

MARIPOSA COUNTY ORDINANCE NO. 982
(Not to be Codified)

**AN ORDINANCE APPROVING DEVELOPMENT AGREEMENT NO. 2002-203 FOR
JOLENE SEALE, APPLICANT**

WHEREAS, a Design Review Application was received from Jolene Seale seeking approval of a 2-story mixed use structure including commercial and residential space; and

WHEREAS, the preliminary environmental review of this application found that there could be potentially significant traffic and emergency response impacts resulting from the project based upon the existing access road to the project site not being improved to commercial standards; and

WHEREAS, in order to address the identified potentially significant impacts, the applicant submitted a Development Agreement proposing to limit the allowed commercial uses within the proposed structure pending full improvement of the access road to 2-lane commercial standards; and

WHEREAS, the Planning Commission and Board of Supervisors have held duly noticed public hearings on the matter in accordance with State Law and County Codes and have considered all public input.

NOW THEREFORE, the Board of Supervisors does hereby ordain as follows:

SECTION 1: The Board of Supervisors approves Development Agreement No. 2002-203 as shown in Exhibit 1 of this ordinance.

SECTION 2: This action of the Board is based on the findings mandated by Section 17.124.130.C of Mariposa County Code, Zoning as stated and discussed in Exhibit 2.

SECTION 3: This ordinance shall become effective thirty (30) days after final passage pursuant to Government Code Section 25123.

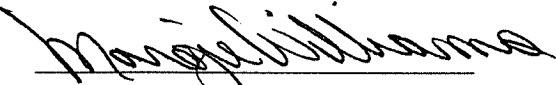
PASSED AND ADOPTED on this seventh day of January, 2003 by the following vote:

AYES:	Parker, Stetson, Pickard, Bibby, Balmain
NOES:	None
ABSTAINED:	None
EXCUSED:	None
NOT VOTING:	None



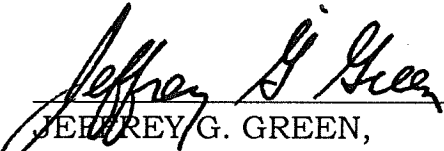
Bob Pickard, Chairman
Mariposa County Board of Supervisors

ATTEST:



MARGIE WILLIAMS,
Clerk of the Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



JEFFREY G. GREEN,
County Counsel

ORDINANCE No. 982 EXHIBIT A

(insert Development Agreement from Staff Report or as modified by Board of Supervisors)

RECORDING REQUESTED BY:

Chairman of the Board of Supervisors
County of Mariposa

DOCUMENT: **2030158**



Titles: 1/ Pages: 13
Fees....
Taxes...
Other...
AMT PAID

WHEN RECORDED MAIL TO:

Margie Williams, Clerk of the Board
Mariposa County Board of Supervisors
P.O. Box 784
Mariposa, CA 95338

DEVELOPMENT AGREEMENT

No. 2002-203

THIS AGREEMENT is entered into this 6th day of February 2003, between Jolene Seale and the County of Mariposa, a political subdivision organized and existing under the laws of the State of California.

RECITALS

THIS AGREEMENT is predicated upon the following facts:

- A. Government Code Sections 65864-65869.5 authorize the County to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.
- B. Under Section 65865 the County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements.
- C. In accordance with the conditions of approval of Design Review and Development Agreement Application No. 2002-203, the Property Owner must enter into a development agreement with the County and proceedings have been taken into accordance with the County rules and regulations.
- D. The Board of Supervisors has found that the development agreement is consistent with the General Plan; and
- E. On December 10, 2002, the Board of Supervisors of Mariposa County adopted Resolution No. 02-441 approving Design Review and Development Agreement

Development Agreement No. 2002-023

Application No. 2002-203, and also waived the first reading and introduced an Ordinance approving the development agreement with the Property Owner.

- F. On January 7, 2003, the Board of Supervisors of Mariposa County adopted Ordinance No. 982 approving the development agreement with the Property Owner and the ordinance will take effect on February 6, 2003.

