DEPARTMENT: Planning

BY: Eric Jay Toll, Planning Director
PHONE: 966-0302

RECOMMENDED ACTION & JUSTIFICATION:

Adopt a Resolution approving Land Division Application No. 2002-470, Variance Application No. 2002-471, and Amended Development Agreement and Design Review Application No. 2002-472 with the recommended findings and conditions. The findings include environmental determinations for each project.

Waive the first reading and introduce an Ordinance approving Development Agreement No. 2002-472.

This is the Planning Commission’s recommendation for project action.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

- June 27, 2000 – The Board of Supervisors approved the original project, including a design review application, a Specific Plan/Zoning Amendment, and a Development Agreement. The Board of Supervisors adopted a Negative Declaration for this action.
- November 9, 2000 – The Chairman of the Board executed the Development Agreement with the property owners.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternatives include amending the conditions of the land division or design review projects, amending the development agreement provisions, amending the findings supporting action, or denying portions or all of the project. Denying the project would result in the possibility of no skilled nursing facility being constructed at this site, as the primary reason for the project is based upon a funding entity’s requirements.

Financial Impact? ( ) Yes (X) No Current FY Cost: $  Annual Recurring Cost: $
Budgeted In Current FY? ( ) Yes (X) No ( ) Partially Funded
Amount in Budget: $
Additional Funding Needed: $

Source:
Internal Transfer  4/5's vote
Unanticipated Revenue  4/5's vote
Transfer Between Funds  4/5's vote
Contingency  4/5's vote
( ) General ( ) Other

List Attachments, number pages consecutively

Staff Report to Board with Attachments:
A. Vicinity Map  B. Concept Drawing  C. Elevations
D. Tentative Parcel Map  E. Variance Map  F. Site
G. Grading  H. Retaining Walls  I. Section Grids
J. N/S Sections  K. E/W Sections  L. PC Resolution
M. PC Minutes  N. NOEs  O Proposed Resolution
P. Proposed Ordinance  Q. Correspondence

CLERK'S USE ONLY:
Res. No.: Ord. No.: 
Vote – Ayes: Noes:
Absent: __________
Approved
Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date: __________
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: __________
Deputy

COUNTY ADMINISTRATIVE OFFICER:
Requested Action Recommended
✓ No Opinion
Comments:

CAO:

Revised Dec. 2002
MINUTE ORDER

TO: ERIC TOLL, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on July 8, 2003

ACTION AND VOTE:

2:09 p.m. Eric Toll, Planning Director;
PUBLIC HEARING to consider Land Division Application No. 2002-470, Variance Application No. 2002-471, and Amended Design Review and Development Agreement Application No. 2002-472 for Mariposa Skilled Nursing Facility; Norm Gallagher and Rick Roesch, applicants
BOARD ACTION: Sarah Williams, Deputy Planning Director, presented the staff report, and she advised that Rick Roesch/applicant, and Roger Stephens/Stephen Engineering-agent for the applicant, were present. She responded to a question from the Board relative to condition number ten requiring that all flammable vegetation be removed prior to the issuance of a building or grading permit.

The public portion of the hearing was opened and input was provided by the following:
- Rick Roesch, applicant, gave an update on his proposed project and the status of funding for the skilled nursing facility, and he advised that given the State budget situation, that portion of the project is in a holding pattern. He advised that they may decide to proceed with the assisted living portion of the project first. He responded to questions from the Board relative to the skilled nursing and assisted living portions of the project, and relative to accepting Medical and insurance payments.

The public portion of the hearing was closed, and the Board commenced with deliberations. Staff responded to a question from the Board relative to off-site improvement requirements. (M)Parker, (S)Balmain, Res. 03-260 was adopted approving Land Division Application No. 2002-470, Variance Application No. 2002-471, and Amended Design Review and Development Agreement Application No. 2002-472 with the recommended findings and conditions for Mariposa Skilled Nursing Facility. It was noted that the introduction of the Ordinance for this project would be scheduled on July 15, 2003. It was also clarified that relative to condition number ten requiring that all flammable vegetation be removed prior
to the issuance of a building or grading permit, that “or grading” would be deleted from the condition.
Ayes: Unanimous. The hearing was continued to July 15, 2003, at 10:00 a.m. for action on the Ordinance.

