to perform the duties and professional services required as legal counsel to the City; and

WHEREAS, it is the purpose of this Agreement to establish the terms and conditions of employment of Bryant, Emerson & Fitch under this Agreement to act as attorneys for and to fulfill the duties of legal counsel to the City;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES DO AGREE AS FOLLOWS:

1. **Legal Counsel:** The firm of Bryant, Emerson & Fitch, LLP are appointed as and agree to act as Legal Counsel to City.

2. **Effective Date and Duration:** This Contract commences July 1, 2012 and continues thereafter until June 30, 2016, at which point it may be extended for two one-year extensions.

3. **Scope of Services:** Attorney agrees to provide the following legal services to the City:

   3.1 Attend all regularly scheduled meetings of the City Council and other meetings as requested or when necessary (these may include land use public hearings, neighborhood meetings, land purchase/sale meetings, etc.).

   3.2 Provide appropriate oral or written legal advice and opinions as required or requested by the City Council, City Manager, or Department Directors.

   3.3 Review minutes, findings and decisions documents, motions, resolutions, ordinances, contracts, leases, and other legally binding agreements, for conformity with existing laws, statutes, administrative rules and regulations.

   3.4 Provide such assistance and legal advice as may be required by the City Council, City Manager, and other designated individuals for the administration of the City.

3.5 Represent the City in litigation where appropriate and assist and cooperate with special counsel as necessary. Attorney shall assist in identifying those areas where special counsel may be required and to assist the City in the selection of special counsel.

3.6 Advise and assist the City in matters involving Municipal corporation law, local budget law, elections, and state laws governing public leasing, purchasing and contracting.

3.7 Attorney shall maintain all of its records relating to this Contract not otherwise maintained by the City, in accordance with the requirements of state law. Attorney shall allow the City or its authorized representative to inspect and review all records to this Contract whenever so requested by the City. Attorney shall retain and keep accessible all such records for a minimum of three (3) years.

3.8 Contractor shall comply with all federal, state and local laws and ordinances applicable to public contracts and the work to be performed under this Contract.

3.9 Each person signing this Contract represents and warrants that they are authorized and have legal capacity to execute this Contract. Each party represents and warrants to the other that the execution and delivery of the Contract and the performance of such party's obligations have been authorized and that the Contract is valid and legal agreement binding on such party and enforceable in accordance with its terms.

3.10 Attorney shall coordinate services, progress reports and this Contract through the following authorized City employee:

Name:	Eileen Stein, City Manager
Contact Phone Number:	(541) 323-5205

4. Restrictions:

4.1 Attorney shall make prompt payments as due to all persons supplying labor or materials for the work provided under this Contract. City shall make prompt payments as due to Attorney.

4.2 During the course of this Contract Attorney may have access to confidential information of City and may participate in confidential discussions with City. Attorney shall not disclose confidential City information to any third party during the term of this Contract or after its termination except as required by a court of competent jurisdiction or with the consent of City.

5. Fee for Services:

5.1 City shall pay Attorney for legal services to be billed at an hourly rate as follows:

a.	Regular City Council meetings (There would be no charge for travel time for these meetings).	$100.00 per hour
b.	All other legal services, including travel time.	$130.00 per hour

c. There would be no charge for paralegal or legal assistant time.

5.2 All billing shall be in 1/10 hour increments. Billing for hourly services and expenses will be monthly and will be identified by the specific matter and/or department. The billing will include the following:

A. Date
B. Hours
C. Topic or area of service
D. Description of service
E. Charge

5.3 In the event that a dispute arises regarding Contractor's billing, City shall pay any amounts it agrees it owes and shall withhold payment of disputed amounts pending resolution of those disputes. Attorney shall provide any necessary documentation to support its billing to City.

6. **Insurance:** Attorney shall obtain the insurance specified in this Section prior to performing under this Contract and shall maintain it in full force and at Attorney's own expense throughout the duration of this Contract. Attorney shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the City.

6.1 Workers Compensation. All employers, including Attorney, that employ subject workers who work under this Contract in State shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless the employers are exempt under ORS 656.126(2). Contractor shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

6.2 Professional Liability. Professional Liability Insurance with a combined single limit, or the equivalent, of not less than $1,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

6.3 Certificate(s) of Insurance. The Contractor shall provide to the City Certificate(s) of Insurance for all required insurance before performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on

the policy as Additional Insured (or Loss Payees). The Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

7. **Workers Compensation:** Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are either subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage to employees and obtain Employer's Liability Insurance coverage limits of not less than $500,000 for each accident or are employers that are exempt under ORS 656.126. Out-of-State employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage.

8. **Independent Contractor:** Attorney, for the purpose of this Contract, shall be considered an independent contractor. As an independent contractor, Attorney agrees as follows:

   8.1 Attorney will be solely responsible for payment of Federal or State taxes required as a result of this Contract;

   8.2 Attorney is not entitled to any benefits generally granted to city employees;

   8.3 Attorney is solely liable for any Workers Compensation coverage under this contract. If Attorney has the assistance of other persons in the performance of this contract, Attorney shall qualify and remain qualified for the term of this contract as a direct responsibility employer under Oregon Workers' Compensation law.

   8.4 Attorney shall comply with the requirements of a Contractor under Oregon Revised Statutes.

9. **Non-Discrimination:** Contractor agrees that it shall not discriminate on the grounds of race, color, creed, national origin, sex, marital status, age, or disability in Contractor's performance of this Contract. Attorney agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statues, rules and regulations.

   Attorney shall also comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Contractor agrees to comply with ADA in its employment and nondiscrimination practices, and that it shall perform its contractual obligations consistent with ADA federal requirements/regulations, state disability and accessibility law and requirements, and applicable regulation and administrative rules established pursuant to those laws.

