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Amador County Recorder
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DOC- 2009-0010603-00
REQD BY CITY OF SUTTER CREEK
Wednesday, DEC 30, 2009 12:02:55
Ttl Pd \$0.00 Nbr-0000189089
CT2/R1/1-11

Recording Requested By:

Return to:

City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

**DEFERRED IMPROVEMENT AGREEMENT
BETWEEN CITY OF SUTTER CREEK
AND
BRYSON COTTAGES, LLC.**

**Agreement for Deferral of Subdivision Improvements
Between the City of Sutter Creek
And
Bryson Cottages, LLC.
Final Map No. 175**

CCMB
5/1

AGREEMENT FOR DEFERRAL OF SUBDIVISION
IMPROVEMENTS BETWEEN THE
CITY OF SUTTER CREEK AND BRYSON COTTAGES, LLC

Section 1. Recitals

A. This agreement is entered into by and between the City of Sutter Creek, a municipal corporation of the State of California (hereinafter “City”) and Bryson Creek Cottages, LLC (herein “Owner”).

B. Owner desires to record Final Subdivision Map No. 175 on file in the Office of the City Clerk, but wishes to defer the construction of certain improvements and defer compliance with certain conditions of approval as required by City.

C. City will allow such deference on the terms and conditions set forth in this agreement and subject to Owner’s compliance with Government Code Section 66411.1, Sutter Creek City Code Section 1724.030, and City Council Resolution No. 07-08-35, a true and correct copy of which is attached hereto and incorporated by reference herein as if fully set forth.

Section 2. Consideration and Interpretation

This agreement is entered for and in consideration of the mutual promises herein exchanged and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged. This agreement shall be interpreted in accordance with California law, provided however, it still be interpreted as of jointly prepared by the parties and no presumption shall arise from the identity of the drafter.

Section 3. Agreement Binding on Successors in Interest

This agreement is an instrument affecting the title or possession of the real property set forth on Final Subdivision Map No. 175. All the terms, covenants and conditions herein imposed are for the benefit of City and the real property or interest therein which constitutes the private driveway and utility system and shall be binding upon the successors in interest of Owner. The terms of this agreement shall apply separately to each parcel, and the owner of each parcel shall succeed to the obligations imposed on Owner by this agreement.

Section 4. Effective Date

This agreement shall be effective upon recordation of Final Map No. 175 in the official records of Amador County, California.

Section 5. Deferred Improvements and Conditions

A. Conditions 7, 8, and 9 required by City Council Resolution 07-08-35 will be applied individually to each lot at issuance of each building permit on any lot in said Subdivision Map No. 175.

Section 6. Performance of Work

In performing all work, Owner shall comply with the referenced conditions in City Council Resolution 07-08-35 and all other applicable provisions of law and complete all work at his sole expense. The work shall be done in accordance with all legal requirements in effect at the time improvements are constructed. Owner agrees to commence and complete the work within the time specified herein and shall give the City notice not less than 48 hours prior to start of work.

Section 7. Indemnity

The Owner shall defend, indemnify and save harmless the City, its officers, agents and employees, from every expense, liability or payment by reason of injury (including death) to persons or damage to property suffered through any act or omission, including passive negligence or act of negligence, or both, of Owner, his developer, contractors, subcontractors, employees, agents or anyone directly or indirectly employed by any of them, or arising in any way from work called for by this agreement, or any part of the property described in Exhibit "A", including those matters arising out of the deferment of permanent drainage facilities or the adequacy, safety, use or non-use of temporary drainage facilities, or the performance or nonperformance of the work. This provision shall not be deemed to require the Owner to indemnify the City against liability for damage arising from the sole negligence or willful misconduct of the City or its agents, servants, or independent contractors who are directly responsible to the City.

Section 8. Notice

Except as otherwise expressly provided by law, any and all notices or other communication required or permitted by this agreement or by law to be served on or delivered or given to a party by another party to this agreement shall be in writing, and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is directed or, in lieu of such personal service, two (2) days after such written notice is deposited in the United States Mail, First Class, postage paid, addressed to the party at the address identified for that party in this agreement. Any party may change their address for the purpose of this Section by giving written notice of such change to each other party in the manner provided by this Section.

Notice shall be provided as set forth below:

City of Sutter Creek
Attn: City Manager
18 Main Street
Sutter Creek, CA 95667

Bryson Cottages, LLC
Attn: David Sidle
P.O. Box 238
Mokelumne Hill, CA 95245

Section 9. No Continuing Waiver

The waiver by any party of any breach of any of the provisions of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this agreement.