cc: File
STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
BOARD OF SUPERVISORS

Resolution  
No. 2003-260  
A Resolution Approving Environmental Determinations and  
Conditionally Approving a Land Division, a Variance, and  
Amended Design Review and Development Agreement  
Applications for Norm Gallagher and Rick Roesch;  
Assessors Parcel Numbers 012-350-008 and 012-350-010

WHEREAS a complete application for a Land Division, a Variance, and an Amended  
Design Review and Development Agreement was received from Norm Gallagher and  
Rick Roesch seeking approval of a division of property, approval of a variance to the  
parking standards of the Mariposa Town Planning Area Specific Plan and Zoning  
Ordinance, and approval of amendments to a previously approved Development  
Agreement No. 98-1 and Design Review Application for a Skilled Nursing Facility on  
October 22, 2002 on property more particularly described as Assessors Parcel  
Numbers 012-350-008 and 012-350-010; and

WHEREAS additional application information was submitted on December 9, 2002; and

WHEREAS the proposed Land Division proposes to divide a 7.45-acre parcel into two  
parcels of 3.2-acres and 4.25-acres; and

WHEREAS the proposed Variance proposes to allow 100% of improved on-street parking to  
count toward the required on-site parking for the skilled nursing facility project; and

WHEREAS the proposed amended Development Agreement is primarily necessary in order  
to allow the division of the project site for financing of the Skilled Nursing Facility;  
and

WHEREAS the proposed amended Design Review application is necessary based upon  
substantial amendments made to the site plan and building elevations for the project;  
and

WHEREAS the Planning Department circulated the applications among trustee and  
responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS a duly noticed Planning Commission public hearing was scheduled for the 6th  
day of June, 2003; and

WHEREAS the Planning Department prepared environmental documents in accordance  
with the California Environmental Quality Act and local administrative procedures;  
and
WHEREAS a Staff Report to the Planning Commission was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, the proposed environmental determinations, testimony presented by the public concerning the application, comments from affected agencies, and the comments of the applicant and agent; and

WHEREAS the Planning Commission adopted Resolution No. 2003-018 recommending Board of Supervisors approval of environmental determinations and approval of the projects with findings and conditions; and

WHEREAS a duly noticed Board of Supervisors public hearing was scheduled for the 8th day of July, 2003; and

WHEREAS the Planning Department prepared environmental documents in accordance with the California Environmental Quality Act and local administrative procedures; and

WHEREAS a Staff Report to the Board of Supervisors was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS the Board of Supervisors did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, the proposed environmental determinations, testimony presented by the public concerning the applications, comments from affected agencies, and the comments of the applicant and agents.

NOW BE IT THEREFORE RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby adopt findings for environmental review for the projects pursuant to the California Environmental Quality Act, Title 14, California Code of Regulations and Section 65457 of the California Planning and Zoning Laws as included in the individual findings made for each project.

BE IT FURTHER RESOLVED THAT the Board of Supervisors approves Land Division Application No. 2002-470 with the findings and conditions included in Exhibit A; and

BE IT FURTHER RESOLVED THAT the Board of Supervisors approves Variance Application No. 2002-471 with the findings included in Exhibit B; and

BE IT FURTHER RESOLVED THAT the Board of Supervisors approves Development Agreement No. 2002-472 as included in Exhibit C, based upon the findings included in Exhibit D; and

BE IT FURTHER RESOLVED THAT the Board of Supervisors approves Design Review Application No. 2002-472 with the findings and conditions included in Exhibit E.
ON MOTION BY Supervisor Parker, seconded by Supervisor Balmain; this resolution is duly passed and adopted this 8th day of July, 2003, by the following vote:

AYES: Stetson, Balmain, Bibby, Parker, Pickard

NOES: None

EXCUSED: None

ABSTAIN: None

Bob Pickard, Chairman
Mariposa County Board of Supervisors

ATTEST:

MARGIE WILLIAMS, Clerk of the Board
Mariposa County Board of Supervisors

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

JEFFREY G. GREEN
Mariposa County Counsel
Resolution No. 2003-260 · Exhibit A

Findings and Conditions for Land Division Application No. 2002-470

Findings:

Pursuant to Mariposa County Zoning Ordinance, Section 16.16.040, the following Findings are made:

1. Based on the parcel sizes, the engineered development plans, and the availability of community sewer and water services, the site is found to be physically suited for the division, and the future development of a skilled nursing home and assisted care facility, provided that all applicable conditions of approval are met.

