



City Attorney's Office
102 Roadrunner Dr.
Sedona, AZ 86336

Kurt W. Christianson, City Attorney
William A. Kunisch, City Prosecutor
Monique Coady, Assistant City Attorney

November 21, 2025

Via Email

November 21, 2025

Hayleigh S. Crawford
Deputy Solicitor General
Office of the Arizona Attorney General
2005 North Central Ave
Phoenix, AZ 85004
Hayleigh.Crawford@azag.gov

Re: Response to S.B. 1487 Investigation Request - Zoning Reversion Action

Dear Ms. Crawford:

Please accept this letter in response to Senator Mark Finchem's request for investigation under S.B. 1487 (A.R.S. §41-194.01) regarding the City of Sedona's ("City") action to revert zoning on August 13, 2024. I respectfully submit that the City's action was not a rezone and was lawful and in full compliance with Arizona Revised Statutes.

Attached to this letter is the City Council agenda from the August 13, 2024 meeting, the material included in the packet for the reversionary zoning action, relevant letters, the presentation materials (including from the property owner), and the meeting minutes. These materials document the history of the conditional zoning action and the failure/inability of the property owner to comply with the conditional zoning that precipitated the August 13, 2024 reversionary zoning action. The documents can also be found at: <https://www.sedonaaz.gov/your-government/departments-and-programs/community-development/projects-and-proposals/preserve-at-oak-creek>

I. Legal Distinction: Reversion vs. Zoning and Rezoning

It is important to distinguish between zoning reversion and zoning or rezoning. Zoning is application of new regulations on the "use of the land or structures, or both." A.R.S. §9-462(5). Once a property is zoned, or a zoning ordinance in place, subsequent amendments are considered rezoning. Rezoning involves legislative action to change the zoning classification to a new one per A.R.S. § 9-462.01(F). Rezoning is a fresh legislative change to the zoning map. Rezoning establishes new base rights, uses, and standards consistent with the general plan.

In contrast, zoning reversion is a legislative action that restores the property to its former zoning classification that was in conformance with the general plan in effect at the time of original adoption, as required by A.R.S. § 9-462.01(E). The Arizona Revised Statutes make this distinction clear: All zoning and rezoning ordinances or regulations adopted under this article shall be consistent with and conform to the

adopted general plan of the municipality, while zoning reversion under A.R.S. § 9-462.01(E) mandates reversion to the former zoning classification without requiring an amendment to a general plan.

II. Nature of the City's Action

Senator Finchem mischaracterizes the Sedona City Council's action in 2024 as "adopting zoning." Here, the only zoning or rezoning act on the properties occurred in 2006, when City Council adopted Ordinance 2006-04 conditionally rezoning the property and approving a general plan amendment. Contrary to the claims, the City simply has not adopted new zoning for the property since that time.

In 2024, at the request of the property owner, the City simply reverted the zoning back to its prior zoning because the conditions of the 2006 rezone were never met. The property owner acknowledged this failure to meet conditions and the necessity for reversion, stating: "The development schedule expired March 14, 2010" and "Simply put, A.R.S. § 9-462.01(E) requires Council to revert the zoning." The City's action was a zoning reversion, as permitted under A.R.S. § 9-462.01(E), not imposing a new zoning or rezoning under A.R.S. § 9-462.01(F). This critical distinction resolves the concerns raised by Senator Finchem. This statute provides that when a property is conditionally zoned and the development schedule expires without the property being improved for the approved use, the legislative body must take action including public notice and hearing to revert the zoning to its former classification or extend the timeframe for compliance, thus providing due process to the property owner/developer.

The property in question was originally zoned Commercial and low-density multi-family and single-family residential. The property was then conditionally rezoned Planned Development (PD) zoning through Ordinance 2006-04 and Resolution 2006-10. The Preserve at Oak Creek Condominiums PD zoning brought all the parcels in question under one unified development plan with an expiration date of March 14, 2008 unless building permits had been issued by that date. A time extension was granted by City Council on April 22, 2008, extending the deadline for granting building permits to March 14, 2010.

However, while the *ordinance* adopting conditional zoning for the matter at issue took effect upon passage and publication in 2006, the actual rezoning provided for therein did not. That rezoning could only take place when all the conditions were subsequently met. Therefore, while the intent of the then current owner and City was to rezone the property, failure to meet the conditions of approval would mean the property was simply reverted back to its original, then general plan compliant zoning. As no building permits were granted by the expiration date, the entitlements to the rezone for the property expired. There are no statutory requirements for a city to amend its general plan to accommodate a reversionary zoning. There is not an associated "reversion" of a general plan designation.

As detailed in the City's Community Development Department Director's Interpretation, pursuant to A.R.S. 9-462.01(E) and Sedona Land Development Code § 8.6(B)(3)(g)(2), the Sedona City Council at a properly noticed public hearing may only take two actions in this scenario: Administrative action to extend or remove the schedule for The Preserve at Oak Creek Condominiums development; or Legislative action to rezone the property, including a reversion to Commercial, Multi-Family and Single-Family zoning consistent with current zoning regulations. State law requires one of those actions regardless of general plan designations.

The reversionary zoning statute does not provide discretion to impose new zoning classifications or to require consistency with the current community plan when reverting to the prior zoning classification that were consistent with the community plan at the time of adoption. The reversionary action taken by the City was not a discretionary rezoning, meaning the City Council did not have the ability to review the reversion for compliance with the current general plan or future land use map. Under those circumstances,



the Sedona City Council chose to revert the zoning, over a year ago now, after public notice and a public hearing, at the request of the property owner, with the majority of speakers in support of the reversion, and with the unanimous decision of City Council acting in its legislative capacity.

III. Legislative History

The legislative history of A.R.S. 9-462.01(E) and (F) are instructive. Prior to 1997, conditionally rezoned properties that failed to meet the required conditions automatically reverted to the original zoning classification without legislative action by the city council. This meant that municipal staff were able to revert zoning without notice or hearing. That changed with 1997 SB1414, which resulted in the version of A.R.S. 9-462.01(E) that exists today, which requires the legislative body to schedule a public hearing after notifying the owner and applicant who requested the rezoning and allows a city the options of taking administrative action to extend, remove or determine compliance with the schedule for development or to take legislative action to cause the property to revert to its former zoning classification.

The subsequent year, A.R.S. 9-462.01(F) was amended by 1998 Ariz. HB 2361 to add “and rezoning” where it previously only applied to zoning ordinances: “All zoning AND REZONING ordinances or regulations adopted under this article shall be consistent with the adopted general plan...” The process for zoning reversion was already in place in subsection (E), but the legislature did not include it in subsection (F). Just as the legislature found a distinction between a zoning ordinance and rezoning ordinance, a reversionary zoning ordinance is a distinct act.

Notably, A.R.S. § 9-462.01(E) did not and does not state a zoning reversion must comply with the general plan as a rezone would. It is well-established in Arizona jurisprudence that if the legislature had intended something to be included in a statute, it would have explicitly stated it. *See, e.g., Mussi v. Hobbs*, 255 Ariz. 395, 402 (2023) (“It is a basic principle that courts will not read into a statute something which is not within the manifest intention of the legislature as indicated by the statute itself.”) (quoting *Town of Scottsdale v. State ex. rel. Pickrell*, 98 Ariz. 382, 386 (1965); *Reinke v. Alliance Towing*, 207 Ariz. 542, 545, P19 (App. 2004) (“Where the legislature has included a specific provision in one part of a statute and omitted it in another part, we must conclude that it knows how to say what it means, and its failure to do so is intentional.” (internal citation omitted))).

IV. General Plans Are Aspirational Documents

As confirmed by municipal practice throughout Arizona, general plans reflect the aspirational vision and goals of the community. Courts have even found “[t]he city's General Plan is a statement of broad policies, goals, and principles. It enacts nothing definite or specific nor does it implement any law, purpose, or policy previously declared by the legislative body.” *Fritz v. City of Kingman*, 191 Ariz. 432, 434 (1998). This aspirational nature means that at any given time, there are dozens or more properties throughout municipalities that are zoned inconsistent with their community plans. This occurs because general plans represent long-term visionary goals that may desire certain zoning designations for properties that, for various practical, economic, or legal reasons, will never be rezoned to match those aspirations. This is a reality of property zoning and is not illegal as Senator Fincham would have you believe.

Requiring a general plan amendment to accompany a reversionary zoning would completely upend the legislatively mandated process outlined in A.R.S. § 9-462.01(E). After expending a lot of time and resources on obtaining a conditional rezone, a subsequently failed development generally indicates great owner and developer distress. The purpose of reversionary zoning is to provide the owner with at least the property zoning rights that existed prior to the failed development. Requiring the owner to request and receive a general plan amendment, instead of a relatively simple notice and public hearing reversion process, would add significant additional time and expense.

General plan amendments typically require pre-application meetings with staff, submittal of the application, citizen review, neighborhood meetings, notification to other agencies, notice including notification in the newspaper and perhaps posting on the property, a planning and zoning commission meeting where hopefully the commission makes a recommendation at the first hearing, and then notice and public hearing in a city council meeting followed by adoption of a resolution by the council by a 2/3rds vote. The difference between a 2/3rds vote for a general plan amendment and a simple majority vote for a zoning reversion might mean leaving a property in zoning purgatory.

V. Property Rights Considerations

The property owner, through legal counsel, specifically demanded this reversion. As stated in their letter: "We hereby request that the City revert the zoning for the Property to its former zoning classification as required by A.R.S. § 9-462.01(E) and the Sedona Land Development Code § 8.6(B)(3)(g)(2)." The reversionary demand was made by the property owner who had been unsuccessful in selling or developing the property for many years in part because of the expired planned development zoning and was also made in conjunction with a Private Property Rights Protection Act (2006 Prop 207) claim. The property owner's counsel made clear that failure to revert would result in a diminution in value claim under A.R.S. § 12-1134 and lead to potential other claims. Further, the property owner's counsel argued that the City could not actually extend the construction timeframe, but that at that point, nearly 15 years after the expiration of the ordinance, the alleged zoning to planned development was void and the only viable action for the City was to revert the zoning.

In fact, a zoning reversion is more akin to the Prop 207 process. Per, A.R.S. § 12-1134, when a claim for just compensation is made, the state or a subdivision of the state can amend, repeal, or issue a binding waiver of enforcement. Under Prop 207, repeal of the prior zoning or granting waivers to zoning ordinances do not trigger general plan compliance requirements.

Finally, the timing of Senator Finchem's claim cannot be overlooked. As the Arizona Supreme Court stated in 1991, "We also believe that the logical and practical time for a referendum is when the rezoning is conditionally approved. This is shortly after the contested proceedings and public hearings, and is usually before the legislative members leave office through expiration of terms or elections. It is also before owners, developers, and lenders expend huge sums of money to comply with the conditions." *Pioneer Tr. Co. v. Pima Cty.*, 168 Ariz. 61, 66 (1991).

Here, the owner of the property after years of trying to sell or develop the property, was finally able to do so because of the A.R.S. § 9-462.01(E) zoning reversion. Without that process, or with the requirement that zoning reversions comply with general plans adopted more than a decade later could have left the property unmarketable and undevelopable.



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VI. Conclusion

The City's action was mandated by A.R.S. § 9-462.01(E) and represents a reversion to the property's former zoning classification which was consistent with the general plan when that was adopted and does not constitute new zoning or a rezoning requiring current general plan consistency. The City's action was therefore in full compliance with state law. An amendment to A.R.S. § 9-462.01(E) is the only way to remedy the limited statutory choices faced by the City.

We respectfully request that the Attorney General's office find no violation of law in the City's statutorily mandated reversion action.

Very respectfully,

A handwritten signature in blue ink, appearing to be "K. Christianson", written over a horizontal line.

