

ORDINANCE NO. 1460

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA APPROVING AMENDMENT NO. 1 TO THE MAD RIVER PARKWAY BUSINESS CENTER DEVELOPMENT AGREEMENT

WHEREAS, pursuant to the authority of Government Code Section 65864 *et seq.*, the City Council to adopt Ordinance No. 1400 on February 17, 2010, approving a Development Agreement for the Mad River Parkway Business Center, which was recorded in the official records of Humboldt County on April 20, 2010, as Instrument No. 2010-8144-39 (“Development Agreement”); and

WHEREAS, Government Code Section 65868 allows for the amendment of an approved development agreement upon the mutual consent of the parties to the agreement and subject to the finding by the City Council that the amendment is consistent with the General Plan; and

WHEREAS, the parties mutually seek and consent to amend the Development Agreement; and

WHEREAS, pursuant to the requirements of state and local law, the City Council conducted a duly noticed public hearing on April 1, 2015; May 20, 2015; June 3, 2015; and June 17, 2015, to consider the proposed amendment to the Development Agreement at which time all interested persons were given an opportunity to be heard.

NOW, THEREFORE, the City Council of the City of Arcata does hereby ordain as follows:

SECTION 1. Consistency. The City Council finds that the proposed amendments to the Development Agreement are consistent with the City of Arcata General Plan 2020.

SECTION 2. Amendment No. 1 to Development Agreement.

1. Pursuant to Government Code section 65868, the Arcata City Council hereby approves Amendment No. 1 to the Development Agreement with Kenneth E. and Ellen C. Zanzi, as Trustees of the Kenneth E. Zanzi and Ellen C. Zanzi Family Trust dated June 19, 2002, attached hereto and incorporated herein.
2. The City Manager is authorized to execute said Amendment No. 1 and all other documents needed in connection with this project.
3. After full execution by the parties of said Amendment No. 1, the City Clerk is directed to record said Amendment No. 1 in the official records of Humboldt County.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

SECTION 4. Environmental Review. The changes to the Development Agreement proposed to be made by this Ordinance are consistent with the Mitigated Negative Declaration for the Project previously approved on February 17, 2010.

SECTION 3. Effective Date.

This ordinance shall take effect thirty (30) days after its adoption by the City Council.

Attachment: Amendment No. 1 to the Development Agreement with Kenneth E. and Ellen C. Zanzi, as Trustees of the Kenneth E. Zanzi and Ellen C. Zanzi Family Trust dated June 19, 2002,

DATED: June 17, 2015

ATTEST:

/s/ Bridget Dory
City Clerk, City of Arcata

APPROVED:

/s/ Michael Winkler
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of **Ordinance No.1460**, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, held on the 17th day of June, 2015, by the following vote:

AYES: WINKLER, PITINO, ORNELAS, PEREIRA, WHEETLEY

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Bridget Dory
City Clerk, City of Arcata

**AMENDMENT NO. 1 TO
DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF ARCATA AND
KENNETH E. AND ELLEN C. ZANZI**

This is a first amendment to that Development Agreement (herein the “Development Agreement”) entered into by and between the City of Arcata, a municipal corporation (“City”), and Kenneth E. and Ellen C. Zanzi, Trustees of the Kenneth E. and Ellen C. Zanzi Family Trust dated June 19, 2002 (“Developer”), adopted by the City Council of the City of Arcata as Ordinance 1400, effective as of March 17, 2010, and recorded pursuant to the authority of Section 65864 *et seq.* of the Government Code of the State of California in the **official records of Humboldt County on April 20, 2010, as Instrument No. 210-8144-39.**