2. The site is physically suited for the density of the proposed project, based upon the engineered development plans for the project, and based upon applicable Hillside Development Standards for future development of Parcel A.

3. The Pursuant to Section 15182 of the California Environmental Quality Act (CEQA) Guidelines and Section 65457 of the California Planning and Zoning Laws, the project is exempt from the requirements of CEQA. This finding is supported by the following:
   a) As documented by the staff report, the project is consistent with the Mariposa TPA Specific Plan for which an Environmental Impact Report (EIR) has been certified
   b) Substantial changes have not occurred with respect to the circumstances under which the EIR was certified.
   c) There is no new information which demonstrates the project will result in significant or adverse environmental impacts not discussed in the EIR or significant impacts which are substantially more severe than discussed in the EIR.

4. This land division will be served by community sewer and water services, and a paved and maintained access road. Future construction on-site will be regulated by the County Grading Ordinance and all applicable Building Codes. The permitting authority for the site work is the Mariposa County Building Department. The permitting authority for the structure is OSHPOD, the Office of Statewide Health & Planning Development. This project will not cause any public health problems.

5. The proposed map is consistent with the Mariposa County General Plan and the Mariposa Town Planning Area Specific Plan. The land division has been reviewed in accordance with all applicable subdivision standards of the Specific Plan. The land division is an initial step to accomplish the General Plan’s Housing Element overall goal to “…provide an adequate supply of sound, affordable housing units in a safe and satisfying environment for the present and future residents of the County…” The land division satisfies the following Housing Element Policy: “to ensure that there are adequate sites and facilities available to support future housing needs.” The community and county have a serious need for additional housing opportunities for
elderly residents who need residential care options, and the land division project is a first step in achieving this need.

6. The parcel sizes proposed by the project are consistent with standards contained in the General Plan, Specific Plan and the Zoning Ordinance. The land division’s design complies with the County Subdivision Ordinance’s maximum 4:1 length to width ratio for parcel configuration. A waiver to the access requirements established by the Subdivision Ordinance and Road Improvement and Circulation Policy is appropriate based upon the engineered plans submitted for the project, and the future use of the properties as specified in the Development Agreement.

7. The project will not conflict with any public easement.

8. This land division application has been processed and reviewed in accordance with standards set forth in the Subdivision Map Act, Mariposa County Code Title 16 the County Subdivision Ordinance, and Mariposa County Ordinance No. 923 establishing subdivision requirements for projects in the Mariposa Town Planning Area. When the required conditions are met, the project will be in compliance with the Subdivision Map Act and the County Subdivision Ordinance.

Conditions of Approval:

1. The easement from Saint Andrews Road to Parcel A shall be made 40 feet wide and non-exclusive. The easement shall be designated for access for the use and benefit of the subject property. Provisions for a public utility easement along the access easement shall be made; the public utility easement shall be offered for dedication to the County of Mariposa and shall specifically state that the dedication is for public utility purposes only. The location and width of the easements shall be approved by the County Engineer.

2. The on-site easement from Saint Andrews Road to Parcel A shall be improved to a Town Class II standard with no parallel parking lane required, and shall meet this standard at the time of parcel map recordation. Angled parking as submitted on the engineered site plans is approved, but is not required to be completed prior to parcel map recordation. The required road improvements shall be completed in accordance with the Road Improvement and Circulation Policy and the County Improvement Standards. Any modifications to the Town Class II standard shall be reviewed and approved by the County Engineer prior to construction on-site.

3. An encroachment permit shall be obtained from the Mariposa County Public Works Department prior to any work being done on or adjacent to Saint Andrews Road. In addition, all grading and road improvement work required as a condition of approval of this project shall comply with the Mariposa County Improvement Standards and all requirements contained therein. The County Engineer may require engineered improvement plans prepared by a Registered Civil Engineer for any improvements required as a condition of approval for this project. If engineered improvement plans are required, the plans shall be approved by the County Engineer prior to commencement of construction work on the required road improvements.
4. The on-site easement road shall be named Saint Andrews Road in accordance with the criteria of County Resolution No. 92-541. The name of the road shall be shown on the parcel map.