.....
Kurt W. Christianson
City Attorney, City of Sedona, Arizona

cc: The City of Sedona Mayor and Council
Anette Spickard, City Manager
Tony Allender, Director, Community Development



CITY COUNCIL AGENDA BILL

AB 3089
August 13, 2024
Regular Business

Agenda Item: 8a

Proposed Action & Subject: Public Hearing/possible action regarding a request for the Sedona City Council to take administrative action to extend or remove the schedule for development or take legislative action to cause the property to revert to its former zoning classifications. The property is currently zoned PD (Planned Development) - The Preserve at Oak Creek Condominiums and is located on both sides of N State Route 89A in the area generally surrounding the Owenby Way Roundabout. APN 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164. Case Number: PZ24-00008 (ZC) Applicant: Dutchman's Cove, LLC Owner: Axy's Capital Total Return Fund, LLC.

Department	Community Development, Cari Meyer/City Attorney
Time to Present	15 minutes
Total Time for Item	
Other Council Meetings	April 22, 2008; February 14, 2006
Exhibits	<ol style="list-style-type: none">1. Ordinance for Zoning Reversion with Zoning Map2. Zoning Verification/Director's Interpretation, dated May 22, 20243. Applicant's Response to Zoning Verification, Director's Interpretation, dated June 19, 20244. 2018 LDC Conversion Chart

Finance Approval	Reviewed RMS 8/5/24	Expenditure Required
City Attorney Approval	Reviewed 8/6/24 KWC	\$ N/A
City Manager's Recommendation	Reviewed ABS 8/6/24	Amount Budgeted
		\$ N/A
		Account No. (Description)

SUMMARY STATEMENT

Background

On December 6, 2005, the Planning and Zoning Commission approved a development review application, DEV2005-12, for the construction of a new 158-unit condominium project located along both sides of Highway 89A near the intersection of Art Barn Road and Highway 89A. On February 14, 2006, the City Council approved the zone change, subdivision request, and

Community Plan amendment for this project, case numbers ZC2005-7, SUB2005-19, and CPA2005-5 which became effective 30 days later on March 14, 2006.

The development review and zone change approval for the project was valid for a two-year period, with an expiration date of March 14, 2008, unless a building permit was issued for the project and construction commenced and diligently pursued, or a time extension was granted by the Planning and Zoning Commission and City Council.

Prior to this expiration date, on January 4, 2008, the applicant submitted a request to staff for a time extension of the development review and zone change approvals for the project due to economic circumstances beyond the applicant's control. The time extension request for the development review was approved by the Planning and Zoning Commission on March 4, 2008 and by City Council on April 22, 2008, extending the expiration of the project from March 14, 2008, to March 14, 2010.

Despite this extension, the project still did not move forward by the March 14, 2010 expiration date. No further action on the property was taken to either extend the approvals or revert the property to its prior zoning classification. Multiple proposed developments have been presented to Community Development staff in the intervening 14 years, but each proposed development was for rezoning the property and until June 19, 2024, the City had never received a request by the property owners to apply A.R.S. 9-462.01(E) to the property. Documents associated with this zoning case, including ordinances, resolutions, and the master plan approved as part of the project, can be reviewed at the following link:

<https://www.sedonaaz.gov/i-want-to/find/documents/-folder-5760>

Current Zoning of the Property

The property is currently zoned PD (Planned Development). This is a site-specific zoning, and the zoning approvals outline the allowable uses, building design and placement, parking requirements, public amenities, etc. Specifically, Ordinance 2006-04 and Resolution 2006-10 rezoned the property to consist of one hundred fifty-eight (158) single-ownership condominiums, publicly accessibly viewing areas of Oak Creek, a publicly accessibly botanical preserve, a public park, 12 affordable offsite housing units, etc., as described in the development agreement and master plan attached to Resolution 2006-10 (available at the link above). This is the last zoning action that was taken on the property, although the schedule of development was administratively extended by Council in 2008.

Options for the Property

As building entitlements have expired, pursuant to A.R.S. 9-462.01(E) and LDC Section 8.6.B(3)g.2, the City Council may extend the schedule for The Preserve at Oak Creek (grant an extension to the last approved PD), remove the schedule, or revert the zoning to Commercial, Multifamily, and Single-family designations consistent with current zoning regulations. A.R.S. 9-462.01(E) states:

E. The legislative body may approve a change of zone conditioned on a schedule for development of the specific use or uses for which rezoning is requested. If, at the expiration of this period, the property has not been improved for the use for which it was conditionally approved, the legislative body, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative

action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.

The property owner (Axys Capital Total Return Fund, LLC) and the potential buyer of the property (Dutchman's Cove, LLC) have requested that City Council take legislative action to revert the property to its former zoning classification. All legislative acts are discretionary. Developers or courts cannot force a legislative body to legislate in the way they see fit. The zoning reversion would result in the majority of the property being zoned Commercial (CO), with small portions of it being zoned for single family residential (RS-35, east side of Oak Creek) and multifamily residential (RM-2, north end of property on west side of State Route 89A), allowing the property to develop under the current allowances for these districts. The property owner, as part of the 2005 rezoning request, also requested and received from Council an amendment to the Community Plan designating these parcels on the future land use map as multifamily in R2006-09. As the Community Plan designation for this property has changed over the years to ensure the approved PDs are in compliance with the Community Plan, the proposed reversionary zoning designations are not consistent with the Community Plan, but are an option as they are the last non-PD zoning districts for the property. If Council decides to revert the zoning, the property designations will be to the current zoning classifications. As of 2018 LDC update, the 1998 zoning categories to which these properties would revert is the category shown in the conversion table of the 2018 LDC update. The City does not have any other zoning category to revert to other than the converted categories as shown in the conversion chart. The 2018 LDC conversion chart is attached to this AB as Exhibit 4.

Alternatively, City Council may take administrative action to remove the schedule of development completely or grant an extension to schedule of development for the property as was done in 2008. This would allow the property to develop under the master plan approved in 2006, as described above and all of the conditions of approval for the PD. This option would be consistent with the Community Plan designations for the property and would not permit the units to be used as short-term rentals per the PD. While City Council could choose the length of time it would like to extend the approvals for, the last extension requested in 2008, was for 2 years. Staff suggests a minimum of two years would be necessary to complete development review and begin construction on the Project. Council may extend the schedule past two year or even remove the schedule.

The original development plan called for 32 condominium units to be constructed on the west side of State Route 89A, with access to the buildings being provided by an underground parking structure that accessed 89A from the south, and also required the construction of a roundabout at the north end of Uptown. Due to the construction of the Owenby Way roundabout and Owenby Way (Development Agreement with current property owner dated November 26, 2019), these components will likely no longer be a part of the project, as the City has already constructed the roundabout, and the road construction most likely prevents the construction of buildings in this area. This would result in a reduction of 32 condominium units in the PD, but the development will still require an additional driveway access to the Owenby Way roundabout due to the limitations of Art Barn Rd. All other requirements of the PD, including the publicly accessibly viewing areas of Oak Creek, a publicly accessibly botanical preserve, a public park,

12 affordable offsite housing units, etc., and the phasing plan, will remain as proposed by the owner and adopted by Council in 2006.

Climate Action Plan/Sustainability Consistent: ☐Yes - ☐No - ☒Not Applicable

The Climate Action Plan is not applicable. If the property were to apply for a rezoning, it would be evaluated for consistency with all adopted plans of the City.

Board/Commission Recommendation: ☐Applicable - ☒Not Applicable

A Commission recommendation is not applicable. If the property were to apply for a rezoning, the Planning and Zoning Commission would provide a recommendation prior to action by City Council.

Alternative(s):

MOTION

Motion for Extension of Existing PD

I move to: I move to approve a time extension for construction of the Preserve at Oak Creek Condominiums, based on compliance with the requirements of A.R.S. § 9-462.01(E) and LDC § 8.6(B)(3)(g)(2), subject to the conditions of approval and development agreement associated with the original review and approval of the Preserve at Oak Creek Condominium project and a new development review, with a building permit to be issued and the project under construction and diligently pursued to completion by no later than August 13, 202__.

Motion for Reversion of Zoning

I move to: approve Ordinance No. 2024-____, case number PZ 24-00008 (ZC), reverting the zoning of the property identified herein from PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential), based on conformance with the 2018 LDC conversion chart and the requirements for reversionary rezoning of A.R.S. § 9-462.01(E) and LDC § 8.6(B)(3)(g)(2).

ORDINANCE NO. 2024-__
THE PRESERVE AT OAK CREEK CONDOMINIUMS ZONING REVERSION
PZ 24-00008 (ZC)

AN ORDINANCE OF THE OF THE CITY OF SEDONA, ARIZONA, REZONING THAT PROPERTY DESCRIBED HEREIN FROM ITS PRESENT DESIGNATION OF PD (PLANNED DEVELOPMENT) TO CO (COMMERCIAL), RS-35 (SINGLE FAMILY RESIDENTIAL, AND RM-2 (MULTIFAMILY RESIDENTIAL) IN CONFORMANCE WITH A.R.S. 9-462.01(E); DIRECTING THE AMENDMENT OF THE ZONING MAP UPON COMPLETION OF ALL ZONING CONDITIONS SET FORTH HEREIN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND ESTABLISHING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the Planning and Zoning Commission and City Council approved zoning reversion as one of the options for a failure to construct the development per the Planned Development timeline adopted in O2006-04/R2006-10.

WHEREAS, on April 22, 2008, City Council, pursuant to A.R.S. § 9-462.01(E) and LDC § 8.6(B)(3)(g)(2), previously granted a two-year extension for the commencement of construction of the PD.

WHEREAS, the owner failed to construct the PD and is now requesting a reversion of the zoning.

WHEREAS, pursuant to A.R.S. 9-462.01(E), reversionary rezoning is a legislative act to be taken at the discretion of the Sedona City Council.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA AS FOLLOWS:

Section 1. Description and Reversionary Rezoning

The subject property consists of Coconino County Assessor's Parcels 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164, and is located in the vicinity of W State Route 89A, Art Barn Road, and Owenby Way between in Sedona, Arizona, a legal description, depiction, and zoning map of which is provided in "**Exhibit A**" attached hereto and incorporated by this reference. The owner/applicant desires to rezone the property from PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential).

The subject property that is currently zoned PD (Planned Development) is hereby rezoned to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential), based on conformance with the requirements for reversionary rezoning of A.R.S. § 9-462.01(E) and LDC § 8.6(B)(3)(g)(2) .

Section 2. Zoning Map

The zoning map of the City of Sedona is hereby amended to reflect this rezoning, and at least three (3) copies of the map shall be kept in the office of the City Clerk for public use and inspection.

Section 3. Repeal

All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. Effective Date

This ordinance shall become effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 13th day of August, 2024.

Scott M. Jablow, Mayor

ATTEST:

JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson, City Attorney

Exhibit A (Page 1 of 2): PZ24-00008 (ZC)
Preserve at Oak Creek Legal Description and Zoning Map

APNs: 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164

Zone Change Reversion: PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential)

Legal Descriptions to be Provided by the Property Owner prior to executing the ordinance.