Section 10. Effect of Partial Invalidity

Any provision of this agreement which proves to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provisions of this agreement, and such other provisions shall remain in full force and effect.

Section 11. Remedies Cumulative

No remedy or election of remedies provided for in this agreement shall be exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give it the fullest effect allowed by law.

Section 12. Time of Essence

Time is of the essence of this agreement, and all of the terms, covenants, conditions, and provisions of this agreement.

Section 13. Integrated Agreement, Future Amendments

This agreement contains all of the agreements and warranties of the parties with respect to any matter covered or mentioned in this agreement. No prior agreements, arrangements, or understandings pertaining to such matters shall be effective for any purpose. No provision of this agreement may be amended or added to except by an agreement in writing signed by each party or each party's successor in interest.

Section 14. Signator's Warranty

Each party warrants to each other that he or she is fully authorized and competent to enter into this agreement in the capacity indicated by his or her signature and agrees to be bound by this agreement as of the effective date of this agreement.

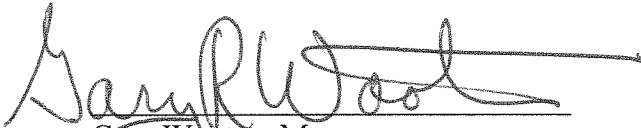
Section 15. Recordation

This agreement shall be recorded in the Official Records of Amador County, California, concurrently with Final Map No. 175 referenced above.

EXECUTED this 16th day of November, 2009, in the City of Sutter Creek, County of Amador, State of California.

CITY:

OWNER: BRYSON Cottages LLC.

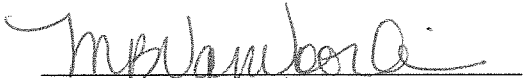


Gary Wooten, Mayor




David Sidle, Manager

ATTEST:



MARY BETH VAN VOORHIS, Secretary

APPROVED:



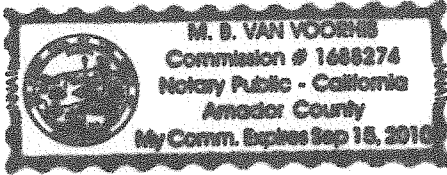
Dennis Crabb, City Attorney
As to Form

NOTARY PUBLIC CERTIFICATE

State of California
County of Amador SS.

On December 22, 2009, before me, M.B. Van Voorhis, Notary Public, personally appeared David Sidle

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

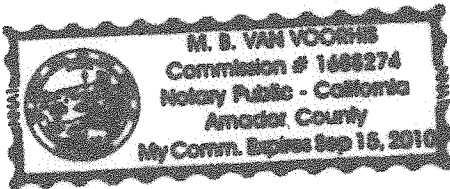
Signature: *M B Van Voorhis*
Signature of Notary Public

NOTARY PUBLIC CERTIFICATE

State of California
County of Amador SS.

On December 28, 2009, before me, M.B. Van Voorhis, Notary Public, personally appeared Gary R. Wooten

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: *M B Van Voorhis*
Signature of Notary Public

EXHIBIT "A" LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF AMADOR, CITY OF SUTTER CREEK, AND IS DESCRIBED AS FOLLOWS:

LOT 12 AND 13 OF GOLD QUARTZ TERRACE, UNIT NO. 1 ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORD ON FEBRUARY 25, 1980 IN BOOK 4 OF SUBDIVISION MAPS, AT PAGE 72, AMADOR COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS, WITH OUT THE RIGHT OF SURFACE ENTRY, HOWEVER, AS CONVEYED IN THAT DEED FROM PACIFIC INDUSTRIES, A CALIFORNIA CORPORATION, TO ROBERT BRYSON, RECORDED APRIL 15, 1960 IN BOOK 89 OF AMADOR COUNTY OFFICIAL RECORDS, AT PAGE 446.

APN: 018-342-002-000 AND 018-342-003-000

RESOLUTION NO. 07-08-35

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUTTER CREEK
APPROVING THE BRYSON COTTAGES TENTATIVE SUBDIVISION MAP**

WHEREAS, the City Council of the City of Sutter Creek did on Monday, June 2, 2008, hold a public hearing on a proposed Tentative Subdivision Map for David Sidle (APN 018-342-002 & 003) after properly noticing said hearing , and

WHEREAS, the City Council did at the public hearing, receive a report from the planning staff, and Commission, receive input from the Applicant's representative, and receive testimony from the public, and at the closing of said public hearing did deliberate and consider the same; and

WHEREAS, the City Council found that the project would not have a significant impact on the environment based on the Negative Declaration that was prepared for the project.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Sutter Creek hereby approves the Tentative Subdivision Map for Bryson Cottages based on the findings attached hereto as Exhibit A, and subject to the Conditions of Approval attached hereto as Exhibit B.