NOW THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires,
 - (a) "County" is Mariposa County.
 - (b) "Project" is the development approved by the County, i.e. Design Review Application for APN 013-130-059 and APN 013-130-056.
 - (c) "Property Owner" means the person having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
 - (d) "Real Property" is the real property referred to in paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

<u>Exhibit Designation</u>	<u>Description</u>	<u>Referred to in Paragraph</u>
A	Real Property	1, 3, 4, 8, 10, 11
B	Specific Restrictions	10, 11, 13, 16

3. Description of Real Property. The real property which is the subject of this Agreement is described in Exhibit A.
4. Interest of Property Owner. Property Owner represents that she has a legal interest in the real property and that all other persons holding legal or equitable interest in the property are to be bound by the agreement.
5. Binding Effect of Agreement. The burdens of this Agreement bind and the benefits of the Agreement inure to the successors in interest to the parties to it.
6. Relationship of Parties. It is understood that the contractual relationship between the County and Property Owner is such that the owner is an independent contractor and not the agent of the County.
7. Changes in Project. No change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the County approving the plan in the first instance. A change, modification, revision or alteration in the

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approved development plan is not effective until the parties amend this Agreement to incorporate it.

8. Effect of Transfer of Real Property to Another Jurisdiction. If all or a portion of the real property which is the subject of this Agreement is annexed to or otherwise becomes a part of a City or another County, this Agreement terminates.
9. Hold Harmless. Property Owner agrees to and shall hold the County, its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage, and claims relating to the title and salability of property and income derived therefrom, which may arise from the direct or indirect operations of the Property Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relate to the project. Property Owner agrees to and shall defend the County and its officers, agents, employees and representatives from actions for damages caused or alleged to have been caused by reason of Property Owner's activities in connection with the project.

This hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not the County prepared, supplied, or approved plans or specifications or both for the project.

Property Owner further agrees to indemnify, hold harmless, pay all costs and provide a defense for the County in any action challenging the validity of the development agreement.

10. Specific Restrictions on Development and Use of Real Property. In addition to zoning classifications, the specific restrictions shall also govern the development and use of the property as identified in Exhibit B.
11. Effect of Agreement on Land Use Regulations. The rules, regulations and official policies governing permitted uses of the property, the density of the real property, the design, improvement, and construction standards and specifications applicable to development of the real property are those rules, regulations, and official policies in force at the time of the effective date of the Agreement, except as modified by Exhibit B.

This Agreement does not prevent the County in subsequent actions applicable to the real property from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to property as set forth in Exhibit B. This Agreement does not prevent the County from denying or conditionally approving any subsequent development project application on the basis of existing or new rules, regulations and policies.

12. Periodic Review of Compliance with Agreement.

- (a) The County Planning Director shall review this Agreement at least once every 12-month period from the date this Agreement is executed. The Planning Commission shall review this Agreement at least once every 36-month period from the date this Agreement is executed.
- (b) During each periodic review by the County, the Property Owner is required to demonstrate good faith compliance with the terms of the Agreement. The Property Owner agrees to furnish such evidence of good faith compliance as the County in the exercise of its discretion may require. Evidence of good faith compliance may include, but is not necessarily limited to, the following:
 - approved or allowed uses, densities of development and conditions of development have not changed, except as allowed by this agreement.

13. Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part by mutual consent of the parties and in the manner provided for in Government Code Sections 65868, 65867 and 65867.5; however, notwithstanding anything to the contrary contained herein, this Agreement shall be non-amendable regarding uses, density, and/or size of property except as specifically provided for in Exhibit B. This Agreement may also be cancelled at any time by the Property Owner. Cancellation will be subject to the provisions and terms specified in Exhibit B.

14. Enforcement. Unless amended or canceled as provided in paragraph 13, this Agreement is enforceable by any party to it notwithstanding a change in the applicable general plan, specific plan, zoning, subdivision or building regulations adopted by the County which alter or amend the rules, regulations or policies governing permitted uses of the land, density, design, improvement and construction standards and specifications.

15. Events of Default. Property Owner is in default under this Agreement upon the happening of one or more of the following events or conditions:

- (a) if a warranty, representation or statement made or furnished by Property Owner to the County is false or proves to have been false in any material respect when it was made;
- (b) a finding and determination by the County made following a periodic review under the procedure provided for in Govt. Code section 65865.1 that upon the basis of substantial evidence the Property Owner has not complied in good faith with one or more of the following terms or conditions of this agreement.

