

**MARIPOSA COUNTY ORDINANCE NO. 954  
(Not to be Codified)**

**AN ORDINANCE APPROVING DEVELOPMENT AGREEMENT NO. 98-1,  
RICHARD R. ROESCH AND NORMAN GALLAGHER, APPLICANTS**

**WHEREAS**, a Specific Plan/Zoning Amendment Application to change the zoning on a portion of APNs 012-140-009 and -058 from Single Family Residential (½ Acre) to Multi-Family Residential was submitted by Richard R. Roesch and Norman Gallagher in order to construct a nursing home and senior citizen apartment units; and

**WHEREAS**, the environmental review of this application found that there could be potentially significant land use compatibility impacts resulting from the change in zoning based upon the range and intensity of development allowed by the Multi-Family Residential Zone; and

**WHEREAS**, mitigation developed to address these potentially significant impacts required the execution of a Development Agreement, in order to limit the development and uses on this parcel; and

**WHEREAS**, an application for a Development Agreement was submitted by Roesch and Gallagher pursuant to the mitigation; 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. 98-1 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 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 10th day of October, 2000 by the following vote:

AYES: REILLY, BALMAIN, STEWART, PARKER, PICKARD

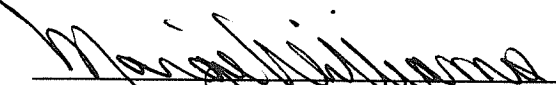
NOES: NONE

ABSTAINED: NONE

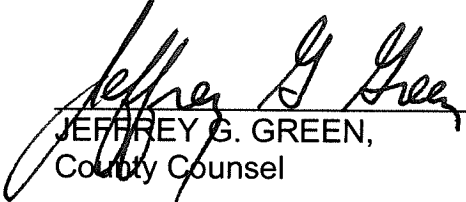
EXCUSED: NONE

  
\_\_\_\_\_  
GARRY R. PARKER, 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

**DEVELOPMENT AGREEMENT**  
(No. 98-1)

THIS DEVELOPMENT AGREEMENT is entered into this 9<sup>th</sup> day of November, 2000, 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.

**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, Property Owners must enter into a development agreement with the County and proceedings have been taken into accordance with the County rules and regulations.
4. The Board of Supervisors has found that the Agreement is consistent with the General Plan; and
5. On October 10, 2000, the Board of Supervisors of Mariposa County will adopt Ordinance No. 954 approving the Agreement with Property Owners and the ordinance will take effect on November 9, 2000.

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.
  - (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
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 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.
  
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.
  - (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.

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 be effective for 30 years. It shall be binding upon all existing and future property owners. This Agreement shall expire on Nov. 9, 2030.

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

ACKNOWLEDGMENTS

PROPERTY OWNER(S)

\_\_\_\_\_  
\_\_\_\_\_

BY:

Richard F. Roesch  
Richard F. Roesch

BY:

Norman Gallagher  
Norman Gallagher

COUNTY OF MARIPOSA

BY:

Garry R. Parker  
GARRY R. PARKER, 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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

No. 5907

State of California

County of San Diego

On August 7, 2000 before me, Shellie M. Dial  
DATE NAME, TITLE OF OFFICER (E.G., "JANE DOE, NOTARY PUBLIC")

personally appeared Richard A. Roese  
NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Shellie M. Dial  
SIGNATURE OF NOTARY

OPTIONAL



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On 8-9-2000 before me, Gail L. Johnson

Norman Gallagher, Notary Public,  
personally appeared Norman Gallagher

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Gail L. Johnson



(Seal)

## EXHIBIT A

A tract of land situated in a portion of Projected Section 14, 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 the REMAINDER as said REMAINDER is delineated on that certain map entitled "Parcel Map for Thomas Coakley" filed February 4, 1980 in Book 17 of Parcel Maps at Page 11, Mariposa County Records, said tract of land being more particularly described as follows:


BEGINNING at the southeast corner of Parcel A as said Parcel A is delineated on said map; thence  $N26^{\circ}23'37''E$ , along the southeasterly line of said Parcel A, for 310.00 feet; thence, leaving the southeasterly line of said Parcel A,  $S38^{\circ}40'30''E$  for 884.49 feet; thence  $S49^{\circ}01'02''E$  for 161.35 feet to a point on the northwesterly line of State Highway 140, said point being a point on a non-tangent curve concave to the southeast, having a radius of 550.00 feet, to said point a radial line bears  $N54^{\circ}05'24''W$ ; thence southerly along said curve and the northwesterly line of State Highway 140, through a central angle of  $49^{\circ}21'08''$ , an arc distance of 473.75 feet to a point, to said point a radial line bears  $S76^{\circ}33'28''W$ ; thence, leaving the northwesterly line of State Highway 140,  $N36^{\circ}19'58''W$ , along the southwesterly line of said REMAINDER, for 397.22 feet to the most easterly corner of Parcel C as said Parcel C is delineated on that certain map entitled "Parcel Map for Jeannette Stewart & Katharine Hoyle" filed June 8, 1982 in Book 20 of Parcel Maps at Page 13, Mariposa County Records; thence  $N36^{\circ}54'34''W$ , along the southwesterly line of said REMAINDER, for 811.79 feet, more or less, to the POINT OF

BEGINNING.

The above described tract of land contains 7.45 acres, more or less, is subject to any rights-of-way or easements of record or legally acquired.

Prepared by:



  
Richard A. Seaman, L.S. 5339

7/12/00  
Date

## EXHIBIT B

### SPECIFIC RESTRICTIONS ON DEVELOPMENT AND USE OF PROPERTY

#### I. USE AND DEVELOPMENT STANDARDS

1. The conditions of Land Division Application # 1503 must be completed and the parcel map recorded prior to issuance of any grading permit.
2. The property which is subject to this Agreement cannot be divided.
3. Permitted uses are an 86-bed skilled nursing facility and 20 senior citizen apartment units with parking in compliance with the Mariposa County TPA Specific Plan.
4. All utilities, with the exception of propane storage tanks, shall be underground within the project site.
5. 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 Section 17.336.030.C of County Code 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.
6. 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.
7. The Hillside Development Standards contained in Section 17.336.040 of 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%.
8. 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.
9. A stormwater 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 stormwater 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.

10. Prior to issuance of a grading permit, the applicant shall contact the Mariposa Public Utilities District and Mariposa County Fire Department for verification of current fire protection development requirements.
11. Prior to issuance of a grading permit, the Mariposa County Fire Department shall review and approve fire protection measures to be used during construction.
12. 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.
13. 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.
14. 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.
15. 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.
16. Individual HVAC units shall be flush mounted with the exterior of the building so that units do not protrude on the exterior of the building. The individual units shall have architectural grilles. The color of the HVAC units shall be color integrated into the building.
17. All exterior mechanical 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.
18. 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.
19. 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 wall to break up the expanse of the wall and cut. The landscaping plan shall conform with Section 17.336.060.C 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 Section 17.336.060.C.6. of County Code. This plan must be approved by the Planning Director prior to issuance of a grading permit.

20. The landscaping plan must be prepared by a licensed landscape architect or other qualified individual 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.
21. 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 Section 17.336.060 of County Code.
22. 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. The applicant shall submit building elevations and a final color palette showing the proposed colors for the building, and roofing, etc. which shall be approved by the Planning Director prior to issuance of a grading permit.
23. All exterior lighting fixtures shall be of a hooded type 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.
24. 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.
25. 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 Section 17.336.060.D of County Code.
26. Employees shall not be permitted to congregate outdoors at the southern end of the nursing facility.

27. The project shall be constructed in substantial compliance with elevations submitted on November 10, 1998 and site plans submitted on December 23, 1998.

28. Phases II and III shall comply with all standards in effect at the time of plan submittal.

## 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 (½ 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. ..

EXHIBIT 2  
FINDINGS

**Finding No. 1:** *The agreement is consistent with the objectives, policies, general land uses and programs specified in the general plan.*

The Development Agreement will create development and use restrictions on the subject property to limit development and use in order to restrict the potential residential density allowed on the project site if rezoned to the Multi-Family Residential Zone.

The Development Agreement will significantly limit development and will keep approximately half of the project site in open space.

The Development Agreement will allow a skilled nursing facility close to an established hospital and 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 such as a nursing facility.

The 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.

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.

**Finding No. 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 development and uses on the property will be compatible with the residential neighborhood and will not cause traffic problems at intersections of Smith Road with state highways.

**Finding No. 3:** *The agreement is in conformity with public convenience, general welfare, and good land use practices.*

See Finding No. 1.

**Finding No. 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 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 density and to address potential significant impacts on the environment.

**Finding No. 5:** *The agreement will not adversely affect the orderly development of property or the preservation of property values.*

The 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 use and development limitations imposed by the Development Agreement will stabilize property values in the area.

**Finding No. 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.