10. **Assignment:** Neither Attorney nor City may assign this Contract without the prior written

consent of the other. Contractor may, however, employ any other party or entity it deems necessary or proper for any part of the Services required to be performed by Attorney under the terms of this Contract.

11. Representations and Warranties: Attorney warrants with and represents to City that:

11.1 Attorney is, and at all times during the course of this Contract will be, duly licensed, authorized and qualified to perform and provide the services that are the subject of this agreement.

11.2 Attorney will perform the services that are the subject of this Contract in conformance with the prevailing standards of professional due care and quality, and that the work product described in this Contract will be useful for its intended purpose.

12. Termination:

12.1 City's Right to Terminate. At its sole discretion, City may terminate this Contract in whole or in part, by written notice by City to Attorney. The termination shall be effective upon receipt of the termination notice.

12.2 Contractor's Right to Terminate. Attorney may, at its sole discretion, terminate this Contract upon 30 days written notice to the City.

12.3 Mutual Consent. This Contract may be terminated at any time by mutual written consent of the parties.

12.4 No waiver of rights. The termination of this agreement shall not waive the rights of either party to the performance by the other party of any obligations due at the time of termination. Specifically, termination by the City for other than cause shall not discharge the City's obligation to pay Attorney for all services and reimbursable costs that may be due and payable as of the date of termination.

13. Indemnification Hold Harmless: The Attorney shall defend, save, hold harmless, and indemnify the city and its officers, employees and contractors from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including reasonable attorneys fees, to the extent caused by the negligent acts, errors or omissions of Attorney or its officers, employees, subcontractors, or contractors under this Contract. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the City and the Attorney, they shall be borne by each party in proportion to its negligence.

Attorney shall have control of the defense and settlement of any claim. However, neither Attorney nor any attorney engaged by Attorney shall defend the claim in the name of the City, or purport to act as legal representative without first receiving from the City authority to do so, or shall Attorney settle any claim on behalf of the City without the approval of the

City. The City may, at its election and expense, assume its own defense and settlement in the event that the City determines that Attorney is prohibited from defending the City, or is not adequately defending the City's interest of that an important governmental principle is at issue and the City desires to assume its own defense.

14. **Notice:** Any notices required under this Contract shall be effective when received at the following addresses:

City: City of Sisters
520 E. Cascade Avenue
PO Box 39
Sisters, OR 97759
(541) 549-6022

Attorney: Bryant Emerson & Fitch, LLP
P.O. Box 457
888 W. Evergreen
Redmond, Oregon 97756
(541) 548-2151

15. **Waiver:** City's delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

16. **Attorney Fees:** If a suit or action is filed to enforce any term of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statue, any sum that a court, including any appellate court, may adjudge reasonable as attorney's fees.

17. **Jurisdiction:** This Contract is executed in Sisters, Oregon. Any litigation over this Contract shall be governed by the laws of the State of Oregon and shall be commenced in Deschutes County.

18. **No Third Party Beneficiaries:** City and the Attorney are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, 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 Contract.

19. **Severability:** If any term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and

provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

20. **Integration:** This Contract constitutes the entire agreement between City and Attorney regarding the services and supersedes all prior or contemporaneous oral or written representations or agreements. This Contract shall not be modified except by a document signed by both parties and in writing.

IN WITNESS WHEREOF the parties have caused this Contract to be executed the day and year first above written.

City of Sisters

EILEEN STEIN, City Manager

Bryant Emerson & Fitch, LLP

STEVEN D. BRYANT, Partner

#4

Kathy Nelson

From: morgan <morgan@bendcable.com>
Sent: Friday, June 19, 2015 5:52 PM
To: Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc: Kathy Nelson; Editor
Subject: 4th email on Steve Bryant.
Attachments: SP 14-07 Letter.pdf; LUBA Decision.pdf

I apologize for sending the 7th email out of order yesterday.

Counselors:

Review the attached then proceed, focus on the yellow. This document again addresses the food cart issue but includes an analysis by an independent land use attorney.

From: Sisters Voice
Sent: Sunday, February 15, 2015 11:56 AM
To: Sisters Voice
Subject: Food Carts, another legal opinion

The Busy Reader Summary: Food Carts - Legal: This voice provides an introduction to the attached documents.

The first attachment is a letter from Bend Attorney Michael Peterkin. This legal analysis is the result of concerned citizens collecting enough money to get an independent opinion on the food cart decision benefiting former mayor Brad Boyd.

We think the document speaks for itself. Consider the contents and conclusion in contrast to the words of Mayor Chris Frye:

"[City Attorney, Steve Bryant's] *letter basically, clearly says the application was done correctly, the interpretation of the code was correct and that we as council have no options, no legal authority to make any changes...We've talked to people on planning commission that also felt that way. We interviewed a few of them.*"

We identified each of the issues addressed by Mr. Peterkin in the 5 page document we submitted to the City Council on January 12, 2015. Mayor Frye chose to ignore our input and it was not considered by the City Attorney because it was never given to him.

Mr. Peterkin's letter cites Oregon Revised Statutes and applicable case law specifically including LUBA decisions (Oregon Land Use Board of Appeals) that directly support his legal conclusions. Contrast his work with the letter we previously sent you from City Attorney Steve Bryant that did not reference any applicable authorities or case law. As we pointed out in the Voice titled "*City Attorney Steve Bryant Must Go*", Bryant's opinion letter to council avoided any mention of Development Code Section 4.1.700 H, which defines the requirement for Planning Commission review of a Type II land use decision made by staff.

The second attachment is the LUBA case cited by Peterkin towards the bottom of the second page titled "Tarjoto v. Lane County". This LUBA decision is on point and directly applicable to SP 14-07, the Food Cart Decision. It makes clear (page 2, lines 8-16) that Oregon statutes allow a local government to make certain land use decisions without a hearing but there must be a process that allows a de novo appeal. De novo means a complete review as if the first decision was never made. Further (page 9, lines 1-8), the time period to initiate an appeal does not start until there is proper notice served on all persons lawfully entitled to initiate an appeal.