5. Prior to the commencement of any road improvements, road construction or other road building or maintenance activities required as a condition of approval for this project and prior to issuance of any encroachment permit for the required improvements, a consultation meeting with the Public Works Department, the applicant, the agent, and the road contractor shall occur. A representative from MPUD and other utility companies may also attend. Any and all costs associated with the consultation shall be the responsibility of the applicant. The County engineer shall verify that this condition has been met prior to issuance of any encroachment permit required for this project and prior to the scheduling of any on-site inspection of road improvements.

6. Upon completion of the required road and encroachment improvements, the applicant shall re-vegetate all exposed soils and install other erosion control as recommended by the Natural Resources Conservation Service/Resource Conservation District (NRCS/RCD). The applicant shall also contact NRCS/RCD for an inspection. Inspection fees shall be the responsibility of the applicant. A letter shall be submitted to the County Surveyor by NRCS/RCD stating that the re-vegetation control provisions have been completed.

7. The existing drainage easement on the project site shall be shown on the parcel map. A statement shall be recorded in Official Records concurrently with the parcel map and referenced on the parcel map which references or repeats the restrictions previously established for the drainage easement. This easement shall be in perpetuity and shall restrict the use of the land within the easement.

8. Public utility easements along property lines shall be offered for dedication to the County of Mariposa. The easements shall be 20 feet in width (total width on-site) along exterior property lines. The easements shall be 20 feet in width along interior property lines, with 10 feet on each parcel. The offer of dedication shall be non-revocable and shall specifically state that the dedication is for public utility purposes only.

9. Prior to recordation of the parcel map, the unpaid portion of the Saxon Creek Assessment District 94-1 assessments shall be paid in full for the project parcel. As an alternative, a document acceptable to Mariposa Public Utility District Bond Counsel must be prepared and recorded to continue the lien on the new parcel configurations. Costs for preparation of the document, including possible engineering, shall be the responsibility of the property owner.

10. Prior to recordation of the parcel map, water and sewer infrastructure (off-site and on-site) shall be installed to each parcel in accordance with Mariposa Public Utility District (MPUD) specifications and requirements. In addition, fire hydrants shall be installed within the subdivision in accordance with MPUD specifications and requirements. The installation of the required MPUD improvements within the road easements shall not commence until road improvement plans are approved by the
County Engineer. Utility easements shall be established for all MPUD improvements located outside the road easements.

11. Prior to recordation of the parcel map, the necessary infrastructure to provide electric, telephone, and cable television services (e.g. utility conduits) shall be installed to each parcel in accordance with the specifications and requirements of the utility company. If the cable television service provider does not wish to install infrastructure at this time, a letter from the service provider shall be submitted to the County Engineer stating they do not wish their infrastructure to be installed by the subdivider prior to recordation of the parcel map. The infrastructure shall be installed underground from the nearest overhead line and shall be coordinated with road improvement construction. Construction work associated with utility improvements within road easements shall not commence until utility layout plans provided by the affected utility companies are submitted to the County Engineer and road improvement plans are approved by the County Engineer. Utility easements shall be established for all utility improvements located outside road easements.

12. An amendment to the Zone of Benefit for Saint Andrews Road shall be processed if determined necessary by the Public Works Department, to address the division of the project parcel into two separate legal parcels and possible re-assignment of existing assessments for road maintenance of the off-site portion of Saint Andrews Road.

13. Verification of taxes paid shall be submitted to the County Surveyor prior to the recordation of the Parcel Map.

14. A deferred improvements agreement may be executed for Conditions No. 2, 3, 5, 6, 10, 11, and 12 pursuant to established county procedures and policy.

RECOMMENDATION ON OFFERS OF DEDICATION FOR LAND DIVISION

The Board of Supervisors recommends that the County Engineer accept the offers of dedication for public utilities.
Resolution No. 2003-260 · Exhibit B

Findings for Variance Application No. 2002-471

Findings:

Pursuant to Mariposa County Zoning Ordinance, Section 17.120.050, the following Findings are made:

1. There are exceptional or extraordinary circumstances applicable to the property involved. The development site on the property is limited by an existing drainage easement, and topography constraints. The applicant has designed a project and site plan which would meet all applicable development standards, if an access easement weren’t required for the project subdivision. The division is needed only for project financing, as development on both parcels will be managed as one project. The site is subject to a Development Agreement, which strictly limits future use of the property. These circumstances combine to create unusual and unique circumstances whereby the application of the zoning standards would preclude the project as proposed.