16. Procedure upon default.

- (a) Upon the occurrence of an event of default, the County may terminate or modify this Agreement in accordance with the procedure adopted by the County. Termination shall be subject to the provisions and terms specified in Exhibit B.

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- (b) County does not waive any claim of defect in performance by property owner implied if on periodic review the local agency does not propose to modify or terminate the agreement.
 - (c) Non-performance shall not be excused because of a failure of a third person.
 - (d) An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the property owners, shall be sufficient to terminate the agreement and a hearing on the matter shall not be required. Termination or cancellation will be subject to the provisions and terms specified in Exhibit B.
 - (e) That adoption of a law or other governmental activity making performance by the applicant unprofitable or more difficult or more expensive does not excuse the performance of the obligation by the property owner.
 - (f) Non-performance shall be excused only when it is prevented or delayed by acts of God or an emergency declared by the Governor.
 - (g) All other remedies at law or in equity which are not otherwise provided for in the agreement or in County's regulations governing development agreements are available to the parties to pursue in the event there is a breach.
17. Damages upon termination. In no event shall Property Owner be entitled to any damages against County upon termination of this agreement.
18. Attorneys fees and costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys fees and court costs.
19. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, with County Certification of said mailing. A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.
20. Rules of construction and miscellaneous terms.
- (a) The singular includes the plural; the masculine gender includes the feminine, "shall" is mandatory, "may" is permissive.
 - (b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.
 - (c) If there is more than one signer of this Agreement, their obligations are joint and several.
 - (d) The time limits set forth in this Agreement may be extended by mutual consent of the parties in accordance with the procedures for adoption of an agreement.
21. Duration of Agreement. This agreement shall expire on February 6, 2033.

IN WITNESS WHEREOF this Agreement has been executed by the parties on the day and year first above written.

ACKNOWLEDGMENTS

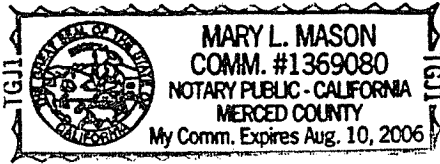
PROPERTY OWNER

BY: Jolene Seale
Jolene Seale, Property Owner

By:
Mary L. Mason
Notary Public 12/19/02

COUNTY OF MARIPOSA

BY: Robert C. Stewart
Robert C. Stewart, Chairman
Mariposa County Board of Supervisors



APPROVED AS TO FORM:

Jeffrey G. Green
Jeffrey G. Green
County Counsel

ATTEST:

Margie Williams
Margie Williams
Clerk of the Board

APN 013-130-059 and
APN 013-130-056

EXHIBIT A

A tract of land situated in a portion of Projected Section 23, Township 5 South, Range 18 East, M.D.B. & M., Rancho Las Mariposas, Mariposa County, State of California, said tract of land also being a portion of that certain real property described in Joint Tenancy Grant Deed recorded April 22, 1991 as Document No. 912038 in the Official Records of Mariposa County, said tract of land being more particularly described as follows:

Commencing at the most northerly corner of Lot 3, as said Lot 3 is delineated on that certain map entitled "RECORD OF SURVEY FOR GEORGE & ZELMA KEYSER" recorded October 7, 1985 in the Book of Maps at page 2221, Mariposa County Records; thence S55°21'00"W, along the northwesterly line of Lot 3, a distance of 159.36 feet to the POINT OF BEGINNING of the herein described tract of land; thence, leaving the northwesterly line of said Lot 3, S51°22'06"E for 18.21 feet; thence S71°20'22"E for 39.88 feet; thence S64°16'04"E for 114.07 feet; thence S75°20'29"E for 31.70 feet; thence S84°58'37"E for 27.50 feet to a point on the southeasterly line of said Lot 3; thence S55°21'00"W, along the southeasterly line of said Lot 3, for 206.92 feet to a point, said point being located N55°21'00"E a distance of 96.00 feet from the

most southerly corner of Lot 3; thence, leaving the southeasterly line of said Lot 3, N35°36'28"W for 110.03 feet; thence N54°51'17"W for 85.42 feet to a point on the northwesterly line of said Lot 3; thence N55°21'00"E, along the northwesterly line of said Lot 3, for 110.98 feet, more or less, to the POINT OF BEGINNING.