RECITALS

- A. Unless defined herein, all terms, phrases and words used in this Amendment shall have the meanings as defined in the Development Agreement apply.
- B. As required by the Development Agreement, Developer has completed, or caused the completion of, and the City has accepted or approved the following required Project activities (herein “Project Activities”):
 1. Notice of Development Plan: Recorded on March 26, 2014 in the official records of Humboldt County as Instrument No. 2014-005312-6.
 2. Final Map: Recorded on March 13, 2014 in the official records of Humboldt County in Book 25 Maps 42-45 as Instrument No. 2014-004468-4.
 3. Declaration of Deed Restrictions for Wetland Setback, Stream Corridor Setback, and Riparian Lands Setback; Declaration of Deed Restrictions for Environmentally Sensitive Habitat Area: Recorded on March 13, 2014 in the official records of Humboldt County as Instrument No. 2014-00473-9.
 4. Notice of Acknowledgement Regarding Mathews Dam Inundation Hazard in the City of Arcata, Humboldt County, California: Recorded on March 13, 2014 in the official records of Humboldt County as Instrument No. 2014-004472-9.
 5. Affordable Housing Regulatory Agreement: Recorded on March 13, 2014 in the official records of Humboldt County as Instrument No. 2014-004470-17.
 6. Notice of Development Plan: Recorded on March 26, 2014 in the official records of Humboldt County as Instrument No. 2014-005312-6.
 7. Landowner Consent to Formation of Maintenance District: Recorded on March 13, 2014 in the official records of Humboldt County as Instrument No. 2014-004471-12.
- C. To the extent any terms, conditions, standards, approvals or requirements contained in any of the above Project Activities conflict with any of the terms, conditions, standards, approvals or requirements in the Development Agreement, the terms, conditions, standards, approvals or

requirements contained in the Project Activities shall control, unless amended by this Amendment No.1 or future action of the parties.

D. Under the terms of the Development Agreement and pursuant to the then existing City of Arcata inclusionary zoning requirements, Developer committed to develop seven out of 49 dwelling units on the Property for restricted use as affordable housing. Said affordable housing restrictions were memorialized in the Affordable Housing Regulatory Agreement, recorded in the official records of Humboldt County as described above.

E. Developer has attempted to market the residential property for future development without success due to the reduction of income potential occurring from the affordable housing restrictions, with the result that portions of the Development have been delayed.

F. As part of the City's 2014 Housing Element update, the City Council analyzed the effectiveness of its inclusionary zoning standards in creating affordable housing and determined that inclusionary zoning is effective primarily when subsidized through public financing, which is of limited availability due to the elimination of redevelopment financing effective 2011. The City Council further determined that, in contrast, other City programs such as its Housing Opportunity Program (HOP) are as equally effective as inclusionary zoning requirements in adding affordable single-family units to the affordable housing stock. Based on this, the City Council adopted Ordinance 1448 on October 1, 2014, repealing the inclusionary zoning provisions of the City's Land Use Code.

G. In order to promote the Development of the Property and create residential housing, the parties desire to amend the Development Agreement to eliminate the requirement that seven units of the Property be restricted for affordable housing.

H. The parties additionally desire to amend the Development Agreement to clarify the scope of review that will be required for planned development and grading.

I. Concurrent with the adoption of this Agreement, the City Council took the following actions:

1. Determined that the changes to the Project made by this Amendment No. 1 are consistent with the Mitigated Negative Declaration approved for the Project on February 17, 2010;
2. Made appropriate findings required by the City's enabling ordinance, Section 9.72.110(H) of the Land Use Code, that this Amendment No. 1 is consistent with the objectives and policies of the General Plan: 2020; and, is made in conjunction with an application for rezoning, a subdivision, a planned development, or other discretionary planning permit application authorizing the Development; and
3. Authorized the City to release the Affordable Housing Regulatory Agreement from the Property.

J. This Development Agreement Amendment No. 1 is adopted by the City Council pursuant to Ordinance No. 1460.

NOW, THEREFORE, in consideration of the mutual covenants and promises recited herein and incorporated by this reference, and for good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the City and Developer hereby agree as follows:

Section 1. Conditions of Approval, Amendment. The Development Agreement Exhibit "C," Conditions of Approval, is hereby amended as shown by Exhibit "A", Conditions of Approval-Amended, attached hereto and incorporated herein.

Section 2. Ratification of Agreement. The terms and conditions of the Development Agreement, including all exhibits and attachments, are ratified in their entirety except to the extent inconsistent with the terms and provisions of this Amendment. In the event of such inconsistency, this Amendment shall control.

Section 3. Counterparts and Exhibits. This Amendment may be executed in duplicate originals, each of which is deemed to be an original. This Amendment consists of eight (8) pages and one (1) exhibit, attached hereto and made a part hereof by this reference, all of which constitute the entire understanding and agreement of the Parties. Said exhibit is identified as follows:

A. Amended Conditions of Approval

IN WITNESS WHEREOF, City and Developer have each executed this Amendment as of the date first written above.