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the property is located. If the variance is granted, the applicants will be able to construct a 59 bed skilled nursing facility, which has direct positive impacts to the public welfare. The surrounding properties have adequate on-site parking and there is on-street parking along the entire length of the off-site portion of Saint Andrews Road. The granting of a variance to allow 100% of the parking proposed on the project site to count toward parking requirements for this project will have no injurious impacts on surrounding properties.

3. The granting of the variance to allow for 100% of the parking along the access road, to count toward the project parking requirements will not adversely affect the comprehensive General Plan for the community, the Mariposa Specific Plan. The project is for a needed residential development. The project proposes construction of adequate parking, and even more parking than is technically required by the standards. The parking is physically located on the project parcel, outside of the proposed easement. The site is an isolated parcel, and surrounding development has constructed adequate on-site parking. On-street parking along Saint Andrews Road is already available to surrounding development. Based upon the project location and surrounding development, and the limitations of the development agreement, there is little or no likelihood of any public need for the on-street parking.

4. Strict application of the parking calculation requirements for the Mariposa Town Planning Area Specific Plan would preclude the owners of the property from building this project, because they would not be able to subdivide the property and consequently could not obtain project financing from HUD. The project would have to construct understructure parking to meet the parking needs, or grade further into the hillside. These options result in significant financial and environmental costs.
5. Based on a review of other commercial and institutional projects in the Mariposa TPA, the situation of the applicants' parcel is not uncommon to other lots in the vicinity and identical zone. There are other projects which use angled on-street parking for their projects. This project will not use the access easement for the parking, and the parking spaces will be entirely on the project parcel. The granting of the variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located, based upon the limitations imposed through the Development Agreement. The road improvements within the access easement are designed to serve the maximum future potential development of Parcel A.

6. The project is Categorically Exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15305, Class 5, of CEQA guidelines, because it is a minor alteration in land use limitations.
Resolution No. 2003-260 · Exhibit C

Development Agreement
RECORDING REQUESTED BY:
Chairman of the Board of Supervisors
County of Mariposa

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. 2002-472

THIS DEVELOPMENT AGREEMENT No. 2002-472 is entered into this ___ day of _____________, 2003, between Richard F. Roesch and Norman Gallagher and the County of Mariposa, a political subdivision organized and existing under the laws of the State of California. This agreement replaces and supersedes Development Agreement No. 98-1, entered into between Richard F. Roesch and Norman Gallagher and the County of Mariposa on the 9th day of November, 2000.

RECITALS

THIS DEVELOPMENT AGREEMENT (Agreement) is predicated upon the following facts:

1. 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;

2. Under Section 65865 the County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements.

3. In accordance with findings adopted for Specific Plan/Zoning Amendment No. 98-1, the Property Owners entered into Development Agreement No. 98-1 with the County, and this document amends the previously executed agreement. All proceedings have been taken into accordance with the County rules and regulations.
Development Agreement No. 2002-472

4. The Board of Supervisors has found that Development Agreement No. 2002-472 is consistent with the General Plan and Specific Plan; and

5. On ________________, 2003, the Board of Supervisors of Mariposa County adopted Ordinance No. _____ approving the Amended Development Agreement and Amended Design Review Application No. 2002-472 for the Property Owners and the ordinance will take effect on ________________, 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 described in this document and approved by the County and known as amended Design Review Application No. 2002-472.
   
   (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:

<table>
<thead>
<tr>
<th>Exhibit Designation</th>
<th>Description</th>
<th>Referred to in Paragraph</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Real Property</td>
<td>1, 3, 4, 8, 10, 11</td>
</tr>
<tr>
<td>B</td>
<td>Specific Restrictions</td>
<td>10, 11, 13, 16</td>
</tr>
</tbody>
</table>

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 he 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 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 this 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 this 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 this 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. 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.