Exhibit A (Page 2 of 2): PZ24-00008 (ZC)

APNs: 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164

Zone Change Reversion: PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential)

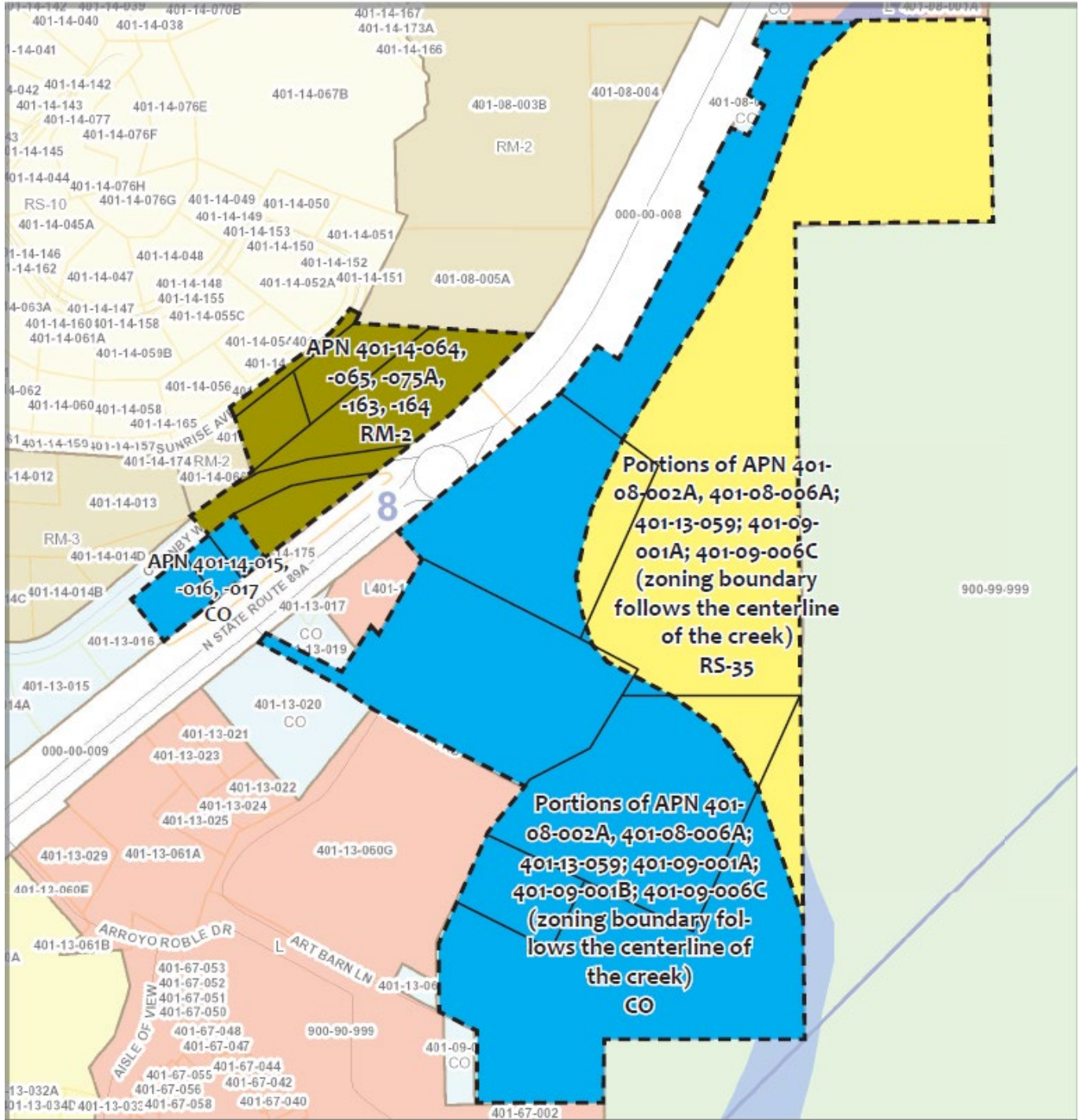


Exhibit A (Page 1 of 2): PZ24-00008 (ZC)

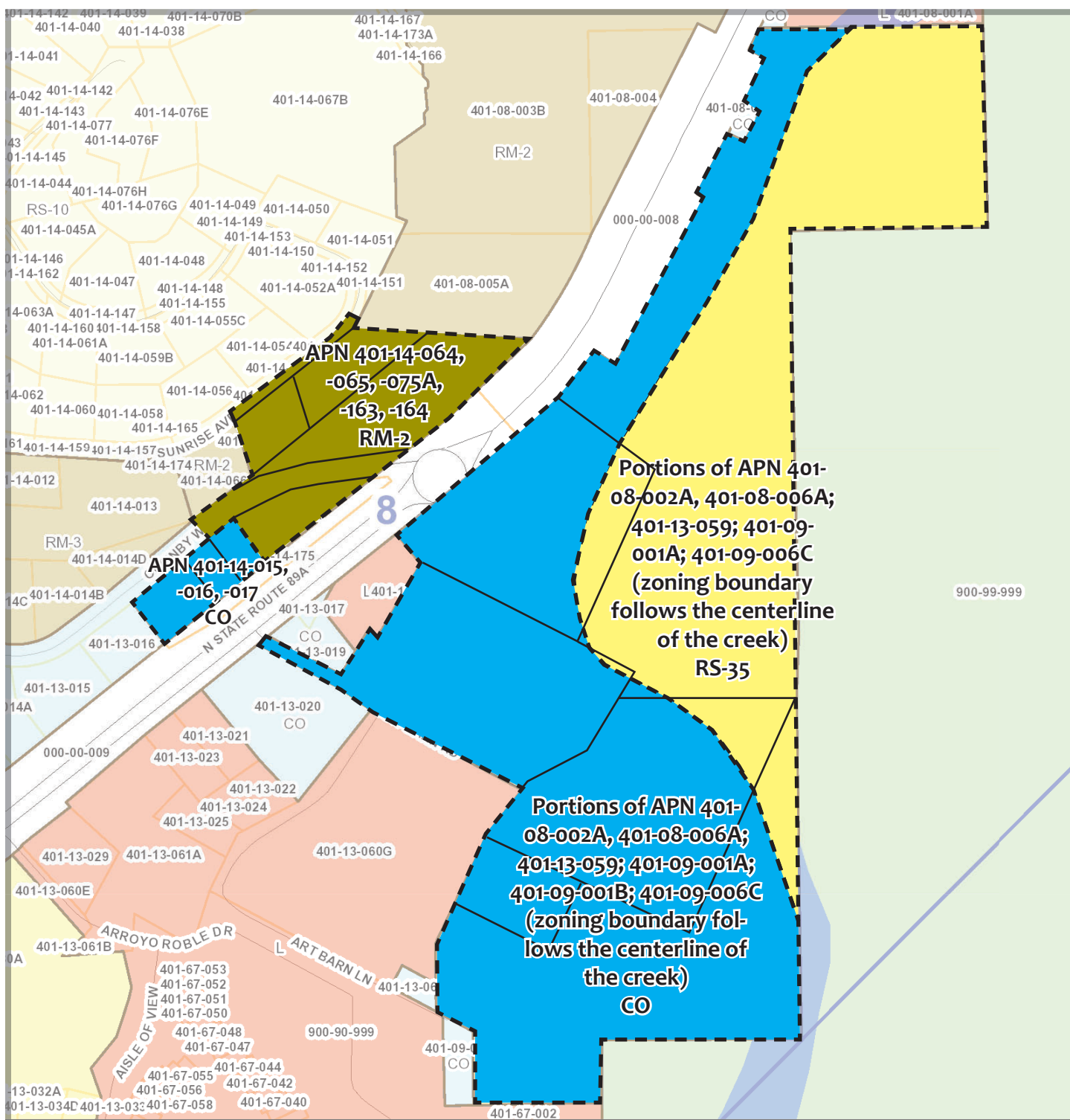
Preserve at Oak Creek Legal Description and Zoning Map

APNs: 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164

Zone Change Reversion: PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential)

Preserve at Oak Creek Legal Description and Zoning Map

Zone Change Reversion: PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential)





City Of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • www.sedonaaz.gov/cd

May 22, 2024

Dutchman's Cove LLC
c/o Stephen Polk
BPCWS Law Firm
125 N. Granite St.
Prescott AZ 86301

Re: Zoning Verification Letter
40 Art Barn Rd., 586 N SR 89A
APN 401-08-002A, 401-09-001A, 401-09-001B, 401-09-001C, 401-13-059, 401-08-006A
(not requested but a part of the PD zoning: 401-14-015, 401-14-016, 401-14-017, 401-14-064, 401-14-065, 401-14-075A, 401-14-175)

Dear Mr. Polk:

Thank you for your request for a Director's Interpretation for the above-mentioned parcels. However, a Director's Interpretation is only an interpretation of the Land Development Code, and, based upon the questions you have posed in your request letter dated May 1, 2024, a Zoning Verification is more appropriate.

The following is a summary of the entitlement history and current status of these properties.

Property History

Based on records from the City of Sedona and Coconino County, the following is the history for this parcel:

- The properties identified above are within the city limits of the City of Sedona, AZ.
- The parcels identified above are currently zoned Planned Development (PD).
- The building entitlements provided by the PD zoning through Ordinance 2006-04 and Resolution 2006-10 have expired.

1. A complete entitlement history of these properties is included as Attachment 1.
 - a. Project files for the applications listed in the entitlement history are available for review in the Community Development Department Office.
 - b. The entitlement history includes Planning and Zoning Commission and City Council hearing dates for the various applications. Agendas, packets, and minutes from these meetings are available online at www.sedonaaz.gov > Your Government > Employee Access > Laserfiche. If you have trouble accessing documents, please contact City Staff.
2. As outlined in the entitlement history, the properties have been the subject of three different PDs beginning in 1998. Ordinance 1998-15/Resolution 1998-38 was repealed by Ordinance 2005-

05/Resolution 2005-13. Likewise, Ordinance 2005-05/Resolution 2005-13 was repealed by Ordinance 2006-04/Resolution 2006-10.

3. These properties are currently zoned PD (Planned Development). This is a site-specific zoning and the zoning approvals outline the allowable uses, building design and placement, parking requirements, public amenities, etc. Specifically, Ordinance 2006-04 and Resolution 2006-10 rezoned the property to consist of one hundred fifty-eight (158) single-ownership condominiums, publicly accessible viewing areas of Oak Creek, a publicly accessible botanical preserve, a public park, 12 affordable offsite housing units, etc., as further described in the development agreement and master plan attached to Resolution 2006-10.
4. The Preserve at Oak Creek Condominiums PD zoning brought all the properties listed above (including the parcels not of your zoning verification request) under one unified development plan with an expiration date of March 14, 2008 unless building permits had been issued by that date. A time extension was granted by City Council on April 22, 2008, extending the deadline for granting building permits to March 14, 2010. As no building permits were granted by the expiration date, the entitlements for this property are currently expired.
5. As building entitlements have expired, pursuant to A.R.S. 9-462.01(E) and LDC § 8.6(B)(3)(g)(2), the Sedona City Council at a properly noticed public hearing may take:
 - a. Administrative action to extend or remove the schedule for The Preserve at Oak Creek Condominiums development; or
 - b. Legislative action to rezone the property, including a reversion to Commercial, Multi-Family and Single-Family zoning consistent with current zoning regulations.
6. A zoning application would be required for any future development inconsistent with the current PD zoning. In addition to a zoning application, other applications, such as development review, subdivision, or conditional use permit, may be required based on the proposal.
7. At a minimum, any future zoning application would be required to comply with the underlying Community Plan designations for the properties. If the proposed development does not comply with the Community Plan designation, a Community Plan amendment would be required. The current Community Plan designations for the above-mentioned properties are as follows:
 - a. 401-08-002A: West of Oak Creek: Commercial/Lodging; East of Oak Creek: Open Space
 - b. 401-09-001A, 401-09-001B, 401-09-001C, 401-13-059, 401-08-006A, 401-14-015, 401-14-016, 401-14-017, and 401-14-075A: Multifamily Medium Density.
 - c. 401-14-175: Commercial/Lodging
 - d. 401-14-064 and 401-14-065: Open Space
8. In addition to complying with the Community Plan land use designations, a zoning application would be expected to demonstrate that it is implementing other Community Plan goals and objectives. The Community Plan can be reviewed online at www.sedonaaz.gov/communityplan.
9. The property is within the Uptown Community Focus Area (CFA). CFAs were identified in the latest Sedona Community Plan as areas in need of additional planning. For more information on the CFA process, please contact Cynthia Lovely, Principal Planner, at (928) 203-5035 or clovely@sedonaaz.gov.

The Community Development Department welcomes discussions with the owner or developer regarding the City's options as explained above. As the Community Development Director this is my interpretation of the PD Zoning District for the above-mentioned parcels. Any person aggrieved by this decision may appeal this decision in accordance with the provisions of LDC 8.8.D (Appeal).

This Zoning Verification Letter supersedes the Zoning Verification Letter dated May 30, 2019.

If you have any questions, please contact Cari Meyer, Planning Manager, at (928) 203-5049, or cmeyer@sedonaaz.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "SM", is written over a faint, larger signature.