So now what? The City Council has two widely diverging opinions to consider. At a minimum, the city **MUST** engage the services of a well-respected independent land use attorney and ask for another opinion. In other words, which of the two legal opinions already in hand is most compelling and why. The leaders in city hall could find themselves in difficulty if they choose to "stay the course".

Please stop by the Sisters Bakery and sign the petition demanding the City Council hold a public hearing on SP 14-07 allowing food carts on the Eurosports lot. We also need more contributions to pay for the work of Michael Peterkin and his staff attorneys. Sharlene Weed is in charge of collecting money (we can't be trusted). Contact her at: sharleneweed@gmail.com. We believe she has set up a Pay Pal account to make it easy.

Message to the Nugget and its Editor Jim Cornelius: While you have previously opined "*It is inappropriate, and probably legally fraught, to unwind this particular process now*" the attached letter clearly indicates otherwise. And you have also stated "*Decisions are made by those who show up... Throwing rocks is not getting involved.*" Not only have we been involved, we have spent our own money to put a solution on the table for our elected representatives. You might suggest they would be wise to consider it.

Regards,

Ed Protas and Mike Morgan

Sisters Voice

Citizen Activists committed to providing unvarnished

information in support of good governance in Sisters, OR.

PETERKIN & ASSOCIATES
ATTORNEYS AT LAW

February 13, 2015

Via FIRST CLASS MAIL AND EMAIL

Sisters City Council
Sisters Planning Commission
PO Box 39
520 E. Cascade Avenue
Sisters, OR 97759

RE: SP 14-07

Dear Council and Planning Commission members:

This office represents a group of concerned citizens of Sisters. This letter addresses why the Council should direct issuance of an amended site plan approval (SP 14-07) to allow Planning Commission review of the decision that permits food carts on the lot located at 223 E. Hood Avenue (Tax Lot 2200).

1. Background on SP 14-07

Applicant 223 Hood Ave LLC received food cart approval under SP 14-07. Brad Boyd, former City of Sister's mayor, is the principal member of the applicant 223 Hood Ave LLC. The application was filed on October 30, 2014. The Findings and Decision approving the application was signed on November 26, 2014 by Eric Porter, Planner for the City of Sisters. Planning Department did not send the Findings and Decision to the Sisters' Planning Commission for review.

2. Remedies to Correct Flawed Approval Process

The review and decision related to SP14-07 were flawed as explained below. The procedural defects can be remedied. Failure to serve the Planning Commission with a copy of the decision means that the time for the Commission to initiate a review of the decision never began. In order to give the Commission adequate opportunity to review SP 14-07, the Planning Department should re-issue the Notice of Decision and serve a copy on the Planning Commission, thereby triggering Commission's fourteen (14) day review period.

The re-issued decision could be called an "Amended Decision." The purpose of an Amended Decision under SDC 4.1.700(G), is to allow the Community Development

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

222 NW IRVING AVENUE BEND, OREGON 97701 541/389-2572 TEL 541/389-6298 FAX WWW.PETERKINPC.COM

Director to rectify inadvertent omissions which do not materially alter the decision. Here the inadvertent mistake was the failure to provide the decision to the Planning Commission. SDC 4.1.700(G) requires an amended decision to be issued within ten (10) days from when the original decision would have become final but here the decision could never have been final because of the procedural failure to serve the Commission. An amended decision will correct the service defect and allow the Commission an opportunity for review.

3. Legal Issues Related to Issuance of SP 14-07

A. Procedural Deficiencies in SP 14-07 Review and Approval

i. Failure to Circulate the Decision to the Planning Commission

Despite the fact that the Findings and Decision signature page indicates that the Decision was circulated to the Planning Commissioners (Findings and Decision, p 31), it was not. Although the SDC provides that the planning department has discretion to forward an application to the Planning Commission to allow it to make the decision (SDC 4.1.400(C)), the Planning Department does not have discretion to provide the Planning Commission with a copy of a decision made on an application not forwarded to the Commission.[1] SDC 4.1.700(H) provides for a process by which the Planning Commission can initiate review of a Type II decision. This review process must be completed within 14 days of the mailing of the final decision. SDC 4.1.700(H)(3).

The fact that the Planning Commission never received a copy of the decision prevented them from initiating a review under SDC 4.1.700(H)(3). Therefore, the fourteen (14)-day time limit in that section should be tolled until the Commission is provided with an official copy of the decision by the Planning Department. *Tarjoto v. Lane County*, 29 Or LUBA 408 (1995).

The ability of the Planning Commission to initiate its own review, which is equivalent to an appeal, is a critical step that ensures proper decision-making and oversight of Type II decisions. Unless corrected, the failure of the Planning Department to complete this step

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[1] *See* SDC 4.1.700(F)(6): the Planning Department must "File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law." The Planning Commission is entitled to notice in order that they can initiate a review of the decision if they choose to. *See also* SDC 4.1.400(B)(4)(h).

and provide for a Planning Commission review renders the decision procedurally deficient under SDC 4.1.700(F)(6).

B. Substantive Concerns with Issuance of SP 14-07

i. Applicability of Transient Merchants License to Food Carts

Decision Condition #11 requires each food cart to obtain a City business license prior to occupancy (p 33). This condition is consistent with Sisters Municipal Code (SMC) 5.04.020 (1):

> "It is unlawful for any person, firm, company or corporation to engage in or carry on for gain any business, trade, profession or calling, as defined in this section, for the transaction or carrying on of which a license is or shall be required in this chapter without first taking out or procuring the license required for such business, trade, profession or calling."