(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.

(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 this Agreement.

(c) Non-performance shall not be excused because of a failure of a third person.

(d) An express repudiation, refusal or renunciation of this Agreement, if the same is in writing and signed by the property owners, shall be sufficient to terminate this 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 this 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.


(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 be effective for 30 years. It shall be binding upon all existing and future property owners. This Agreement shall expire on ________________, 2033.

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

**ACKNOWLEDGMENTS**

BY: ________________________________

Richard F. Roesch

BY: ________________________________

Norman Gallagher

**COUNTY OF MARIPOSA**

BY: ________________________________

BOB PICKARD, Chairman
Mariposa County Board of Supervisors

**APPROVED AS TO FORM:**

______________________________

Jeffrey G. Green
County Counsel

**ATTEST:** ________________________________

Margie Williams
Clerk of the Board
Development Agreement No. 2002-472

(Notary Page or pages)
EXHIBIT A

(Legal Description)

Parcel A of Parcel Map Recorded at Book 28, Page 1, Mariposa County Records
EXHIBIT B

SPECIFIC RESTRICTIONS
ON DEVELOPMENT AND USE OF PROPERTY

I. USE AND DEVELOPMENT STANDARDS

1. The property which is subject to this Agreement cannot be divided, unless the division is consistent with the purpose and intent of the development agreement and project.

2. Permitted uses are a 59-bed skilled nursing facility and 47 senior citizen apartment units in compliance with all standards of the Mariposa County TPA Specific Plan and Zoning Ordinance, except as permitted through the variance process.

II. DEVELOPMENT AGREEMENT REQUIREMENTS

If this Agreement expires and is not renewed, or if this Agreement is canceled or becomes null and void, then the following shall occur:

An application shall be processed by the County and the parcel shall be rezoned to the Single Family Residential (¼ Acre) zone or, if that zoning no longer exists, a comparable residential zoning within one (1) year of non-renewal or cancellation. The property owner shall be responsible for all processing costs and other application requirements.
Resolution No. 2003-260 · Exhibit D

Findings for Amended Development Agreement No. 2002-472

Findings:

Pursuant to Section 17.124.130 of the Mariposa County Zoning Ordinance, the following findings are made:

1. **The agreement is consistent with the objectives, policies, general land uses and programs specified in the general plan.**

The amended 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 amended Development Agreement does not change the land use standards of the plan. The amended Development Agreement maintains use restrictions on the subject property to limit density and intensity of future residential development on the site. The Development Agreement will significantly limit development and will keep approximately half of the project site in open space.

The amended Development Agreement will allow a much-needed residential care facility in an established community close to an established hospital. 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, such as a nursing facility. The amended development agreement will provide for senior citizen apartment units. The Housing Element states the County should consider encouraging multi-unit senior citizen housing, especially in areas where a full range of services are offered.

2. **The agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use zone in which the real property is located.**

The purpose of the agreement is to impose development restrictions to ensure that the development and uses on the property will be compatible with the residential neighborhood and will not cause traffic problems off-site at the intersections of Smith Road with State Highways.

3. **The agreement is in conformity with public convenience, general welfare, and good land use practices.**

See Finding No. 1.

4. **The agreement will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the county as a whole.**

The amended development agreement does not change the environmental determination made for the original project. The Development Agreement is an integral part of the project to limit density and to address potentially significant impacts on the environment resulting
from the previous rezoning project. The development agreement’s amended provisions do not add impacts or mitigation, and achieve the previous mitigation.

5. *The agreement will not adversely affect the orderly development of property or the preservation of property values.*

The amended Development Agreement will further the orderly development of property by limiting the intensity of uses, limiting the density, and providing for landscaping to buffer the project from adjacent development. 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 agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.*

The Development Agreement has been prepared in accordance and is consistent with the Government Code.
Resolution No. 2003-260 · Exhibit E

Finding and Conditions for Amended Design Review Application No. 2002-472

Finding:

Based upon the compliance with the recommended conditions, the proposed amended site plan and project design comply with the architectural theme and development guidelines established for the Mariposa Town Planning Area and with other applicable standards established by Chapter 17.336 of the Mariposa County Zoning Ordinance.

The design review's amended provisions do not add impacts or mitigation, and achieve the previous mitigation.