Steve Mertes, Director
Community Development Department

Attachments

1. Entitlement History for Requested Parcels

Entitlement History for APN 401-08-002A, 401-08-006A, 401-09-001A, 401-09-001B, 401-09-001C, 401-13-059, 401-14-015, 401-14-016, 401-14-017, 401-14-064, 401-14-065, 401-14-075A, 401-14-175

The above referenced properties have been the subject of various development approvals over the years. The following contains a comprehensive history of the development approvals for these properties.

In the following summary, the following abbreviations are used:

- CPA (Community Plan Amendment)
- ZC (Zone Change)
- DEV (Development Review)
- SUB (Subdivision)
- DA (Development Agreement)
- P&Z (Planning and Zoning Commission)
- CC (City Council)
- PH (public hearing)
- WS (Work Session)
- Zoning District Abbreviations
 - PD (Planned Development)
 - C-1 (General Commercial)
 - RM-2 (Multifamily Residential, Medium High Density, 12 units per acre)
 - RS-36 (Single Family Residential, Minimum lot size of 36,000 square feet)

Application	Applicable Parcels	P&Z Meeting Dates	CC Meeting Dates
CPA 94-3	401-14-064, -065, -075, -163, -164	January 18, 1994 (PH, recommended approval)	March 22, 1994 (PH, approved)
	Summary: CPA to redesignate property from Multi-family Medium and High Density to General Commercial/Lodging (-075) and Open Space Preservation/Conservation (remainder of parcels)		
CPA96-3 ZC95-7	401-08-002A, -006 401-09-001A, -001B, -001C, -004 401-13-017, -019, -059 401-14-015, -016, -017, -018A, -064, -065, -075	March 5, 1996 (conceptual review, recommended denial of CPA, continued ZC) July 2, 1996 (PH, continued to allow for modifications to proposal) August 15, 1996 (WS) August 20, 1996 (PH, recommended approval of ZC)	October 22, 1996 (granted 60 day continuance) November 26, 1996 (consent, sent modified development plan back to P&Z) **Project did not proceed
	Summary: ZC from C-1, RM-2, and RS-36 to PD PD contained design guidelines, formal DEV was to come at a later date. The PD allowed for the following: <ul style="list-style-type: none"> • 276 lodging units • 60,000 square feet of retail/office space • 26,000 square feet of restaurant space • 7 acre public park CPA only applied to a portion of the project, would have redesignated an area from Single-family Low Density to Commercial/Lodging. Staff recommended denial of the CPA and this request was ultimately withdrawn and the area was added to the public park. After P&Z recommendation of approval, one of the properties involved (401-14-018A) withdrew authorization, applicant was given time to amend proposal to remove this parcel, the project ended up being dropped.		

Application	Applicable Parcels	P&Z Meeting Dates	CC Meeting Dates
ZC98-3 DEV98-4 CPA98-2 O1998-15 R 1998-38	401-08-002A, -006 401-09-001A, -001B, -001C 401-13-059 401-14-015, -016, -017, -064, -065, -075	February 3, 1998 (Conceptual) May 5, 1998 (PH, recommended approval)	June 23, 1998 (PH, approved, ORD 98-15)
Summary: ZC from C-1, RM-2, and RS-36 to PD; DEV and CPA applications withdrawn, only ZC went to public hearing/was approved. The PD allowed for the following: <ul style="list-style-type: none"> • 195 timeshares, all with double lockout suites • 12 apartments • 56,680 sf retail • 25,087 sf restaurant (including 3,287 microbrewery) • 6,160 sf outdoor dining space • 17,777 sf clubhouse • 194 space parking structure • 150 seat outdoor amphitheater • 7 acre park with 2,000 feet creek frontage 			
DEV99-3	401-14-014, -016, -017, -064, -065, -075	March 2, 1999 (PH, continued) March 11, 1999 (WS) March 16, 1999 (PH, approved)	
Summary: The Cliffs at Oak Creek Phase 1, including: <ul style="list-style-type: none"> • 30 timeshare units, all with double lockout suites • 15,000 sf retail • 8,600 sf restaurant • 224 space parking structure (reduced to 171) Building permits for this development were submitted July 1999, approved by building in January 2000 & planning "some months later"; all building permits expired before construction began.			
ZC2004-1 SUB2004-1 DEV2004-1 O2005-05 R2005-13	401-08-002A, -006 401-09-001A, -001B, -001C 401-13-059 401-14-015, -016, -017, -064, -065, -075	October 21, 2004 March 15, 2005 (PH, approved) DEV, recommended approval of ZC, SUB, and DA	April 26, 2005 (PH, approved), zoning contingent on building permits being issued within 2 years
Summary: The Preserve at Oak Creek Hillside Development (west of 89A) <ul style="list-style-type: none"> • 2.5 acres • 6 buildings and associated parking • 107 parking spaces • 17,973 sf spa • 7,668 sf botanical reserve • 6 units affordable housing • 27 timeshares Creekside Development (east of 89A) <ul style="list-style-type: none"> • 18.5 acres • 8 acres west of the creek; no habitable buildings; future public park • 111 timeshares • 19,876 sf resort amenity space (restaurant, lounge, sales & administration offices, children's camp, fitness room/gym) and a viewing platform • 269 parking spaces 			

Application	Applicable Parcels	P&Z Meeting Dates	CC Meeting Dates
CPA2005-5 ZC2005-7 DEV2005-12 SUB2005-19	401-08-002A, -006 401-09-001A, -001B, -001C 401-13-059 401-14-015, -016, -017, -064, -065, -075	December 6, 2005 (PH, approved DEV, recommended approval on other applications)	February 14, 2006 (PH, approved) zoning contingent on building permits being issued within 2 years
O2006-04 R2006-10 R2006-09 Community Plan Minor Amendment	<p>Summary: The Preserve at Oak Creek, amended previous approval (April 26, 2005 CC approval)</p> <p>CPA: Minor amendment from Commercial/Lodging to Multifamily Medium and High Density Residential</p> <p>ZC: Amendment to site plan (see below)</p> <p>SUB: Preliminary Plat approval</p> <p>DEV: Phase 1 (Hillside Development)</p> <ul style="list-style-type: none"> • Overall amendments <ul style="list-style-type: none"> ○ 138 timeshares to 158 condominiums ○ 6 affordable rental units @ 100% AMI to 12 affordable for sale units @ 100-150% of AMI <ul style="list-style-type: none"> ▪ Phase 1 (Hillside) <ul style="list-style-type: none"> • 28 timeshares to 32 condominiums • 6 affordable units to 6 affordable offsite units • 16,065 sf spa to no spa ▪ Phase 2 (East of Highway) <ul style="list-style-type: none"> • 59 timeshares to 69 condominiums • 21,438 sf of offices and children's camp to nothing • Pool stayed ▪ Phase 3 (Creekside) <ul style="list-style-type: none"> • 51 timeshares to 57 condominiums • 6 new affordable offsite units • Stayed the same: Preserve Jordan well house and Jordan preserve and open space 		
TE2008-1	401-08-002A, -006 401-09-001A, -001B, -001C 401-13-059 401-14-015, -016, -017, -064, -065, -075	February 28, 2008 (WS) March 4, 2008 (PH)	April 22, 2008 (PH, approved by motion of Council)
	Summary: The Preserve at Oak Creek, Time Extension for ZC2005-7, DEV2005-12, and SUB2005-19 New expiration date March 14, 2010		

LAW OFFICES

BOYLE, PECHARICH, CLINE, WHITTINGTON & STALLINGS, P.L.L.C.

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spolk@bpcws.com

Nancy Hargiss-Tatlock
Devon M. White
John C. Stallings, Of Counsel

June 19, 2024

VIA HAND-DELIVERY AND EMAIL

City of Sedona
Anette Spickard, Town Manager
102 Roadrunner Drive
Sedona, AZ 86336
aspickard@sedonaaz.gov

JoAnne Cook, City Clerk
102 Roadrunner Drive
Sedona, AZ 86336
jcook@sedonaaz.gov

With email copies to:
Kurt Christianson, City Attorney
kchristianson@sedonaaz.gov

Steve Mertes, Community Development Director
smertes@sedonaaz.gov

**Re: City-Initiated Zoning Reversion and Alternate Development Proposal
Ambiente Creekside: A Landscape Hotel
APNs 401-08-002A, 401-08-006A, 401-13-059, 401-09-001A, 401-09-001B,
401-09-001C (the "Property")**

This Law Firm represents Dutchman's Cove LLC, an Arizona limited liability company ("Dutchman's Cove") and its principals, Mike Stevenson, Jennifer May, and Colleen TeBrake. Dutchman's Cove have contracted to purchase APNs 401-08-002A, 401-08-006A, 401-13-059, 401-09-001A, 401-09-001B, 401-09-001C (hereinafter, the "Property") from Axys Capital Total Return Fund LLC ("Axys"). The Property will be developed as Ambiente Creekside: A Landscape Hotel.

Enclosed with this letter are:

1. Property Map
2. Owner Authorization Letter for Zoning Reversion

I. REQUEST FOR CITY-INITIATED ZONING REVERSION

We hereby request that *the City* revert the zoning for the Property to its former zoning classification as required by A.R.S. § 9-462.01(E) and the Sedona Land Development Code § 8.6(B)(3)(g)(2).

1. The Property was conditionally zoned PD (Planned Development), conditioned on the schedule for development specified in Ordinance 2006-04/Resolution 2006-10.
2. The prior developer, Steve Cole, died in 2008.
3. The development schedule expired March 14, 2010.
4. Upon expiration of the development schedule, City Council “shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to **revert to its former zoning classification.**”¹
5. The City is estopped from extending the development schedule for the following reasons:
 - a. Fourteen years have passed since the conditional zoning expired.
 - b. The prior developer is deceased.
 - c. The property owner objects to extending the development schedule and requests reversion of the zoning to its former zoning classification.
 - d. The Preserve development plan² can no longer be implemented, due to the City having acquired a portion of the property under threat of condemnation to construct Owenby Way.
6. It should be noted that the Sedona Community Plan and the Uptown CFA have no legal effect on the City’s obligation to revert the zoning to its former zoning classification.
7. Simply put, A.R.S. § 9-462.01(E) requires Council to revert the zoning.

¹ ARS. 9-462.01(E) “The legislative body may approve a change of zone conditioned on a schedule for development of the specific use or uses for which rezoning is requested. If, at the expiration of this period, the property has not been improved for the use for which it was conditionally approved, the legislative body, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.”

² The Preserve development plan includes the following:

- 195 timeshares, all with double lockout suites
- 12 multi-family apartments
- 56,680 sf retail
- 25,087 sf restaurant space (includes 3,287 sf microbrewery, excludes 6,160 sf outdoor dining areas)
- 6,160 sf outdoor dining space
- 17,777 sf clubhouse
- 194 space parking structure
- 150 seat outdoor amphitheater
- 7 acre publicly accessible park with 2,000 feet creek frontage

II. DEVELOPMENT UNDER BY-RIGHT ZONING OF AMBIENTE: CREEKSIDE – A LANDSCAPE HOTEL (36 UNITS)

1. City staff have determined that the former zoning classification for each of the parcels is C-1, with those portions of the parcels east of Oak Creek being RS-36.
2. C-1 allows six (6) lodging units by right, for a total thirty-six (36) lodging units across the 6 parcels.
3. Upon reversion to the former zoning classification, the property will be developed as Ambiente: Creekside.
4. The development will be subject to site plan review but not the Planning & Zoning Commission.
5. Because this is by-right zoning, the City is legally prohibited from requiring any exactments, such as a public park.
6. This new 36 lodging-unit hotel will be comparable in scope to the current 40-unit Ambiente Hotel now in operation.

III. DIMINUTION IN VALUE CLAIM (if Council fails to revert the zoning to its original zoning classification)

In the Zoning Verification Letter, Director Mertes states that Council has the option to revert the zoning “consistent with current zoning regulations.” This is incorrect. A.R.S. § 9-462.01(E) unequivocally requires reversion of the Property to its “former zoning classification”. Failure to revert to its former zoning classification would trigger a Diminution in Value Claim pursuant to A.R.S. § 12-1134 for the reduction in the fair market value of the Property.