The license required for the food carts is a transient business/merchant license. The definition of a transient business/merchant under SMC 5.24.110 is defined as:

> "[A] person who either carries goods, wares or merchandise from area to area (or City to City, selling or offering the same for retail sale; or who offers goods, ware merchandise or services from a vehicle, trailer or cart, temporary apparatus, temporary location, or door to door without making the business permanent and continuous in the City."

The approval of SP 14-07 necessarily makes the food carts that will operate at 223 Hood Avenue "transient merchants" for the purpose of SMC 5.24.110. Condition of Approval 12.A requires that the carts remain mobile at all times. There is also no condition prohibiting the allowed carts from leaving the lot at 223 E Hood Ave to operate in another community at any time. Thus the operation of the food carts at 223 E Hood will not be "permanent and continuous." It would follow then, that the food carts are required to obtain a transient merchant/business license pursuant to SMC 5.24.020(1) and 5.24.110.

It has come to our attention that the City is choosing to interpret Condition 11 to require only an annual business license. The difference in those two licenses is substantial and means a great deal of difference in revenue for the City. An annual business license costs $105/year whereas a transient merchant/business license is $100/day. In addition to the difference in impact, the interpretation proposed by the City is clearly inconsistent with

the permit as issued. A transient business/merchant license is the appropriate license for food carts located at 223 E. Hood Avenue.

ii. Categorical determination of food carts as eating and drinking establishments

In the Findings and Decision, Planner Porter determines that "food carts are categorically considered as eating and drinking establishments," and that as such they are an outright permitted use in the Downtown Commercial (DC) district. This statement is problematic for several reasons. First, one land use decision cannot make a "categorical" determination that is binding on future land use decisions. Staff or hearing officer interpretations of local ordinances have no binding effect on subsequent decisions. *Marquam Farms v. Multnomah County*, 32 Or LUBA 240 (1996). Thus, Planner Porter was without authority to make such a broad statement.

Second, Porter's determination is inconsistent with the express language of the applicable section of the code and is not supported with any evidence. ORS 197.829(1). There is no discussion whatsoever in the Findings as to why a food cart is an eating and drinking establishment for the purposes of the zoning code for the DC district. Sisters Development Code (SDC) 4.1.400(C) requires that the decision shall address "all of the relevant approval criteria and standards." An unsupported conclusion does not meet this standard.

Furthermore, the statement is contradicted by the plain language of the code. Websters New Third International Dictionary (unabridged 2002 ed) defines "establishment" as "a more or less fixed and usually sizable place of business…"[2] A food cart that is required to remain mobile at all times is not fixed nor is it sizable. Planner Porter's interpretation of a food cart as an eating and drinking establishment is not consistent with the plain meaning of the word "establishment" as used in the zoning code. *See PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993)("[W]ords of common usage typically should be given their plain, natural and ordinary meaning."); *Siporen v. City of Medford*, 349 Or 247, 266, 243 P3d 776 (2010) (a local governing body's interpretation of its land use regulations must be plausible and not inconsistent with the text of the regulation and its underlying purpose). *See also Greenhalgh v. Columbia County*, 54 Or LUBA 626 (2007) (A city is not afforded deference as to its interpretation of a phrase where such interpretation is contrary to the plain meaning of a word in the phrase.)

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[2] Per SDC 1.3.100 all terms in the code have their commonly accepted dictionary meaning and Websters Third New International Dictionary (unabridged) is the standard reference for said meaning.

iii. The Decision is Contrary to the Standard in SDC 2.4.300H

The Development Standards set forth in SDC 2.4.300 apply to all land, buildings and uses in the DC District. The Standard set out in SDC 2.4.300(H) reads as follows:

> Outdoor Displays, Sales and Dining. Outdoor display, sale of merchandise and dining associated with the primary use is permitted and shall be limited to the private property of that primary use.

The plain language interpretation of the intent of this provision is that dining associated with the primary use of the lot is permitted. The Findings and Decision for SP 14-07 state: "The applicant intends on having outdoor eating areas, which is permitted in this zone according to this subsection." This conclusion is incorrect and unsupported. The current primary use[3] of the lot located at 223 E. Hood Ave is as a bicycle shop, Eurosports, which is also owned by Mr. Boyd. The applicant has made no indication in its application that it intends to close the bike shop or change the primary purpose of the lot. Dining, in the regular context, is not associated with a bike shop, and the applicant has failed to demonstrate how it might be in this particular situation. Again, the statement that outdoor dining is permitted in this zone does not address non-compliance with the Development Standard in SDC 2.4.300 (H).

C. Ethical Concerns with Issuance of SP 14-07

In addition to the above issues related to the application of code provisions and proper procedure to SP 14-07, there are serious concerns related to the actions of elected officials in connection with this application and subsequent proposed policy and code changes related to food carts and other transient uses in Sisters. The applicant listed on SP 14-07 is an LLC controlled by Mr. Boyd. At all times between when the application was submitted and the decision issued, Mr. Boyd was Mayor of the City of Sisters. Mr. Boyd benefits directly from the approval of this Site Plan. Both before and after its approval, Mr. Boyd, as mayor, engaged in discussions related to changing the requirements for temporary use permits and temporary business licenses, to make them more stringent and difficult. Such changes would not apply to the food carts on Mr. Boyd's lot, but would effectively prevent the opportunity for any competition. Mr. Boyd did not, to our knowledge, make any attempt to recuse himself from those discussions despite its impact and the resulting direct benefit to him personally.

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[3] Per SDC 1.3.300, "primary" means the largest or most substantial of a given element (including use) on the property.

In conclusion, SP 14-07 has legal and ethical concerns and is procedurally deficient. The decision was never finalized by serving a copy on the Planning Commission. There is a solution to the procedural error. The City Council should direct the Planning Department to issue an Amended Decision and serve it on the Planning Commission which would start the fourteen (14) days allowed by the Sisters Development Code for review. Allowing the decision to stand leaves an uncertain future for the City and the SP 14-07 applicant because there is a strong legal argument that the decision is not a final decision per the Sisters Development Code.