“CITY”
CITY OF ARCATA,
A municipal corporation

DATE: _____

By _____
Michael Winkler, Mayor

ATTEST:

Bridget Dory, City Clerk

APPROVED AS TO FORM:

Nancy Diamond
City Attorney

“DEVELOPER”
Kenneth E. and Ellen C. Zanzi,
Trustees of the Kenneth E. and Ellen C.
Zanzi Family Trust dated June 19, 2002

Date: _____
Ellen C. Zanzi, Trustee

Date: _____
Kenneth E. Zanzi, Trustee

EXHIBIT A TO DEVELOPMENT AGREEMENT Amendment No. 1

AMENDED CONDITIONS OF APPROVAL

The Conditions of Approval are amended as shown by the following, with deleted text shown as strikeout and new text shown as underline. All Conditions which are not amended by this action shall remain in effect.

A-1 COMPLIANCE WITH PLANNED DEVELOPMENT PERMIT, DEVELOPMENT AGREEMENT, AND LAND USE CODE REQUIREMENTS. All future development shall comply with the approved Planned Development Permit and Development Agreement. Modifications to the Planned Development may be authorized as permitted in the City of Arcata Land Use Code, §9.72.070.J – *Planned Development Permit Amendment* or its equivalent. Except as modified by this action, the authorized uses and development shall comply with the standards and provisions of the Land Use Code or equivalent, and other applicable provisions of the Arcata Municipal Code in effect as of February 17, 2010. Change of uses may be modified through a Planned Development Permit Amendment as reviewed and approved by the Planning Commission.

B-3 DEVELOPMENT PLAN. Three copies of a DEVELOPMENT PLAN shall be submitted to the Community Development Department for review and approval prior to the issuance of any Building Permits, including Grading Permits. In addition the Development Plan shall be in the form of a map that is drawn to scale and include, but not limited to the following: the location of all improvements, including but not limited to sidewalks and paths, parking and no parking areas, turn around areas, street lights, landscape lights, mailboxes, water mains, water meters, valves, sewer mains, laterals, cleanouts, manholes, storm water drainage facilities, fences, landscaping, and fire hydrants.

Furthermore, the Development Plan shall include the following notations:

1. Exterior lighting shall: be compatible with the surrounding setting; limited to the development area; not be directed beyond the boundaries of the parcel; and not result in illumination above the tree canopy. Limited path lighting is permitted for public safety. No bright or flashing lights shall be visible in a residential district. Overhead lighting shall be shielded to prevent direct illumination of natural areas.
2. All outdoor waste burning is prohibited.
3. Construction activity shall be limited to the hours of 8:00 a.m. to 7:00 p.m. on weekdays, and 9:00 a.m. to 7:00 p.m. on Saturdays. No construction activity shall be allowed on Sundays and Holidays.
4. Should concentrations of archaeological materials be encountered during construction or grading operations, all ground-disturbing work shall be temporarily halted on the site. Work near the archaeological finds shall not be resumed until a qualified archaeologist has evaluated the materials and offered recommendations for further action. Prehistoric materials which could be encountered include: obsidian or chert flakes or tools, locally darkened midden, groundstone artifacts, depositions of shell, dietary bone, and human burials. Should human remains be uncovered, State law requires that the County Coroner be contacted immediately.

Should the Coroner determine that the remains are likely those of a Native American, the California Native American Heritage Commission must be contacted. The Heritage Commission consults with the most likely Native American descendants to determine the appropriate treatment of the remains.