1. The former zoning classification is C-1.
2. C-1 no longer exists in the Land Development Code, except on grandfathered properties.
3. C-1 allows 6 lodging units per parcel.
4. It is unclear what zoning would even be applied that is “consistent with current zoning regulations.” Presumably it would not allow 6 lodging units per parcel.
5. The value of the Property without 6 lodging units per parcel is de minimis (the property has been unsaleable for 14 years and would remain unsaleable).
6. The value of the property with C-1 zoning is calculated as follows:
 - a. Current appraised value of the Ambiente Hotel
 - b. Minus construction costs

This discussion is provided as a response to the position taken in the Zoning Verification Letter, which would clearly violate the law. Dutchman's Cove would then have grounds to assert

a diminution in value claim for the loss sustained, which will undoubtedly be pursued vigorously. As you can imagine, the diminution in value claim would be substantial.

IV. ALTERNATE DEVELOPMENT PROPOSAL: 5-acre Park and 50 Lodging Unit Ambiente Hotel.

If the City is opposed to simply reverting the zoning and allowing development of the 36-unit hotel under by-right zoning, Dutchman's Cove would be willing to negotiate a simple development agreement for the Property.

Dutchman's Cove would in this case require an additional fourteen (14) lodging units across the Property (the "Alternative Development Proposal"), to make a total of fifty (50) lodging units.

As consideration for the increased number of units, Dutchman's Cove would be willing to reserve five (5) acres to be dedicated to the City for use as a public park. The City would be responsible for the maintenance and constructions costs of the park.

The Sedona Community Plan highlights a park in this prime location as a crucial community goal. The rationale is clear: currently, there is no public access to Oak Creek within city limits, and this represents the last undeveloped land where such access is feasible. The public benefits of providing creek access are immense. This would include seamless access to the Huckaby Trail and connectivity to the Munds Wagon Trail, Jim Thompson Trail, and the greater Sedona trails system. Imagine a short, 2.5-mile day hike from Uptown, starting at the proposed public park along Huckaby Trail to Grasshopper Point, becoming an iconic must-do activity. Why drive to Grasshopper Point and deal with the traffic nightmare when you can hike from Uptown along the scenic Oak Creek? This park not only fulfills a key community goal but also enhances Sedona's natural appeal and accessibility for both residents and visitors.

It should be noted that the request for this public park was initiated by City staff, drawing from the Community Plan and prior development agreements for the property. While the City Council has not yet had the chance to discuss this proposal, and it may not necessarily reflect their views, it underscores a critical point: this is the City's last opportunity to secure public access to Oak Creek. Without an agreement on Option 2, the property will be fully developed privately under by-right zoning, as previously outlined. This is a pivotal moment for Sedona, where the community can choose to preserve and enhance its natural beauty and accessibility for future generations. The creation of this park aligns with the community's long-term vision and ensures that Oak Creek remains a treasured and accessible part of Sedona's landscape.

Under this alternate proposal, the zoning would revert to C-1 and development would follow the relevant zoning regulations. The 50 units, along with ancillary hotel facilities (such as a restaurant, spa, lobby, pool, etc.), would be positioned in their optimal locations without regard to parcel boundaries.

V. CONCLUSION

1. Dutchman's Cove and Axys formally request that City Council initiate the legislative process to revert the zoning of the Property to its former zoning classification of C-1 (west of Oak Creek) and RS-36 (east of Oak Creek), with by-right zoning for 6 lodging units per parcel, in strict compliance with LDC Section 8.6(B)(3)(g)(2) and ARS 9-462.01(E).
 - a. We specifically request that the public hearing be scheduled for the July 9, 2024, Council meeting.
2. In the alternative, enter into a development agreement with Dutchman's Cove to proceed with the Alternate Development Proposal for a 5-acre public park and 50 total lodging units.
 - a. We anticipate that Council will meet in executive session to consider this matter at its June 25, 2024, Council meeting.

The City's prompt and appropriate action will ensure adherence to legal requirements and prevent significant financial detriment to the Property's value. Please respond **no later than June 28th** as to whether Council will schedule the public hearing to revert the zoning for July 9th, or whether they instead wish to negotiate the details of the Alternate Proposal.

We appreciate your immediate attention to this matter and await your confirmation of the City's intention to proceed with the necessary legislative rezoning process.

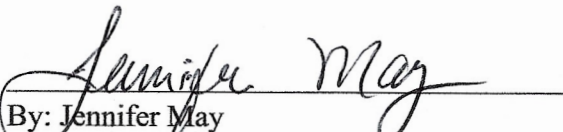
Sincerely,
BOYLE, PECHARICH, CLINE
WHITTINGTON & STALLINGS, P.L.L.C.



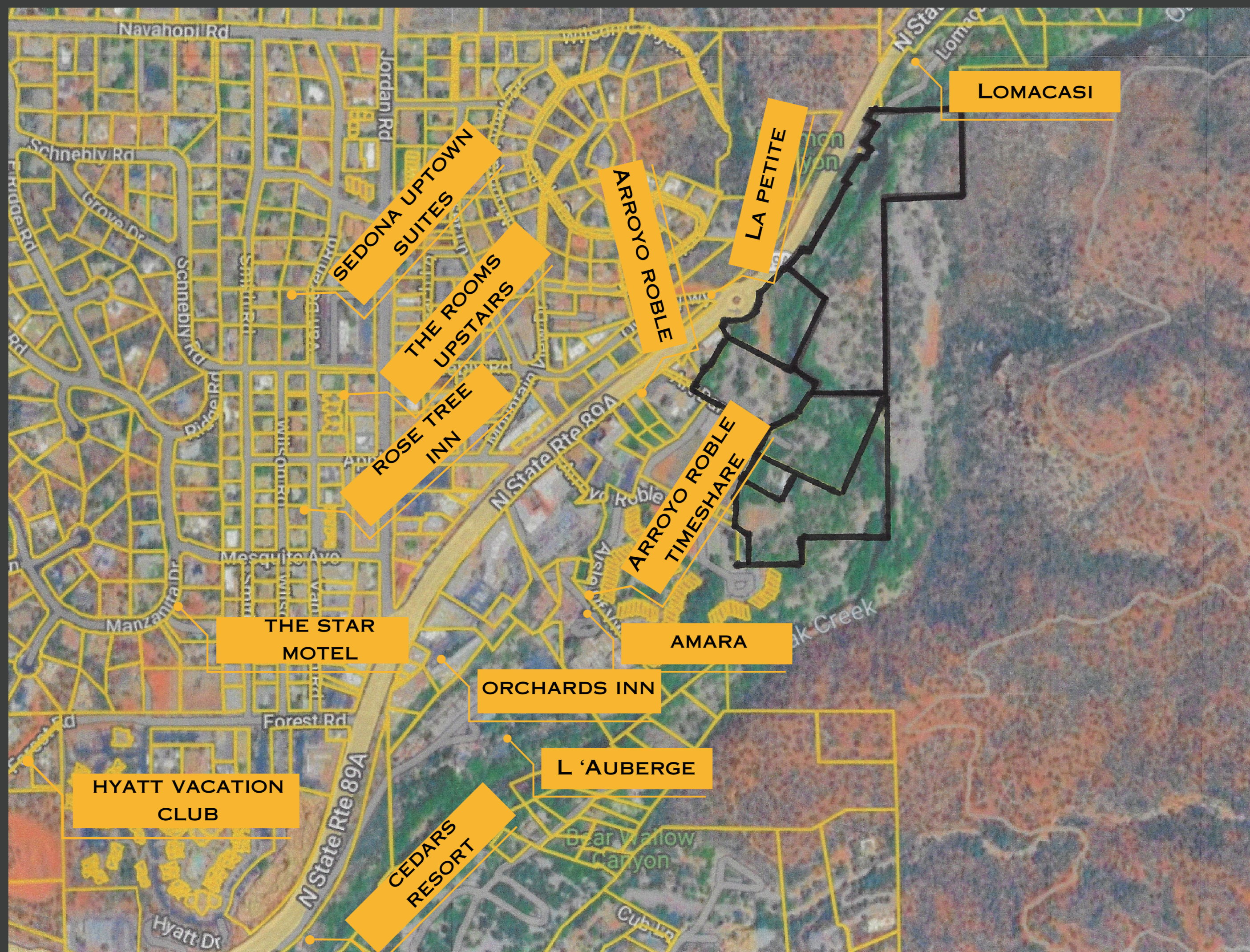
Stephen W. Polk, Esq.

APPROVED:

Dutchman's Cove LLC, an Arizona limited liability company



By: Jennifer May
Its: Manager



Axys Capital Total Return Fund, LLC
c/o Timothy A. Birch
1900 St James Place, Suite 300
Houston, Texas 77056

June 18, 2024

City of Sedona
Attn: City Manager
102 Roadrunner Drive
Sedona, AZ 86336-3710

Re: Authorization for Dutchman's Cove to Act on Behalf of Axys in Reversionary Zoning Request and Related Matters

To Whom It May Concern,

This letter serves as formal authorization for Dutchman's Cove LLC ("Buyer") to act on behalf of Axys Capital Total Return Fund, LLC ("Owner") in matters related to the property located at 586 N. SR 89A, Sedona, AZ 86336, currently assigned Coconino County Assessor's Parcel Nos. 401-08-006A, 401-08-002A, 401-09-001A, 401-09-001C, 401-13-059, and 401-09-001B (together, the "Property"). Specifically, Owner grants Buyer the authority to:

1. Reversionary Zoning Request:

- Submit a request for reversionary zoning and any associated documents to the City of Sedona, including but not limited to applications, plans, reports, and supporting materials required for the processing and approval of the reversionary zoning request.

2. Development Negotiations:

- Engage in negotiations with the City of Sedona and any other relevant governmental authorities or agencies regarding the development of the Property, including but not limited to zoning changes, permits, approvals, and any other matters necessary for the development and use of the Property.

3. Diminution in Value Claim:

- Pursue, file, and manage any claims for diminution in value related to the Property, as provided under ARS § 12-1134, including all necessary communications, filings, and legal actions required to assert and enforce such claims.

This authorization includes the right for Buyer to execute, deliver, and perform any and all agreements, documents, instruments, and certificates in connection with the foregoing, and to take any and all actions necessary or appropriate to effectuate the purposes described herein.

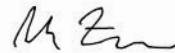
Please direct all correspondence and inquiries regarding this matter to the following contact person at Dutchman's Cove:

Dutchman's Cove LLC
Attn: Jennifer E. May
900 West State Route 89
Sedona, Arizona 86336

Copy to: Boyle, Pecharich, Cline, Whittington & Stallings, P.L.L.C.
Attn: Stephen W. Polk, Esq.
125 N. Granite Street
Prescott, AZ 86301

If you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "M Zislis".

Michael Zislis
Axys Capital Total Return Fund LLC

Zoning District Conversions

The LDC Update project includes a revised list of zoning districts to consolidate similar districts, propose new districts, rename current districts, and remove obsolete zoning districts. The table below shows the proposed new lineup of zoning districts and the proposed conversion from the existing LDC zoning districts.