Thank you for your consideration.

Sincerely,

for

Michael W. Peterkin

cc: Clients

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

HERU H. TARJOTO,	)	
	)	
Petitioner,	)	
	)	LUBA Nos. 95-052 and 95-053
vs.	)	
	)	FINAL OPINION
LANE COUNTY,	)	AND ORDER
	)	
Respondent.	)	

Appeal from Lane County.

Wendie L. Kellington, Portland, represented petitioner.

Stephen L. Vorhes, Assistant County Counsel, Eugene, represented respondent.

SHERTON, Chief Referee; GUSTAFSON, Referee; LIVINGSTON, Referee, participated in the decision.

DISMISSED 07/11/95

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISIONS**

3 Petitioner appeals two county planning director
4 decisions, each of which approves a special use permit for a
5 dwelling not related to forest management (nonforest
6 dwelling) in the Impacted Forest Lands (F-2) zone.

7 **FACTS**

8 ORS 215.416(11)(a) allows a county decision maker to
9 approve or deny an application for a land use permit without
10 a hearing, if notice of the decision is given to certain
11 persons and an opportunity is provided for a de novo appeal
12 of the decision to a hearings officer, the planning
13 commission or the governing body.[1] The Lane Code (LC)
14 establishes such a procedure for county decisions on
15 applications for special use permits for nonforest dwellings
16 in the F-2 zone.

17 The following facts are undisputed. Without holding a
18 hearing, the county planning director issued two decisions

---

[1]ORS 215.416(11)(a) provides, in relevant part:

> "The hearings officer, or such other person as the governing body designates, may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision. * * * An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. [T]he appeal shall be a de novo hearing."

1 approving applications for nonforest dwellings on two
2 properties in the F-2 zone. With regard to such planning
3 director decisions, LC 14.100(4)(c) requires that notice of
4 the decision be mailed to the owners of property "[w]ithin
5 500 feet of the exterior boundaries of the contiguous
6 property ownership which is the subject of the application
7 if the subject property is within a farm or forest zone."
8 On January 3, 1994, the county mailed notice of the
9 challenged planning director decisions to certain persons.
10 LC 14.505(1) and 14.510 provide that such planning director
11 decisions may be appealed to the county hearings officer,
12 and that such appeals must be filed within 10 days after the
13 date the planning director's decision is signed.[2]
14 Petitioner owns property adjacent to both properties
15 that are the subject of the nonforest dwelling applications
16 at issue in this appeal. Consequently, under
17 LC 14.100(4)(c) petitioner was entitled to mailed notice of
18 the planning director decisions approving the subject
19 nonforest dwellings. However, the county failed to mail
20 notice of the decisions to petitioner. Petitioner first
21 learned of the existence of the planning director decisions
22 on March 14, 1995. On March 20, 1995, petitioner filed
23 local appeals of the planning director decisions. On
24 March 22, 1995, the county planning department accepted

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[2]Under LC 14.505(1) and 14.300, the hearings officer's review is de novo, as required by ORS 215.416(11)(a).

1 petitioner's local appeals and scheduled them for hearing
2 before the hearings officer.[3] On March 29, 1995, petitioner
3 filed notices of intent to appeal the planning director
4 decisions at LUBA, initiating this appeal proceeding.

5 **MOTION TO DISMISS**

6 The county moves for dismissal of this consolidated
7 appeal proceeding on the ground that under
8 ORS 197.825(2)(a), LUBA's jurisdiction is limited to "cases
9 in which the petitioner has exhausted all [local] remedies
10 available by right before petitioning [LUBA] for review."
11 The county argues that both ORS 215.416(11) and LC 14.100(4)
12 require that petitioner be given notice of, and an
13 opportunity for a local appeal of, the planning director's
14 decisions. The county further argues that, in this
15 circumstance, the planning director's decisions became final
16 as to petitioner only when petitioner was given the required
17 notice of those decisions. League of Women Voters v. Coos
18 County, 82 Or App 673, 799 P2d 588 (1986); Pautler v. City
19 of Lake Oswego, 23 Or LUBA 339 (1991); Komning v. Grant
20 County, 20 Or LUBA 481 (1990). According to the county,
21 because it accepted petitioner's local appeals of the
22 planning director's decisions, under ORS 197.825(2)(a)
23 petitioner cannot appeal the planning director's decisions

---

[3]When such a local appeal is filed, LC 14.520 requires the planning department to "determine if [the appeal] was received within the 10 day appeal period and if it contains the contents required by LC 14.515 * * *."

directly to LUBA.

Petitioner contends that because the planning director decisions were made without a hearing, ORS 197.830(3) gives petitioner a right to appeal those decisions directly to LUBA. Petitioner further contends that because he was entitled to written notice of the subject planning director decisions pursuant to LC 14.100(4)(c), ORS 197.830(3)(a) applies, and his notices of intent to appeal are timely because they were filed within 21 days after petitioner obtained actual notice of the planning director decisions. Petitioner also argues that the requirement of ORS 197.825(2)(a) to exhaust available local remedies is not applicable in circumstances where the deadline for filing a local appeal expires before petitioner gets actual notice of a land use decision made without a hearing. Beveled Edge Machines, Inc. v. City of Dallas, 28 Or LUBA 790, 795 (1995) (Beveled Edge); Kevedy, Inc. v. City of Portland, 28 Or LUBA 227, 239-40 (1994) (Kevedy).

ORS 197.830(3) was added to the land use statutes in 1989, and provides:

> "If a local government makes a land use decision without providing a hearing or makes a land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to [LUBA] under this section:
>
> "(a) Within 21 days of actual notice where notice is required, or

1 "(b) Within 21 days of the date a person knew or
2 should have known of the decision where no
3 notice is required." (Emphasis added.)