5. Dust Control:
 - a. Water all active construction areas twice per day and use erosion control measures to prevent water runoff containing silt and debris from entering the storm drain system.
 - b. Cover trucks hauling soil, sand, and other loose material.
 - c. Pave, water, or apply non-toxic soil stabilizers on unpaved access roads and parking areas.
 - d. Sweep paved access roads and parking areas daily.
 - e. Sweep streets daily if visible material is carried onto adjacent public streets.
6. Only leashed domestic animals shall be allowed outside of the residential units.
7. Arcata General Plan Policies PF-6a (1-9), PF-6b (1-8), and PF-6c shall be adhered to; they promote the reduction of solid waste through source reduction, re-use and recycling, and the proper disposal of household hazardous waste. Sufficient space for mandatory universal trash and curbside recycling shall be incorporated for individual parcels.
8. ~~Of the 49 total units of housing, the Developer shall construct, or cause to be constructed, seven (7) Inclusionary Units; a proposed child day care facility may be counted as one (1) Inclusionary Unit if it serves more than 15 children.~~
9. Limitation on wood-burning devices to one EPA Phase II (or better) certified device per residence, no other wood burning devices allowed. All other combustion heaters shall use natural gas or wood pellets. All development including new construction and remodels shall prohibit the installation of wood-burning masonry and zero clearance fireplaces. Brochures on wood burning are available from the North Coast Unified Air Quality Management District that identify improper wood burning device use, improperly dried fuel, and faulty equipment.
10. New owners, and or occupants shall be fully informed through recorded notice about development restrictions and allowable uses when the property is sold, transferred or occupied.
11. All lots are subject to potential floodwaters and debris from failure of the Matthews Dam. An early-warning system and evacuation plan shall be in place for all new buildings designed for human occupancy or use per Condition E-3.
12. All development including construction activities related to grading for roadways, drainage, building pads, storm water facilities and riparian replanting enhancement shall adhere to the approved Grading Plan, including the Erosion and Sediment Control Plan.
13. All development shall adhere to the recommendation set forth in the R-1 Engineering Geologic Soils Report by LACO Associates, March 2006 (with November 2008 amendment letter).
14. All commercial and industrial businesses and other operations that use, store, or produce hazardous materials, shall contract with a licensed hauler for pickup and

disposal of waste materials, except for individual disposal complying with County, State and Federal requirements. All hazardous materials shall be stored in safe containers and locations, and use of these materials shall be in compliance with County, State and Federal standards.

15. Lots 1-14 and the LLA Parcel 1 are located in a residential, commercial, and industrial mixed-use development, whereby industrial uses and activities on the project site and on surrounding off project site properties are not to be regarded as a nuisance to the residents and occupants of this Planned Development. Furthermore, the project site is located adjacent to existing gravel mining and processing activities that exempt nuisance complaints per the landscaping, sound wall construction, and setback mitigation measures associated with this project; any complaints will be reviewed under the auspices of the adjacent historically permitted activities.
16. The applicants shall sign an "Affidavit of Compliance with Industrial Performance" to verify compliance with the Performance Standards as set forth in the Arcata Land Use Code (LUC) Section 9.30.080.
17. The following land uses shall be restricted from occurring within the project site unless approved through the Planned Development Permit process: Medical Marijuana Dispensary, Sex Oriented Business, Emergency Shelter, Group Quarters, Drop-In Center, General Retail (more than 30,000 square feet), Solid Waste Disposal Transfer Station, or a Telecommunication Tower.

B-4 AFFORDABLE HOUSING DEVELOPMENT PLAN. Affordable Housing Regulatory Restrictions shall be recorded on Lot 10 which restricts the rent, occupancy and any sale of the lot and improvements to Low Income households for a term of not less than 55 years. At the time of the initial sale and any subsequent sale to an income-eligible purchaser, the qualified buyer of the designated Inclusionary Unit shall enter into a Promissory Note Secured by Deed of Trust at zero percent (0%) interest for the term of affordability securing the difference between the property's market value, as determined by an appraisal, and the actual price paid by the income-eligible purchaser.

B-6 DESIGN REVIEW REQUIRED FOR PLANNED DEVELOPMENT AND GRADING. All development, including each proposed building, will be subject to exempt from review by the Historic and Design Review Commission as specified in the Land Use Code unless the Arcata Community Development Director determines the development is not in compliance with the adopted Mad River Parkway Business Center Design Guidelines. Per recommended Design Guidelines for this project, Historic and Design Review Commission approval is required prior to any grading activities; soils of high agricultural value should be stockpiled and utilized on site and / or off site for ag production or landscaping. Landscaping must not include invasive non-native plants that could escape to nearby natural areas.