Current	Proposed	Comments
RS-5A single-family residential	--	Carried forward as obsolete district
RS-70 single-family residential	RS-70 large lot single-family residential	Carried forward
RS-36 single-family residential	RS-35 large lot single-family residential	Consolidated based on similarities in purpose, standards, and uses
RS-35 single-family residential		
RS-18a single-family residential	RS-18 single-family residential	Consolidated based on similar purpose and uses
RS-18b single-family residential		
RS-12 single-family residential	RS-10 single-family residential	Consolidated based on similar purpose, standards, and uses
RS-10a single-family residential		
RS-10b single-family residential		
RS-6 single-family residential	RS-6 single-family residential	Consolidated based on similar standards
RMH-6 single-family residential and mobile home		
RMH-12 single-family residential and mobile home		
RMH-10 single-family residential and mobile home	RMH single-family and mobile home	Consolidated based on similar purpose and uses
RM-1 medium density multifamily	RM-1 medium density multifamily	Carried forward
RM-2 high density multifamily	RM-2 medium-high density multifamily	Carried forward but renamed
RM-3 high density multifamily	RM-3 high density multifamily	Carried forward
MH manufactured home	--	Never applied on the zoning map
PRD planned residential	--	Consolidated PRD and PD districts (see below)
CN neighborhood commercial	M1 mixed-use neighborhood	Renamed and refined uses to accommodate primarily residential with limited commercial
OP office professional	M2 mixed-use employment	Renamed and refined uses to accommodate employment centers with limited residential
--	M3 mixed-use activity center	New district intended to accommodate a mix of uses in Sedona’s primary and secondary activity centers
C-1 general commercial	CO commercial	Consolidated and renamed
C-2 general commercial		
C-3 heavy commercial/light manufacturing	IN light industrial	Renamed
RC resort commercial	L lodging	Consolidated based on similar standards and uses
L lodging		
PD planned development	PD planned development	Consolidated PD and PRD districts
CF community facilities	CF community facilities	Carried forward
P parking	--	Carried forward as obsolete district
OS open space and recreation	OS open space and recreation	Carried forward
NF national forest	NF national forest	Carried forward
T transitional	--	Replaced by SU district
SU special use	--	Carried forward as obsolete district



DUTCHMAN'S COVE

Reversion to Former
Zoning Classification

Meet our Team

DEVELOPER

**DUTCHMAN'S COVE
LLC**

**MIKE STEVENSON
JENNIFER MAY
COLLEEN TEBRAKE**

900 W. STATE ROUTE 89A
SEDONA, AZ, 86336

LEGAL

**BOYLE, PECHARICH,
CLINE, WHITTINGTON
& STALLINGS, PLLC**

STEPHEN POLK, ESQ.

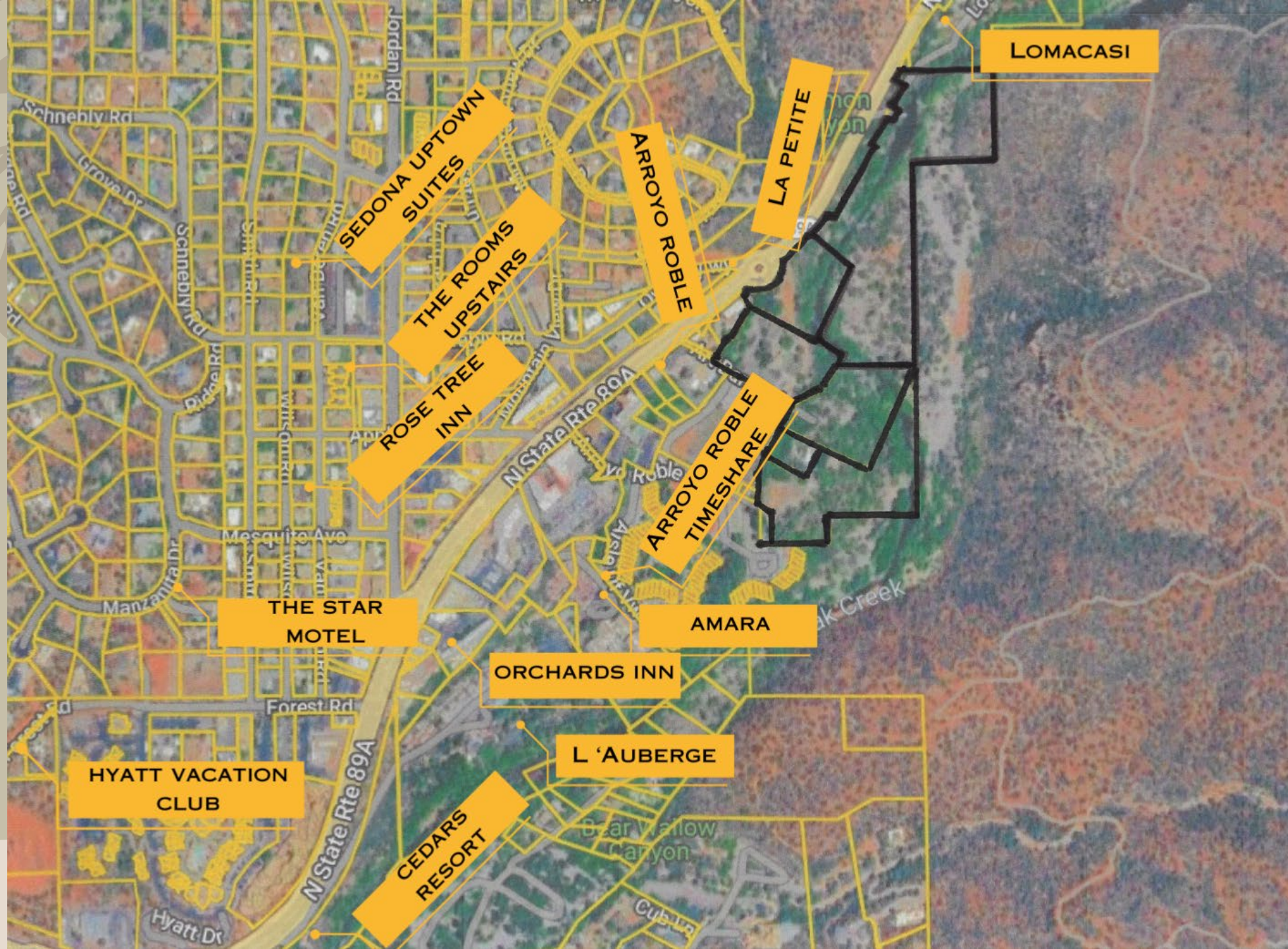
125 N. GRANITE STREET
PRESCOTT, AZ 86301

LEGAL

SNELL & WILMER, LLP

**NICHOLAS J. WOOD,
ESQ.**

ONE EAST WASHINGTON STREET |
SUITE 2700 | PHOENIX, AZ 85004



Why City- Initiated Zoning Reversion?

- Development schedule expired in 2010
- Nothing can be built on the property
- ARS 9-462.01(E) requires Council to schedule a public hearing to extend or revert the zoning

City Code does not allow 2nd extension

- Development schedule set to expire March 14, 2008
- Extended to March 14, 2010
- LDC § 400.11(3):

“A conditional rezoning may be extended **only one time** for an additional prescribed time period to be recommended by the Planning and Zoning Commission and determined by the Council in a public hearing.”

Property History

- Annexed into City in 1988 as CG-10,000
- 1995 – C-1
 - Did not limit lodging to 6 units per parcel
 - Restricted by maximum lot coverage
- 12/22/1997 – The Cliffs (timeshares)
- 4/26/2005 – The Preserve (timeshares)
- 2/14/2006 – The Preserve (condos)

Former zoning classification is C-1 as of December 22, 1997

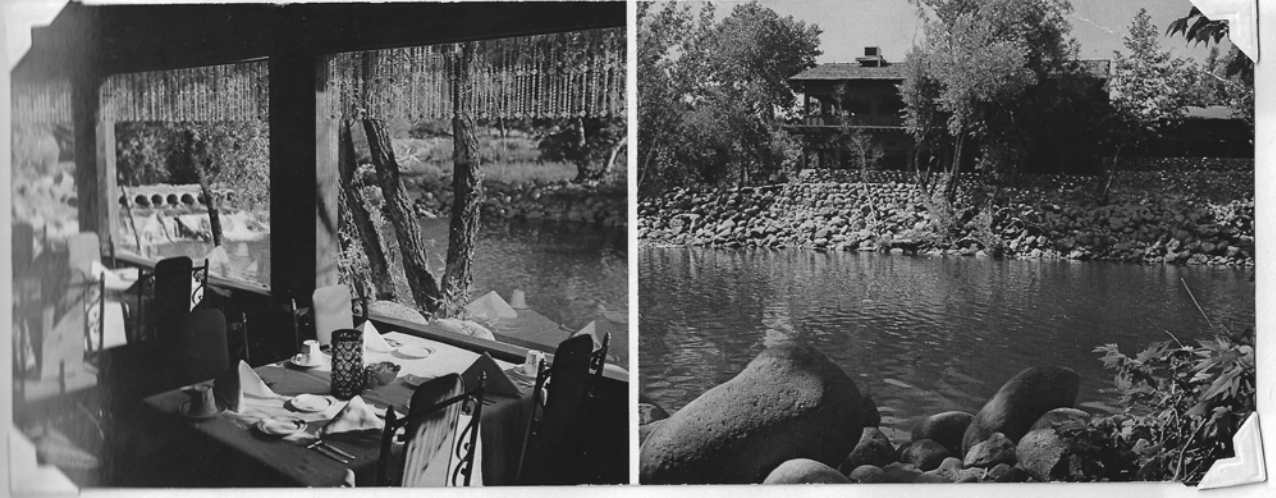
Family History of the Property

1911 — John
Stevenson (father of
Mike Stevenson) &
family move to
Arizona

1966 - John purchased
the property

Constructed the
Dutchman's Cove
Restaurant

The Dutchmans Cove Restaurant 1970-71



*Kathy - Marion - Pat and Betty Stevenson (Jenny's in the
Oven !!)*



SAME SCENE AS ABOVE LEFT.

Family History of the Property

- 1969 – Mike Stevenson & family move to the property
- 6 month-old Colleen
- Jennifer born 1 year later





LEGAL

Nicholas J. Wood, Esq.
SNELL & WILMER, LP

Case Number: PZ24-00008

City Council Meeting
8.13.24

Aerial Map





8. REGULAR BUSINESS

- a. AB 3089 **Public Hearing/possible action** regarding a request for the Sedona City Council to take administrative action to extend or remove the schedule for development or take legislative action to cause the property to revert to its former zoning classifications. The property is currently zoned PD (Planned Development) - The Preserve at Oak Creek Condominiums and is located on both sides of N State Route 89A in the area generally surrounding the Owenby Way Roundabout. APN 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B;

A.R.S. § 9-462.01.E

E. The legislative body may approve a change of zone conditioned on a schedule for development of the specific use or uses for which rezoning is requested. If, at the expiration of this period, the property has not been improved for the use for which it was conditionally approved, the legislative body, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.

Zoning Condition #2 (1998)

Conditions of Approval -- The Cliffs at Oak Creek -- ZC98-3 As Revised by the Planning and Zoning Commission, May 5, 1998

2. In the event that the developer fails to obtain Development Review approval for Phase 1 of the project and building permits for the Phase 1 development within the time frames set forth in Section 2.1 of the Development Agreement, the City may revert the PD zoning designation to its original zoning as of the date of approval of the PD (C-1, RS-36 and RM-2) pursuant to the procedures set forth in Title 9, Chapter 4, Arizona Revised Statutes.

the City may revert

Zoning Condition #2 (2006)

CONDITIONS OF APPROVAL

**The Preserve at Oak Creek Condominium project
(CPA2005-5, ZC2005-5 and SUB2005-15)
Hillside Development -- DEV2005-12**

2. Vesting of the PD (Planned Development) zoning designation shall be contingent upon the applicant obtaining building permits for the first phase of development, i.e. the Hillside buildings (Buildings A through C-3). In accordance with Section 401.12A-1 of the City's Land Development Code a valid building permit for the project shall be issued and the first phase of the project shall be under construction within two years of the City Council action on the PD amendment following zone change procedures (i.e. by [insert date]), or the Commission's and Council's approval will become void. Construction of the remaining phases of the project in the Creekside Development shall only commence following separate development review approval by the Planning and Zoning Commission. The buildings in Phase 3 shall be designed to ensure as much as possible the preservation of mature and healthy trees.

Council's approval will become void.

Issue 1: The conditional PD Zoning Approval is VOID as a matter of law, therefore it cannot be resurrected.

The conditional zoning was approved and terminated legislatively and cannot now be resurrected.

Zoning Condition 1 (2006)

CONDITIONS OF APPROVAL

**The Preserve at Oak Creek Condominium project
(CPA2005-5, ZC2005-5 and SUB2005-15)
Hillside Development -- DEV2005-12**

1. Development of the subject property shall be in substantial conformance with the applicant's representations of the project, including the letter of intent, preliminary site plan and supporting architectural plans, landscape plans, grading plans etc., as reviewed, modified, and approved by the Planning and Zoning Commission and City Council.