Conditions of Approval:

1. The approved project includes a 1-story, 27,280 square foot, 59-bed skilled nursing facility to be constructed on APN 012-350-008 and APN 012-350-010, or on Parcel B of the Parcel Map recorded to complete approved Land Division Project No. 2002-470. The approved project also includes site improvements including parking areas, access roads, sidewalks, landscaping, signs, and retaining walls. The project shall be constructed in substantial compliance with elevations dated October 14, 2002, except as modified to meet project conditions and site plans dated October 1, 2002, except as modified to meet project conditions. Minor amendments in the approved design of the structure and approved site plan may be approved by the Planning Director, as long as findings are made that the amendments don't create impacts not considered and addressed by the Planning Commission and Board of Supervisors, and the modified design conforms with adopted design review requirements.

2. All utilities, with the exception of propane storage tanks, shall be underground within the project site.

3. The applicants shall submit a parking plan showing all parking space and aisle width dimensions to be approved by the Planning Director prior to issuance of a grading permit for each project phase. All access roads, parking spaces and drive aisles shall comply with the standards contained in County Code, unless amended through the variance process, and shall be maintained for the life of the project. The parking lot shall also comply with all handicapped accessibility requirements as established by Title 24 of California Code of Regulations.

4. The engineered grading plan shall ensure that temporary and final slopes are stable and that final slopes can sustain vegetative re-growth. Final slopes shall be stabilized and seeded in accordance with the recommendations and standards of the Soil Conservation Service and the County Grading Ordinance and landscaped in accordance with design review requirements. All fees associated with inspections necessary in accordance with this condition shall be the responsibility of the applicant.

5. The Hillside Development Standards contained in County Code shall be applied to construction areas with slopes in excess of 20% as determined by the Planning Director,
to reduce required cut and fill. Planning Staff shall ensure that the Hillside Development Standards are complied with if construction or grading is proposed in areas with slopes in excess of 20%.

6. All exposed and/or disturbed soils created by grading or construction activities shall be watered down or suppressed during grading operations to reduce the generation of dust and other particulate matter. During non-grading periods, all stockpiles of debris, soil, sand, or other materials shall be protected from wind erosion.

7. A storm water drainage plan for each phase of the project shall be prepared and approved in accordance with Section 15.28.110 of County Code and shall be required prior to issuance of a grading permit. The purpose of the storm water drainage plan shall be to ensure the project will not have any negative impacts on any downstream properties or drainage facilities and all downstream drainage facilities will be adequate to handle any increase in runoff associated with the project. The applicant shall also obtain a NPDES Storm Water Permit from the Regional Water Quality Control Board, if applicable.

8. Prior to issuance of a grading permit, the applicant shall contact the Mariposa Public Utilities District (MPUD) and Mariposa County Fire Department for verification of current fire protection development requirements and requirements for water and sewer services (MPUD).

9. Prior to issuance of a grading permit, the Mariposa County Fire Department shall review and approve fire protection measures to be used during construction.

10. Prior to issuance of a building permit all flammable vegetation shall be removed from each building site a minimum distance of thirty (30) feet from any flammable building material, including finished structure. This condition shall not apply to vegetation proposed to remain as finished site landscaping.

11. Construction activities occurring outside shall not commence prior to the hours of 7:00 a.m. Monday through Friday, and 8:00 a.m. on Saturdays. All construction activities occurring outside shall cease by sunset Monday through Saturday, and no construction shall be permitted on Sundays. The Planning Department shall monitor noise through complaints by the neighbors.

12. Provisions shall be made for the on-site storage of all solid waste generated during construction and operation of the project. All solid waste shall be removed from the site on a weekly basis to maintain the site in a safe and attractive condition.

13. The kitchen vents of the nursing facility shall be located at least 200 feet from neighboring residences. Planning Staff shall review the construction plans for location of the nursing facility kitchen prior to issuance of the grading permit.

14. Individual HVAC units are not proposed on the amended plans or approved for this project.
15. All exterior mechanical equipment, including HVAC equipment located on roof, building, and ground shall be enclosed or screened from public view either by utilizing materials compatible with the building or locating them away from public view. Proposed locations and screening of mechanical equipment shall be reviewed and approved by the Planning Department prior to issuance of a grading permit. This shall include, but not be limited to, backflow prevention devices and equipment located on the building.