E-1 TRACT (FINAL) MAP. The Tract (Final) Map for the subdivision shall substantially conform to the Tentative Map as amended by any special conditions imposed by the City, including the Public Works Department, Environmental Services Department, Community Development Department, Planning Commission, or the City Council. ~~Special conditions shall include reserving at least 7 units on Lot 10 as shown on the Tentative Map as affordable housing which will be managed by the Project Developer.~~

The final location and language for all proposed easements and dedications shall be submitted for review and approval by the Directors of Community Development, Public Works, and Environmental Services. River access granted to the City of Arcata from Lot 12 through LLA Parcel 1 to the Mad River shall be shown on the Final Map and per the Development Agreement.

A mylar and an electronic version of the Tract (Final) Map shall be submitted to the Public Works Department. A map check fee must be paid to the Public Works Department by the developer.

E-4 RECORDATION OF AFFORDABLE HOUSING REGULATORY AGREEMENT. The applicant shall submit an Affordable Housing Plan which will be attached to the Regulatory Agreement for review and approval by the Community Development Director and City Manager. The applicant shall cause to record the approved Regulatory Agreement at the Humboldt County Recorder's Office. Applicant shall include payment for applicable recording fees. The Regulatory Agreement shall include, but are not limited to:

- ~~Lot 10 will be rent restricted for low income households. The rent restricted unit shall be rented to households qualifying as low income for their household size. Annual income limits as published by the Department of Housing and Urban Development (HUD), for the County of Humboldt, apply for determining income eligibility.~~
- ~~A minimum of 7 units shall be constructed on Lot 10.~~
- ~~Rent levels charged for the residence shall be limited to annual Rent Limits as published by HUD for Humboldt County, less a Utility Allowance.~~
- ~~Utility allowance for the rent restricted unit shall be determined using annual utility allowances published by the Housing Authority of Eureka and Humboldt County.~~
- ~~Example Income and rent determination: A family of three qualifies as a low income household if the household income is under \$40,200, the low income limit for 2009 as published by HUD. The HUD "Technical Guide for Determining Income and Allowance for the HOME Program" should be utilized for determining household income. The HIGH HOME rent limit, as published by HUD, for a 2 bedroom unit is \$794. The HIGH HOME rent can be charged for a unit occupied by a low income household. The HIGH HOME rent includes the Utility Allowance, therefore if the Utility Allowance was determined to be \$100 for the unit size, the tenant rent would be \$694 per month (\$794 rent limit - \$100 utility allowance).~~
- ~~The applicant shall construct the units in compliance with the Arcata General Plan: 2020 policy RC-8b, Encouragement of Energy Efficiency and Conservation. The applicant shall document that the units are 15% more energy efficient than the California Energy Code~~

(2005 T24) and submit a Title 24 Report documenting compliance. The units shall be enrolled in and receive certification as "Energy Star Certified".

- The Inclusionary unit location, type, size, and exterior appearance shall be the same as the market rate units. If more than one rental housing building is to be included in the development, the Inclusionary Units shall be disbursed equally across all of the rental housing buildings.

E-5 COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&R's) ON THE ARCATA COMMUNITY DEVELOPMENT AGENCY'S AFFORDABLE HOUSING UNITS. CC&R's shall be recorded against the Inclusionary Zoning units on Lot 10. The CC&R's shall be submitted to and approved by the Community Development Director and City Manager prior to recordation. Language to be included in the CC&R's shall be determined after the Inclusionary Units are proposed by the developer as either rental or owner occupied housing.

F-4 CONSTRUCTION SCHEDULE. The developer may submit building permits simultaneously for the Inclusionary Units as well as all Market Rate Units. The developer shall work on the Inclusionary Unit and Market Rate Units at approximately the same schedule, but shall be restricted from receiving Certificates of Occupancy from the City's Building Official on the second (2nd) Market Rate Lot until the Lot 10 Inclusionary Units receives a Certificate of Occupancy for 7 units. The City's Community Development Director, in consultation with the City's Building Official, may make an adjustment to the issuance of Market Rate Unit Certificates of Occupancy.

Community Development Department:

I-1 COMPLIANCE WITH CODE REQUIREMENTS. All future development shall comply with all applicable zoning standards of the Land Use Code in effect as of February 17, 2010, the approved Development Agreement for this project, and other applicable provisions of the Arcata Municipal Code in effect as of February 17, 2010, or its equivalent except as amended with this Planned Development Permit.