4 We have not previously determined whether
5 ORS 197.830(3) applies to a situation where a county or city
6 decision is made pursuant to local procedures authorized by
7 ORS 215.416(11) or 227.175(10).[4] As explained above, these
8 statutory provisions allow a local government to make a land
9 use permit decision without a hearing, but require that
10 notice of the decision and an opportunity for a de novo
11 local appeal be provided.[5] The question we are presented
12 with in this case is if a county fails to provide a person

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[4]In appeals of local government decisions made prior to the enactment of what is now ORS 197.830(3), we held that where a local government fails to provide the notice of a decision on a permit application made without a hearing required by ORS 215.416(11) or 227.175(10), any time period set by the local code for filing a local appeal does not begin to run until the required notice of the decision is provided to the appellant, and that ORS 197.825(2)(a) requires that such local appeals be exhausted before appealing to LUBA. Citizens Concerned v. City of Sherwood, 21 Or LUBA 515, 528 n16 (1991); Komning v. Grant County, supra, 20 Or LUBA at 493; Dack v. City of Canby, 17 Or LUBA 1015, 1017 (1988); Pienovi v. City of Canby, 16 Or LUBA 604 (1988); see League of Women Voters v. Coos County, 82 Or App 673, 679-81, 729 P2d 588 (1986). In Pautler v. City of Lake Oswego, supra, 23 Or LUBA at 341 n3, we specifically reserved judgment on whether ORS 197.830(3) affects the requirement for exhausting a local appeal in such situations.

[5]Both Beveled Edge, supra, and Kevedy, supra, concerned city permit decisions made pursuant to the process authorized by ORS 227.175(3) and (5), whereby an initial city decision on a permit application is made only after a hearing, and notice of such hearing must be given in accordance with ORS 197.763. The codes of both cities involved in Beveled Edge and Kevedy provided an opportunity for a local appeal, but as far as we can tell, an opportunity for a local appeal in those circumstances is not required by statute. In Beveled Edge, the petitioner was not given notice of the city hearing as required by ORS 197.763(3). In Kevedy, the petitioner contended the notice of the city hearing did not reasonably describe the city's action.

with the notice of a decision made without a hearing required under ORS 215.416(11), and the person subsequently obtains actual notice of the decision, may that person appeal the county's decision directly to LUBA under ORS 197.830(3), or must the de novo local appeal required by ORS 215.416(11) first be exhausted, as provided by ORS 197.825(2)(a)? In the situation presented by this appeal, we believe these statutory provisions can be interpreted in a consistent manner that gives effect to each provision.

We have previously interpreted ORS 197.830(3) to apply where "a local government is required to provide a hearing under state or local law, but fails to do so." Beveled Edge, 28 Or LUBA at 792; Leonard v. Union County, 24 Or LUBA 362, 374 (1992). We have also construed the phrase "without providing a hearing" in ORS 197.830(3) to include circumstances where the local government either (1) fails to hold a required hearing; or (2) fails to give a person the individual notice of hearing to which they are entitled under state or local law, thereby denying that person the opportunity to appear at the hearing. Id.; cf. Flowers v. Klamath County, 98 Or App 384, 388, 780 P2d 227, rev den 308 Or 592 (1989) (local government may not rely on its own "failure to provide notice and a hearing to defeat petitioners' ability to achieve standing to challenge the failure to provide them"). We have also described the

1 purpose of ORS 197.830(3) as protecting the "statutory
2 rights of the individual to receive adequate notice of the
3 public hearing, participate fully in the public hearing and
4 challenge the local decision * * *." Kevedy, 28 Or LUBA
5 at 232.

6 While ORS 215.416(11) allows a county to make land use
7 permit decisions without a hearing, it protects an
8 individual's right to participate in a local hearing, by
9 requiring that notice of the decision be given to affected
10 persons and that the opportunity for a de novo local appeal
11 be provided. Where such a local appeal is available, the
12 purpose of the exhaustion requirement of ORS 197.825(2)(a)
13 is to assure that the challenged decision is reviewed by the
14 highest level local decision making body the local code
15 makes available, before an appeal to LUBA is pursued. Moody
16 v. Deschutes County, 22 Or LUBA 567, 569 (1992); McConnell
17 v. City of West Linn, 17 Or LUBA 502 (1989).

18 Reading these provisions together, we conclude that
19 where a local government makes a permit decision without a
20 hearing, pursuant to local procedures implementing
21 ORS 215.416(11) or 227.175(10), ORS 197.830(3) does not
22 apply, because the local government did not fail to provide
23 a hearing or the notice of such hearing required by state or
24 local law. However, under ORS 215.416(11) and 227.175(10),
25 the local government must provide the opportunity for
26 individuals to obtain a hearing through a de novo local

appeal, as required by those statutes. If the local government fails to provide the notice of decision required by ORS 215.416(11) or 227.175(10), it cannot rely on that failure to prevent it from providing the opportunity for a de novo local appeal required by statute. Therefore, in such a situation, the time for filing a local appeal does not begin to run until a local appellant is provided the notice of decision to which he or she is entitled.[6] Because a local appeal is available to such an individual, under ORS 197.825(2)(a) that appeal must be exhausted before appealing to LUBA.