PASSED AND ADOPTED by the City Council of the City of Sutter Creek on this 2nd day of June, 2008 by the following vote:

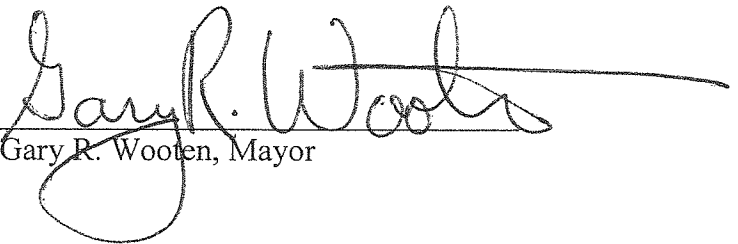
AYES: Council Member Crosby, Murphy and Parsons

NOES: None


ABSENT: Council Member Hepworth

ABSTAIN: Council Member Wooten

CITY OF SUTTER CREEK


Gary R. Wooten, Mayor

ATTEST:


Natalie Doyle, Deputy City Clerk

FINDINGS FOR THE
BRYSON COTTAGE TENTATIVE SUBDIVISION MAP

1. The proposed map is consistent with applicable General Plan because the project site is designated Residential Low Density and no further changes to the General Plan Land Use designation are proposed other than those requested.
2. The design and improvement of the proposed parcel map is consistent with applicable General Plan. The General Plan residential policies have been considered in the project design.
3. The site is physically suitable for the type of development proposed. The proposed 12 residential lots can accommodate detached single family dwellings as allowable by the General Plan and Zoning Code.
4. The site is physically suitable for the proposed density of development and each parcel is of sufficient size to accommodate low density residential uses.
5. Neither the design of the subdivision map nor the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because of the parcels are within a developed area.
6. Neither the design of the subdivision map nor the proposed improvements is likely to cause serious public health problems because sewer, water, and storm drainage improvements are in place or will be constructed as part of the project's improvements.
7. The proposed subdivision map will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed project because the existing and proposed easements are properly located.
8. The proposed dedication of land or improvements is consistent with the General Plan Circulation Policies. The site can be adequately served by existing facilities.
9. The design of the subdivision map provides, to the extent feasible, for the future passive or natural heating opportunities in the project because each lot is large enough and has sufficient southern exposure to facilitate solar orientation.

CONDITIONS OF APPROVAL FOR THE
BRYSON COTTAGE TENTATIVE SUBDIVISION MAP

All conditions shall be met prior to or concurrent with recordation of the Final Parcel Map.

1. Approval of this action includes a Tentative Subdivision Map for 12 single family residential lots. The map is valid for a period of 24 months from the date of approval unless a Final Map is recorded or an extension is granted.
2. Construct storm drainage improvements to City Standards in accordance with the storm drainage study.
3. Construct sidewalk, curb, gutter and drainage improvements along the property frontage of Bryson Drive consistent with City of Sutter Creek street standards as required by the City Engineer.
4. Submit a grading plan consistent with Chapter 33 of the Uniform Building Code for review and approval by the City of Sutter Creek.
5. Extend all utilities to property in accordance with a utility plan approved by the City Engineer.
6. Comply with Title 14 of the Municipal Code for sewer service including a main line extension and/or sewer service laterals to serve each lot.
7. Provide street tree landscaping pursuant to Ordinance No. 274.
8. Pay Parkland In Lieu fees pursuant to Ordinance No. 258, based on the fair market value of the lots.
9. Pay a Traffic Mitigation Fee equivalent to twelve single-family units.
10. All ordinance requirements of the Amador Water Agency shall be met.
11. All ordinance requirements of the Sutter Creek Fire District shall be met.
12. Prior to recordation of the first final map, the project shall annex into the County of Amador Community Facilities District No. 2006-1 to fund additional costs associated with fire protection services for the new development as per City of Sutter Creek Resolution No. 060706.
13. Prior to recordation of the first final map, the project applicant shall form or annex into a Community Facilities District (CFD), street maintenance assessment district or other financing district or will provide a similar funding mechanism

which is acceptable to the City of Sutter Creek to fund the project's fair share of ongoing roadway maintenance.

14. Meet the Sewer Facilities and connection requirements as specified by the City Sanitation Engineer.
15. All work shall be completed per City of Sutter Creek standard details and specifications.