The above described tract of land contains 0.62 acres, more or less, and is subject to any rights-of-way or easements of record or legally acquired.

TOGETHER WITH a non-exclusive easement for ingress and egress on, over, across and under all that portion of the following described strip of land lying outside the boundary of the hereinabove described tract of land, said strip of land being situated in a portion of said Lot 3, said strip of land having a uniform width of 30.00 feet being 15.00 feet on each side of the following described centerline:

BEGINNING at the most northerly corner of the hereinabove described tract of land; thence, along the northeasterly line of said tract of land, the following five (5) courses and distances:

1. S51°22'06"E for 18.21 feet; thence
2. S71°20'22"E for 39.88 feet; thence

3. S64°16'04"E for 114.07 feet; thence
4. S75°20'29"E for 31.70 feet; thence
5. S84°58'37"E for 4.01 feet to a point, said point being perpendicular to and 15.00 feet distant northwesterly from the southeasterly line of said Lot 3; thence, leaving the northeasterly line of said tract of land, N55°21'00"E, parallel with and 15.00 feet distant northwesterly from the southeasterly line of said Lot 3, for 99.94 feet, more or less, to a point on the northeasterly line of said Lot 3, said point being the terminus of the herein described centerline.

The sidelines of the above described strip of land are to be lengthened or shortened so as to begin at the northwesterly line and end on the northeasterly line of said Lot 3.

The above described strip of land is subject to any rights-of-way or easements of record or legally acquired.

RESERVING THEREFROM, as an appurtenance to the remaining lands of the Grantor or any portion thereof, a non-exclusive easement for ingress and egress on, over, across and under all that portion of the hereinabove described strip of land lying within the boundary of the hereinabove described tract of land.

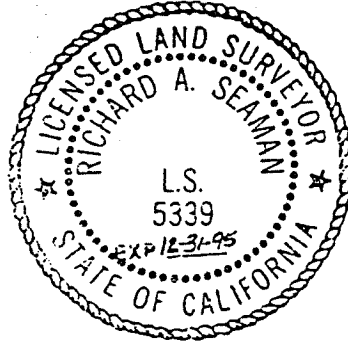
ALSO RESERVING THEREFROM as an appurtenance to the remaining lands of the Grantor or any portion thereof, a non-exclusive easement for ingress and egress on, over, across and under a strip of land, said strip of land being situated in a portion of the hereinabove described tract of land, said strip of land having a uniform width of 30.00 feet being 15.00 feet on each side of the following described centerline:

BEGINNING at a point on the northeasterly line of said tract of land, said point being located S51°22'06"E a distance of 15.66 feet from the most northerly corner of said tract of land, said point also being perpendicular to and 15.00 feet distant southeasterly from the northwesterly line of said tract of land; thence S55°21'00"W, parallel with and 15.00 feet distant southeasterly from the northwesterly line of said tract of land, for 109.97 feet, more or less, to a point on the southwesterly line of said tract of land, said point being the terminus of the herein described centerline.

The sidelines of the above described strip of land are to be lengthened or shortened so as to begin at the northeasterly line and end at the southwesterly line of said tract of land.

The above described strip of land is subject to any rights-of-way or easements of record or legally.

Prepared by:



Richard A. Seaman, L.S. 5339

Date

EXHIBIT B

SPECIFIC RESTRICTIONS ON USE OF PROPERTY

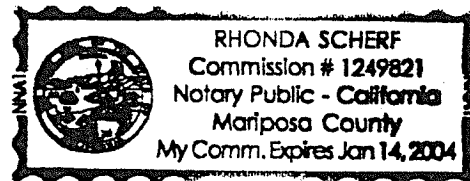
1. If the Development Agreement expires and is not renewed, or if the Development Agreement is canceled or becomes null and void, the County will begin proceedings with the intent to compel the property owner to improve the access road from Stroming Road to the parking lot on the project site to full commercial standards. Full commercial standards shall mean that the access meets commercial road standards pursuant to all applicable County Improvement Standards in effect at the time.
2. At such time as the access roads from the closest county maintained road to the project site are improved to full commercial standards as determined by the Planning Director and Public Works Director pursuant to all applicable county standards, then the Development Agreement shall be canceled. The costs for canceling the Development Agreement shall be the responsibility of the property owner.
3. Uses within the structure located on the property shall be limited to those uses which generate an average of less than 11.6 ADT (average daily trips) per 1,000 square feet of space based upon the current ITE (International transportation Engineers) Manual. The Planning Director shall be responsible for determining if proposed uses meet these criteria.
4. The property owner shall participate in any formal or informal road maintenance and shared improvement efforts for the access road from the project site to Stroming Road. The level of participation shall be the property owner's fair share, based upon usage. The property owner shall not be responsible for improvements required for future commercial development on an off-site property.

State of California
County of Mariposa

On December 12, 2002 before me, Rhonda Scherf, personally appeared Robert C. Stewart, personally known to me 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.

WITNESS my hand and official seal.


Rhonda Scherf



Title of Document: *Development Agreement No. 2002-203*

Date of Document: *December 12, 2002*

Number of Pages: *12 (including Exhibit A and Exhibit B)*

Other signatures acknowledged: *None*

ORDINANCE No. 982 EXHIBIT B

1. *“That such an amendment is in the general public interest, and will not have a significant adverse affect on the general public health, safety, peace, and welfare”*

The Development Agreement has no impacts on the objectives, policies and general land uses and programs specific in the Mariposa Town Planning Area Specific Plan and the Mariposa County General Plan. The Development Agreement does not change the land use standards of the plan. The Development Agreement will create use restrictions on the subject property to limit traffic until the access road is fully improved to commercial standards. The Development Agreement is necessary in order to allow the commercial development on the site with existing access conditions.

The Development Agreement will allow a commercial office structure close to an established commercial core within a population center. The Land Use Element of the General Plan states TPAs are for the purposes of being centers of population concentration and providing basic services to residents.

The commercial project includes a residential unit. The Housing Element encourages mixed-use developments, especially in areas where a full range of services are offered.

The Development Agreement is consistent with, or will have no negative effect on the other goals, policies, and standards of the Mariposa County General Plan.

2. *“That such an amendment is desirable for the purpose of improving the Mariposa County General Plan with respect to providing a long term guide for county development and a short term basis for day-to-day decision making”*

The purpose of the agreement is to impose use restrictions to ensure that the traffic to the project site is limited pending full improvement of the access road. The agreement will not change the land uses allowed on the site, just limit them temporarily. Although the area is planned for commercial uses, the area is now developed with residential uses. The Development Agreement will have the secondary effect of ensuring less intense commercial use of the site, to be more compatible with the residential neighborhood.

3. *“That such an amendment conforms to the requirements of state law and county policy”*

See Finding No. 1.

4. *“That such an amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County General Plan”*

The Initial Study/Negative Declaration adopted for the project studied these issues and determined the project will not have a significant effect on the environment, including the surrounding area, with the mitigation measures adopted. The Development Agreement is an integral part of the project to limit uses on the project site pending full improvement of the access road to commercial standards. The project is for a commercial development which has the potential to support the needs of county residents.

The project will have an adverse impact on wildlife resources and is subject to the Department of Fish and Game filing fee for the Negative Declaration (California Government Code, Fish and Game Filing Fees §711.4). This finding is based upon input on the project from the Department of Fish and Game. Fish and Game stated that, although the project is relatively minor in its scope, the project will result in the destruction of at least some habitat, and is not considered DeMinimis in its effect on fish and wildlife.

5. *“The subject parcel is physically suitable (including, but not limited to access, provision or utilities and infrastructure, compatibility with adjoining land uses, and absence of physical constraints) for the requested land use designation and the anticipated land use development”*

The Development Agreement will further the orderly development of property by limiting the intensity of uses pending full improvement of the road to commercial standards. The standards established by the design review standards will help to preserve property values in the area, by ensuring high quality development which is compatible with the community character.

6. *“The proposed zoning is logical and desirable to provide expanded employment opportunities, or basic services to the immediate residential population or touring public”*

The Development Agreement has been prepared in accordance and is consistent with the Government Code.