In this case, there is no dispute the planning director made initial decisions on the disputed permits without a hearing, under code provisions implementing ORS 215.416(11). Therefore, ORS 197.830(3) does not apply to allow petitioner to appeal the planning director's decisions directly to this Board. Furthermore, under ORS 215.416(11), the county is required to provide petitioner with notice of the planning director's decisions and the opportunity for a de novo local

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[6]We realize that under ORS 197.829, Gage v. City of Portland, 319 Or 308, 316-17, 877 P2d 1187 (1994), and Clark v. Jackson County, 313 Or 508, 514-15, 836 P2d 710 (1992), a local governing body has a great deal of discretion in interpreting its own enactments. However, we do not believe that discretion would extend to interpreting code local appeal provisions implementing ORS 215.416(11) or 227.175(10) in a way that would deprive the local government of authority to accept a local appeal where the local government is required by statute to provide such a local appeal, after giving proper notice of its initial decision. Such an interpretation would be contrary to a state statute that the code provisions implement and, therefore, subject to reversal by this Board. ORS 197.829(4).

1 appeal. Consequently, under ORS 197.825(2)(a), we lack
2 jurisdiction to review the challenged decisions, because
3 petitioner must exhaust the available local appeal process.
4 The county's motion to dismiss is granted.
5 This appeal is dismissed.

Kathy Nelson

From: morgan <morgan@bendcable.com>
Sent: Sunday, June 21, 2015 11:42 AM
To: Chris Frye; Bill Hall; David Asson; Nancy Connolly; Wendy Holzman
Cc: Kathy Nelson; Editor; Sue Stafford; Carol Jenkins; Patrick Davenport; Richard Coe; Mark Adolf
Subject: Steve Bryant has a conflict of interest...

Importance: High

Councilors:

City Attorney Steve Bryant usually attends Planning Commission (PC) meetings when a known contentious issue is involved. This past Thursday (6/18) he was not there even though the very contentious McKenzie Meadow Village (MMV) issues were before the PC. I checked the recording for the 4/2 City council workshop and Mr. Bryant was a no show then and MMV issues were on the table. The email below likely explains why Mr. Bryant has been a no show at any meeting where MMV issues were on the agenda.

If you have not seen enough before to convince you that Mr. Bryant needs to be replaced, this should do it. He does not declare his conflict of interest, does not get an unconflicted attorney to step in, he leaves the city high and dry, and on 6/18 the PC makes a fatal procedural error that if not corrected guarantees another LUBA action.

It is a clear violation of attorney ethics rules for Mr. Bryant or his firm to represent people that have business before the City which he and his firm also represent. See rule 1.7 at: http://www.osbar.org/_docs/rulesregs/orpc.pdf. You have grounds to file an ethics complaint with the Oregon State Bar Association. You should do that and talk to legal counsel at the Oregon League of Cities and / or a legal ethics and malpractice attorney. You must get independent legal counsel to protect the interests of the City. Leaving the city high and dry at a critical hearing was unconscionable and will likely cause financial harm to the City.

What follows is a verbatim transcript of Mark Adolf's attorney asking for the 6/18 hearing to be continued which was ignored. Had the city been represented by a competent attorney at this meeting this procedural error would not have happened.

Michael J. Repucci, representing Pinnacle Alliance Group: "I would also like to formally request that this hearing be continued under Sisters Development Code Section 4.1.500.C.1.d, to a date that will allow my client to gather additional information to submit in rebuttal or further clarification of comments that were made tonight. We need to find whether approvals previously granted have dates and deadlines that expired. We have not been able to get documents from city staff on this point."

Mr. Bryant goes MIA in hopes people will think by doing so he solves his ethics problem. Not a chance. Oregon ethics preclude him and his firm from having clients that are, or could be, adverse to each other. A land use hearing is a judicial proceeding and the decision can be challenged to LUBA and to the

Appellate Court. Mr. Bryant should not have taken Mr. Cox as a client given he was likely to be involved in a land use process with the City of Sisters which he is contractually obligated to represent.

Mr. Bryant has been the city attorney for 18 years and it's time for him to go. You can and must do better.

Mike Morgan

From: Michael Repucci [mailto:mjrepucci@j-rlaw.com]
Sent: Thursday, March 26, 2015 2:55 PM
To: cfrye@ci.sisters.or.us; mwomack@ci.sisters.or.us; dasson@ci.sisters.or.us; wholzman@ci.sisters.or.us; nconnolly@ci.sisters.or.us; aholzman@ci.sisters.or.us; dlayne@ci.sisters.or.us; rdean@ci.sisters.or.us; dgentry@ci.sisters.or.us; jseymour@ci.sisters.or.us; dtewalt@ci.sisters.or.us; bwright@ci.sisters.or.us
Cc: 'Randy Scheid'; 'Chris Gracia'; 'Patrick Davenport'; editor@nuggetnews.com; Chris Mayes; Tom Pryor; rlcinv@aol.com; jcarp549@aol.com; madolf@pinallgroup.com
Subject: Notice of Professional Legal and City Governance Breach of Ethics and Conflict of Interest-3/26/15

Dear Mayor Frye, City Council members and Planning Commission members,

Our firm represents Mark Adolf and Pinnacle Alliance Group with respect to matters associated with several pending legal disputes involving Ageia Health Services and Kevin Cox. It has recently come to my attention that City Attorney Steve Bryant's law firm, Bryant Emerson, LLP, represents Ageia Health Services and Kevin Cox in connection with these disputes. As you know, my client has recently advised the City of significant and substantial potential violations of due process associated with the processing of Ageia Health Services' development applications for the McKenzie Meadow Village project. In light of the legal disputes between my client and Ageia and Kevin Cox relating to the same project which is also the subject of my client's notification to you of potential due process violations associated with the processing of Ageia's application by the City, it appears that a very real and substantial conflict of interest exists with respect to the continued involvement of Steve Bryant and/or his firm, Bryant Emerson, LLC, in any matters relating to the processing of Ageia's development application for the McKenzie Meadow Village project.

These items were brought to your attention this week in email dated March 24, 2015 and in a letter dated March 23, 2015.