16. Refuse storage areas, dumpsters, and propane tanks shall be enclosed or screened from public view. Proposed locations and screening of these facilities shall be reviewed and approved by the Planning Department prior to issuance of a grading permit. The design of the screening of the trash enclosure located in the front of the building shall be incorporated into the building’s architectural design.

17. Prior to the issuance of a grading permit for each of the project phases, the applicant shall submit a landscaping plan for the new buildings and the parking lots. The landscaping plans shall indicate existing native trees within the development site to be retained. A dense coniferous vegetative buffer shall be located on the southern end of the nursing facility to ensure APN 013-020-010 (the SFR parcel to the south) is shielded from the nursing facility. Landscaping shall be planted within the stepped retaining walls to break up the expanse of the wall and cut. The landscaping plan shall conform to all requirements of County Code, delineating the size, type, and location of landscape plantings as well as proposed irrigation methods. The landscaping plan shall provide for parking lot shading and building enhancement in conformance with County Code. This plan must be approved by the Planning Director prior to issuance of a grading permit.

18. The landscaping plan must be prepared by a licensed landscape architect and approved by the Planning Director prior to issuance of a grading permit for each of the project phases and landscaping must be installed prior to finaling the grading permit for each of the project phases.

19. All landscaping shall be maintained in good condition in order to present a healthy and neat appearance for the life of the development. Dead or diseased plants shall be immediately replaced with plants which meet the size requirements of County Code.

20. The base color for the proposed building shall be a light color in a warm tone. Trim may be brighter or darker colors to compliment architectural features. The color of the roof of the building shall be compatible with the building. If asphalt shingles are used for the roofing material, architectural or dimensional shingles shall be used.

The building elevations dated October 14, 2002 are approved with the following provisions:

- On the west elevation, the length and mass of the southerly side shall be broken up. This could be accomplished with dormers or another gabled end, a covered walkway, a landscape structure such as a trellis planted with vines, and/or extensive planting of trees.
- All exposed sides of the mechanical well shall be finished to be consistent with the finished building siding.

- On the east elevation, the length and mass of the entire side shall be broken up. This could be accomplished with dormers, a covered walkway, shutters or awnings, some other vertical architectural element, a landscape structure such as a trellis planted with vines, and/or extensive planting of trees.

- A minimum roof overhang of 2 feet is required for all of the building. Greater roof overhangs and/or use of covered porches or walkways are encouraged to comply with the design review requirements, and to provide shade for weather protection.

The applicant shall submit revised building elevations and a final material and color palette showing the proposed finish materials and colors for the building and roofing, etc., which shall be approved by the Planning Director prior to issuance of a grading permit.

21. All exterior lighting fixtures shall be of a hooded type, shall be full cutoff fixtures, and shall be designed and located to confine lighting directly on the premises. Lighting should be of minimum, but adequate, intensity. Exterior lighting fixtures shall not shine light upon or directly illuminate any surface other than the area required to be lighted. In order to subdue the effect of lighting on the neighboring residences, lighting on the south side and southeastern corner of the nursing facility shall be provided by free-standing fixtures no higher than 8 feet or shall be placed at sidewalk level. A lighting plan showing the design and location of all exterior lights, including any lighting at sidewalk level, shall be submitted. The Planning Director shall approve the design of the lighting fixtures prior to issuance of the grading permit.

22. All retaining walls for cut banks and fill placements associated with the structures and parking lots shall comply with the Mariposa TPA Specific Plan design review standards, including but not limited to items such as color, finish, material, and surfaces. The use of tan or light brown split face concrete block is approved.

23. Prior to issuance of a grading permit, the applicant shall submit a Sign Design Review Plan for the proposed structure, delineating the location, size, materials, colors, lettering, and lighting method for all on-site signage. The proposed signage shall be in conformance with all requirements of County Code.

24. Employees shall not be permitted to congregate outdoors at the southern end of the nursing facility.

25. This design review action does not approve any portion of subsequent project phases for the assisted living facility. Future site development and construction of the assisted living facility shall comply with all Specific or Community Plan and Zoning standards in effect at the time of plan review and approval.