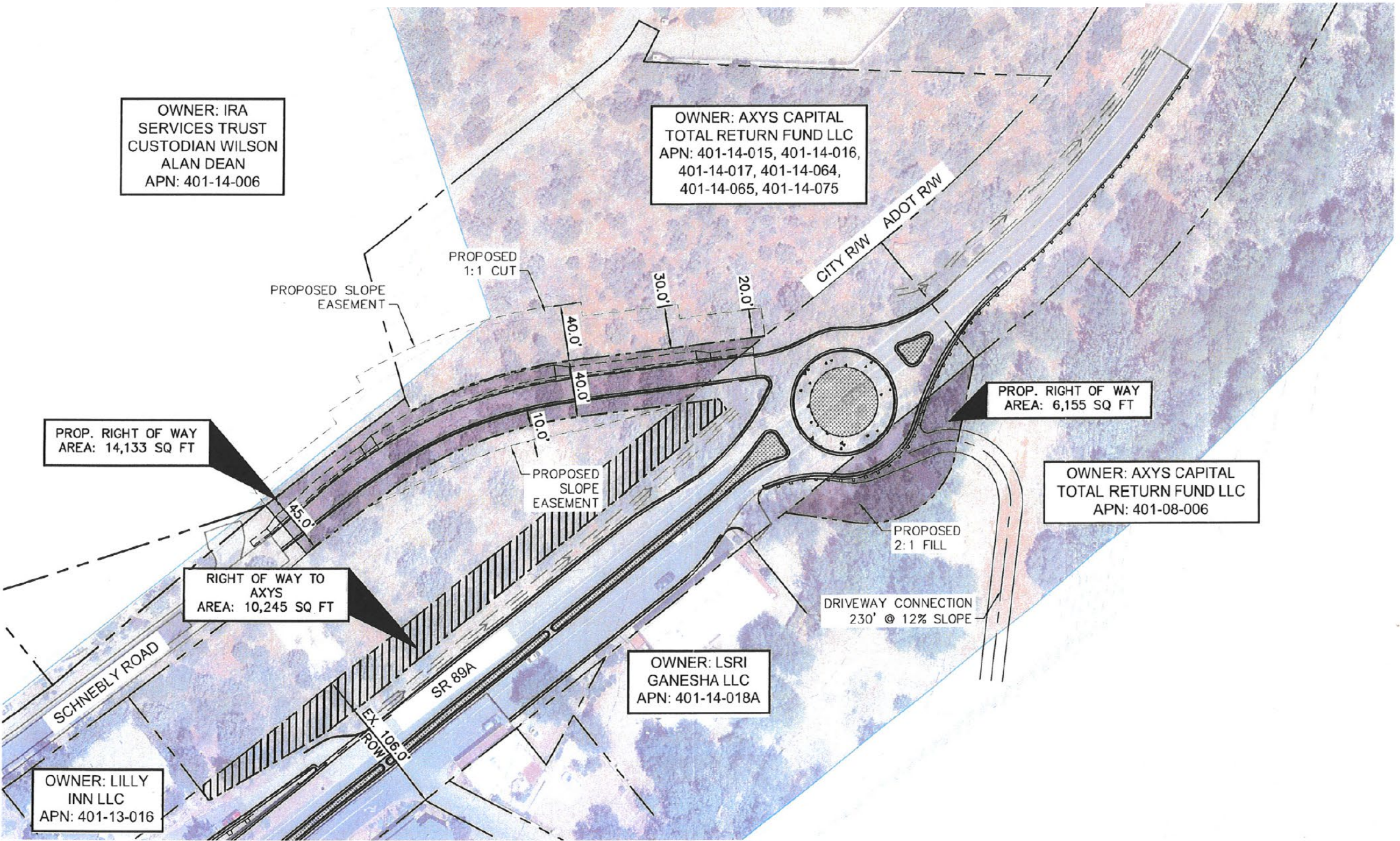
Master Site Plan 2006 PD Zoning Case



2019 Development Agreement

RESOLUTION NO. 2019-20

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH AXYS CAPITAL TOTAL RETURN FUND, LLC, FOR THE UPTOWN ROADWAY IMPROVEMENTS PHASE OF THE SEDONA IN MOTION (SIM) PROJECT.



Kimley»Horn

UPTOWN SEDONA

PROPOSED RIGHT OF WAY

AUGUST 2, 2019

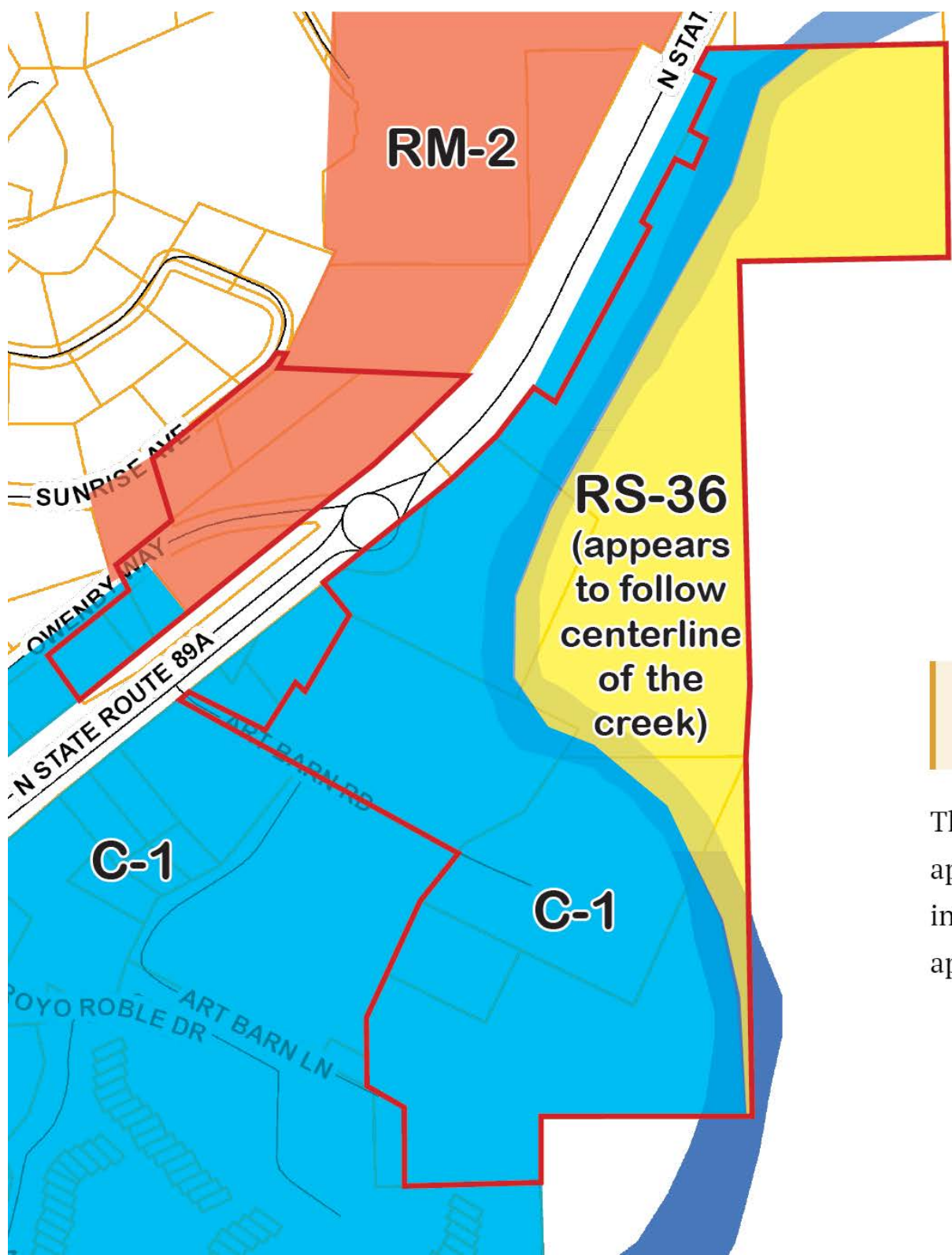


Dedicated Right-of-Way Overlaid on 2006 Master Site Plan



Issue 2: The conditional PD Zoning Approval is subject to a condition requiring compliance with a specific site plan which cannot be implemented due to the roadway taking.

1995 Zoning Map at Time of Conditional Approvals



1995 Districts

- RM-2
- RS-36
- C-1

2018 Districts

- RM-2
- RS-35
- CO

B. Adoption of Existing Conditions of Approval



This Code adopts and incorporates by reference the stipulations and conditions from particular development approvals in effect under the 1995 Land Development Code (as amended). The Code further adopts and incorporates by reference all development plans, use permits, variances, stipulations, and conditions that currently apply to any parcel prior to the date of adoption of this Code.

1998 Approval – Resolution 98-38

***17 ZC 98-3**

Section 2: Zoning Map.

The zoning map shall be amended to reflect this zone change upon completion of all zoning conditions as set forth in Exhibit A attached hereto and made a part hereof by this reference, and at least three (3) copies of the map shall be kept in the office of the City Clerk for public use and inspection.

2005 Approval – Resolution 2005-13

***43 ZC 2005-7**

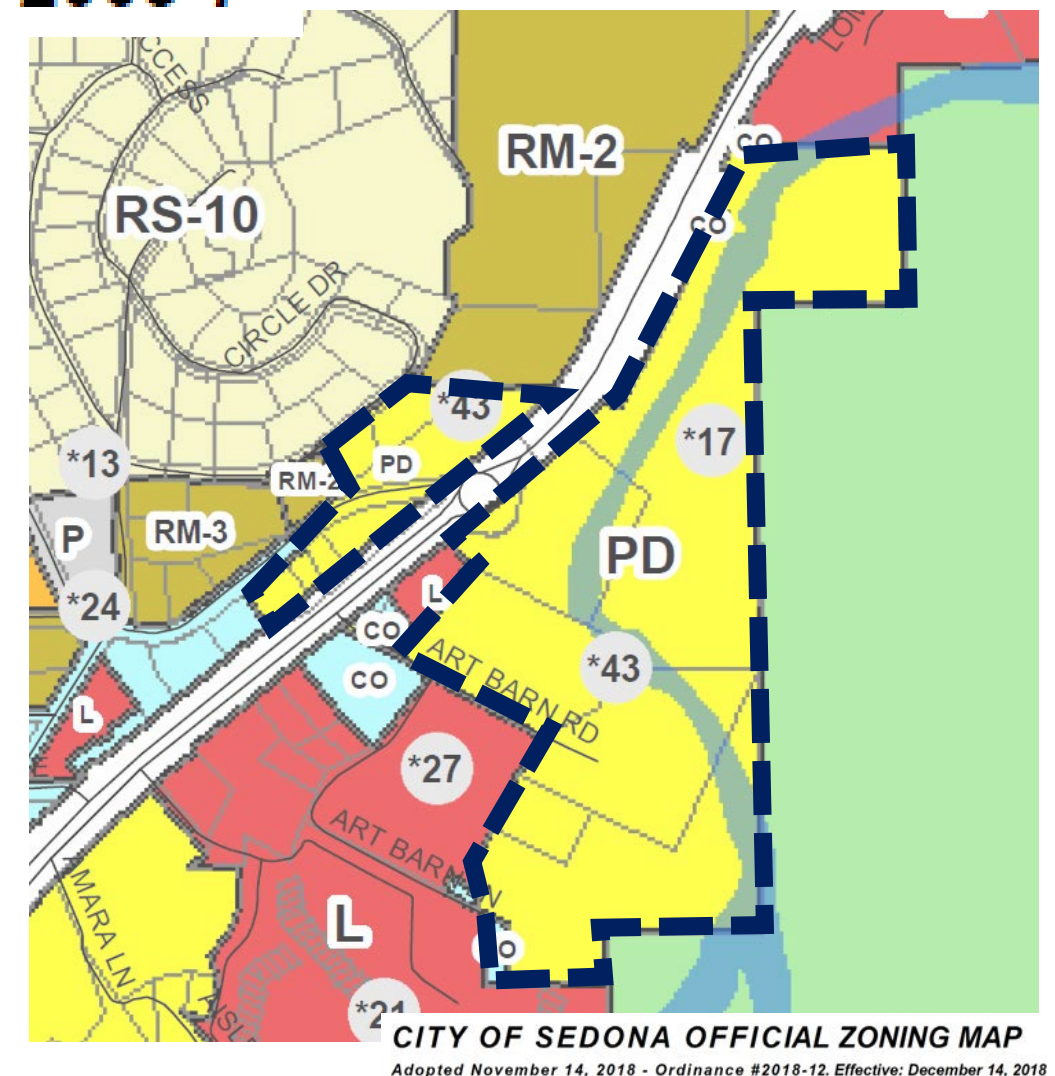
RESOLUTION NO. 2005- 13 (Rezoning Ordinance as Public Record)

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, ESTABLISHING AS A PUBLIC RECORD THE TERMS OF THAT CERTAIN ORDINANCE OF THE CITY OF SEDONA, ARIZONA; AMENDING THE ZONING DESIGNATION FOR THAT PROPERTY DESCRIBED HEREIN FROM PD (PLANNED DEVELOPMENT) TO PD (PLANNED DEVELOPMENT) WITH AN AMENDED SITE PLAN; **DIRECTING THE AMENDMENT OF THE ZONING MAP UPON COMPLETION OF ALL ZONING CONDITIONS SET FORTH HEREIN**; AND REPEALING ALL ORDINANCES IN CONFLICT HERewith.