Given the appearance of impropriety and actual conflict of interest associated with Mr. Bryant's continued involvement with the Ageia development application, demand is hereby made for Mr. Bryant and his law firm to immediately recuse themselves from any further involvement with the Ageia development application. This request extends to matters that involve Ageia Health Services and Kevin Cox, including, but not limited to:

1 Ageia Health Services.

2 Kevin Cox.

3 McKenzie Meadow Holding Company, LLC (Kevin Cox is the Registered Agent and Member).

4 McKenzie Meadow Village, LLC, and owners of McKenzie Meadow Village, LLC: Willitts, Reed, Kallberg and associated individuals and entities.

5 Ascent Architecture & Interiors, its owner Ambient Architecture, LLC, and associates Seth Anderson, Krista Appleby and associated individuals and entities.

Thank you for your immediate attention to this grave matter of professional legal and City governance ethics.

Michael J. Repucci
Johnson & Repucci LLP
2521 Broadway, Suite A
Boulder, Colorado 80304
Phone (303) 442-1900
Fax (303) 442-0191
Email: mjrepucci@j-rlaw.com

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AGENDA ITEM

SUMMARY

CITY OF SISTERS
SISTERS CITY COUNCIL

Meeting Date: June 25, 2015

Staff: Paul Bertagna

Type: Regular Meeting

Dept: Public Works

Subject: Barclay Drive Waterline Improvement Project

Action Requested/Motion:
By motion, award a construction services contract to Lindsay Development, LLC DBA McKenzie Cascade Heavy Excavation in an amount of $74,767.00 for the Barclay Drive Waterline Improvement Project and authorize the City Manager to execute the contract.

Summary Points:

- The Barclay Drive Waterline Improvement Project went out to bid on Wednesday, June 3rd, 2015.
- City staff received 2 bids. Bids were opened on Wednesday, June 17th, 2015.
- Lindsay Development, LLC DBA McKenzie Cascade Heavy Excavation was the apparent low bidder.
- Notice of Intend to Award went out on Thursday, June 18th, 2015.
- The City Engineer's estimate for the contract was $98,650.00.

Financial Impact:

- City budgeted $98,650.00 to pay all invoices and will be reimbursed through the IFA (Infrastructure Funding Authority) IGA.

Attachment(s):
A. Bid Analysis
B. Notice of Intend to Award

Concurrence: _____ CM _____ F&A PD CDD _____ PW

Barclay Drive Waterline Improvement Project

Bids opened June 17, 2015

				MCKENZIE CASCADE		ROBINSON AND OWEN		ENGINEER OPINION	
NO.	DESCRIPTION	QTY	UNIT	Unit $	TOTAL	Unit $	TOTAL	Unit $	TOTAL
1	Mobilization	1	Lump Sum	$ 6,050.00	$ 6,050.00	$ 6,600.00	$ 6,600.00	$ 6,000.00	$ 6,000.00
2	Temporary Traffic Control	1	Lump Sum	$ 7,000.00	$ 7,000.00	$ 4,029.00	$ 4,029.00	$ 10,000.00	$ 10,000.00
3	Saw Cut and Removal	1	Lump Sum	$ 575.00	$ 575.00	$ 2,190.00	$ 2,190.00	$ 3,000.00	$ 3,000.00
4	Asphalt Patching	300	Square Yard	$ 26.41	$ 7,923.00	$ 28.45	$ 8,535.00	$ 8.00	$ 2,400.00
5	Testing and Chlorination	1	Lump Sum	$ 1,850.00	$ 1,850.00	$ 2,310.00	$ 2,310.00	$ 1,000.00	$ 1,000.00
6	12" C-900 PVC Pipe	650	Foot	$ 49.32	$ 32,058.00	$ 55.11	$ 35,821.50	$ 75.00	$ 48,750.00
7	6" C-900 PVC Pipe	30	Foot	$ 14.50	$ 435.00	$ 59.67	$ 1,790.10	$ 50.00	$ 1,500.00
8	4" C-900 PVC Pipe	20	Foot	$ 9.40	$ 188.00	$ 71.50	$ 1,430.00	$ 40.00	$ 800.00
9	12"x12" MJxFLGxMJ TEE	1	Each	$ 1,140.00	$ 1,140.00	$ 1,515.00	$ 1,515.00	$ 2,000.00	$ 2,000.00
10	12"x6" MJxFLGxMJ TEE	2	Each	$ 750.00	$ 1,500.00	$ 960.00	$ 1,920.00	$ 1,000.00	$ 2,000.00
11	12"x4" MJxFLGxMJ TEE	1	Each	$ 775.00	$ 775.00	$ 946.00	$ 946.00	$ 1,000.00	$ 1,000.00
12	12" B'Fly Valve	2	Each	$ 1,662.00	$ 3,324.00	$ 1,910.00	$ 3,820.00	$ 2,000.00	$ 4,000.00
13	6" Gate Valve	2	Each	$ 792.50	$ 1,585.00	$ 1,010.00	$ 2,020.00	$ 1,000.00	$ 2,000.00
14	4" Gate Valve	1	Each	$ 698.00	$ 698.00	$ 860.00	$ 860.00	$ 800.00	$ 800.00
15	Hydrant Assembly	2	Each	$ 2,149.00	$ 4,298.00	$ 3,960.00	$ 7,920.00	$ 3,000.00	$ 6,000.00
16	Hydrant Pad w/Bollards	2	Each	$ 1,000.00	$ 2,000.00	$ 730.00	$ 1,460.00	$ 1,000.00	$ 2,000.00
17	2" Blowoff Assembly	2	Each	$ 957.00	$ 1,914.00	$ 1,939.00	$ 3,878.00	$ 1,200.00	$ 2,400.00
18	Air-Vac Release	1	Each	$ 1,454.00	$ 1,454.00	$ 2,403.00	$ 2,403.00	$ 3,000.00	$ 3,000.00
	TOTAL				**$ 74,767.00**		**$ 89,447.60**		**$ 98,650.00**

correction of arithmetic extension