2006 Approval – Resolution 2006-10

RESOLUTION NO. 2006-10 (Rezoning Ordinance as Public Record)

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, ESTABLISHING AS A PUBLIC RECORD THE TERMS OF THAT CERTAIN ORDINANCE OF THE CITY OF SEDONA, ARIZONA; AMENDING THE ZONING DESIGNATION FOR THAT PROPERTY DESCRIBED HEREIN FROM PD (PLANNED DEVELOPMENT) TO PD (PLANNED DEVELOPMENT) WITH AN AMENDED SITE PLAN; **DIRECTING THE AMENDMENT OF THE ZONING MAP UPON COMPLETION OF ALL ZONING CONDITIONS SET FORTH HEREIN**; AND REPEALING ALL ORDINANCES IN CONFLICT HERewith.



Issue 3: The conditional PD Zoning Approval was subject to specific conditions and not lawfully mapped.

The site retains its C-1 (now CO with 2018 Zoning Code Update) zoning classification.

April 25, 2023 - LDC Amendment to C-O Zoning District

Ordinance No. 2023-03

EXHIBIT A: PZ23-00002 (LDC)

April 25, 2023: Land Development Code Revisions

Article 1 – General Provisions:			
Section	Current Language	Proposed Change	Notes
<u>1.6.B(3): Maintenance and Minor Repair</u>	New subsection	Minor repairs and maintenance of nonconformities are permitted and encouraged; provided, that the repairs and maintenance do not increase the degree of nonconformity. Minor repairs and maintenance include the following: e. <u>Repainting less than 50% of the exterior of the structure.</u>	Require repainting a compliant color if more than 50% of the house is repainted. Choosing a compliant color vs. repainting the same color should not have a cost difference and moves towards compliance with LDC requirements. See additional changes to Section 5.7.B(3)a.
<u>1.6.D: Nonconforming Structures</u>	New subsection	Nonconforming structures are subject to the following additional limitations: 5) <u>When 50% or more of a structure is being painted, the color shall be in full conformance with the standards of subsection 5.7.F(5)</u>	Require repainting a compliant color if more than 50% of the house is repainted. Choosing a compliant color vs. repainting the same color should not have a cost difference and moves towards compliance with LDC requirements. See additional changes to Section 5.7.B(3)a.
Article 2 – Zoning Districts:			
Section	Current Language	Proposed Change	Notes
<u>2.24.D(4), Table 2.6: Exceptions to Setback Requirements</u>	Exception for Ground-mounted solar and geothermal equipment	Add “Rainwater harvesting tanks” to exception	Allow rainwater harvesting tanks to have the same standards as solar.
Article 3 – Use Regulations:			
Section	Current Language	Proposed Change	Notes
<u>3.2.E: Table of Allowed Uses</u>	“School, Vocational or Trade” not currently listed as a permitted use	“School, Vocational or Trade” as a permitted use in M2, M3, CO, IN, and L	The LDC currently has separate parking requirements and definitions for “School, Public or Private” and “School, Vocational or Trade.” However, “School, Vocational or Trade” is not listed as a permitted use.
<u>3.2.E: Table of Allowed Uses</u>	“Lodging, Fewer than Seven Units” currently listed as a permitted use in M1, M2, M3, CO, L, and OC	Remove “Lodging, Fewer than Seven Units” as a permitted use in any zone	This has caused properties to try to get around the requirements of the Lodging zone by splitting properties into smaller properties and constructing up to 6 lodging units per property. Removal of this as a permitted use ensures that all lodging projects are treated equally and reviewed using the same process.

12-1134. Diminution in value; just compensation

F. Any demand for landowner relief or any waiver that is granted in lieu of compensation runs with the land.

I. Nothing in this section prohibits this state or any political subdivision of this state from reaching an agreement with a private property owner to waive a claim for diminution in value regarding any proposed action by this state or a political subdivision of this state or action requested by the property owner.

Issue 4: The property's CO zoning was amended in 2023 to remove "Lodging, Fewer than Seven Units" which is a violation of A.R.S. § 12-1134 and a waiver of the 2023 amendment is necessary for City to avoid a takings claim.

Council Actions:

1. Take no legislative action to revert the conditional PD zoning approval because there is nothing to revert as it expired March 14, 2010 and is void.
2. Take no administrative action to extend the time periods of the conditional PD zoning approval because (i) its void and (ii) it is impossible to comply with the conditions of approval.
3. Direction to Staff via Resolution finding that the conditional PD zoning approval is void as March 14, 2010 and directing Staff to correct the improperly modified Zoning Map to show the Site's legal zoning classification of C0.

Case Number: PZ24-00008

City Council Meeting
8.13.24

PRESERVE AT OAK CREEK

CITY COUNCIL HEARING

AUGUST 13, 2024

DEVELOPMENT APPLICATION HISTORY (CONT'D)

- 1994: Community Plan Amendment to redesignate property from Multi-family Medium and High Density to General Commercial/Lodging and Open Space Preservation/Conservation
 - Application Approved
- 1995/1996: Application to rezone entire property to PD for lodging, retail/office, restaurant, and public park.
 - Application Withdrawn

DEVELOPMENT APPLICATION HISTORY (CONT'D)

- 1998: Zone Change to rezone property to PD from timeshares, apartments, retail, restaurant, outdoor dining, clubhouse, parking structure, amphitheater, public park.
 - Application Approved
- 1998: Development Review application for 1st phase of PD (above) for timeshares, retail, restaurant, parking structure
 - Application Approved
 - Building permits approved in 2000
 - Permits expired before construction began

DEVELOPMENT APPLICATION HISTORY (CONT'D)

- 2004: Zone Change, Subdivision, and Development Review application to amend PD: timeshares and resort amenities, affordable housing, spa, parking structures, botanical reserve
 - Application approved in 2005, building permits required to be issued within 2 years
- 2006: Community Plan Amendment, Zone Change, Subdivision, and Development Review to amend 2004 approval to convert timeshares to condominiums, increase affordable housing
 - Application approved in 2006, building permits required to be issued within 2 years
- 2008: Time Extension request for 2006 approvals
 - Request approved, new expiration date of March 14, 2010

NEXT STEPS

- Options are outlined in Agenda Bill
- Community Development and City Attorney staff are available for questions

Action Minutes
Regular City Council Meeting
City Council Chambers, Sedona City Hall,
102 Roadrunner Drive, Sedona, Arizona
Tuesday, August 13, 2024, 4:30 p.m.

1. Call to Order/Pledge of Allegiance/Moment of Silence

Mayor Jablow called the meeting to order at 4:30 p.m.

Council Present: Mayor Scott Jablow, Vice Mayor Holli Ploog, Councilor Melissa Dunn, Councilor Brian Fultz, Councilor Pete Furman, Councilor Kathy Kinsella, and Councilor Jessica Williamson.

Staff Present: City Manager Anette Spickard, Deputy City Manager Andy Dickey, City Attorney Kurt Christianson, Planning Manager Cari Meyer, Communications Manager Lauren Browne, Director of Community Development Steve Mertes, Assistant Director of Public Works Sandy Phillips, Director of Public Works/City Engineer Kurt Harris, Associate Engineer Bob Welch, Police Chief Stephanie Foley, Police Lieutenant/Manager Erin Loeffler, Assistant Engineer Hanako Ueda, Accounting Manager Renee Stanley, Revenue Supervisor Bernadette Krchnavy, Contract Administrator Ian Coubrough, Arts & Culture Specialist Nancy Lattanzi, Sustainability Coordinator Zach Schwarz, Short-Term Rental Specialist Teresah Arthur, Community Services Aide Jack Ross, Budget and Financial Analyst Sterling West, Assistant Project Manager Gillian Arnold, Transit Administrator Robert Weber, Director of Wastewater Roxanne Holland, Assistant Attorney Monique Coady, Deputy City Clerk Marcy Garner, and City Clerk JoAnne Cook.

2. Roll Call/Moment of Art

Nancy Lattanzi introduced the Acapella Quartet Surround Sound. They sang, "Red Rock Rag", and a "Wish for the City Council Meeting".

3. Consent Items

- a. **Minutes - July 09, 2024 City Council Special Meeting - Executive Session.**
- b. **Minutes - July 09, 2024 City Council Regular Meeting.**
- c. **Minutes - July 10, 2024 City Council Special Meeting.**
- d. **AB 3093 Approval of award of a Professional Services Agreement with Carollo Engineers for design services for the WWRP Facility Plan in the amount of \$250,000.**
- e. **AB 3094 Approval of a recommendation regarding an application for a New Series 12 Restaurant Liquor License for Costa Modern Latin Cuisine, located at 150 SR 179, STE #9, Sedona, AZ (File # 23678964).**
- f. **AB 3100 Approval of a recommendation regarding an application for a New Series 12 Restaurant Liquor License for Nicks West Side located at 2920 W HWY 89A, Sedona, AZ (File# 23664461).**
- g. **AB 3104 Approval of a recommendation regarding an application for a New Series 12 Restaurant Liquor License for Sound Bites Grill, located at 101 N HWY 89A, #F29, Sedona, AZ (File# 23682070).**

- h. **AB 3096 1) Approve acceptance of the FFY 2024 FTA 5311 Grant award in the amount of \$155,000. 2) Approve the expenditure of \$51,900 which is included in the FY2025 budget as the city's local share to satisfy the conditions of the grant. 3) Direct staff to apply all stated FTA grant and local funding for only approved activities as specified within the grant.**
- i. **AB 3103 Approval of change order to Questica Budget Software in relation to CIP IT-01 Citywide Business Software.**
- j. **AB 3102 Approval of additional fiscal year contract with Tourism Economics for tourism data platform software in amount not-to-exceed \$57,000.**
- k. **AB 3105 Approval of a Contract Change Order with Banicki Construction, Inc for the Pedestrian Crossing at Oak Creek Project in the amount of \$201,938.**

Item 3k was pulled off Consent Items by Councilor Furman for public discussion regarding costs. Bob Welch and Kurt Harris spoke to the item regarding the change order.

Motion: Councilor Kinsella moved to approve consent items 3a - 3j. Seconded by Councilor Fultz. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

Motion: Councilor Furman moved to approve consent items 3k. Seconded by Councilor Kinsella. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

4. Appointments - None.

5. Summary of Current Events by Mayor/Councilors/City Manager

Mayor Jablow announced Alex Schroder was promoted to the US Forest Service District Ranger position. Vice Mayor Ploog stated she attended a Meals for Wheels delivery; she encouraged councilmembers to do the same.

6. Public Forum

Opened to the public at 4:51 p.m.

Julie Richard, Sedona (Sedona Arts Center), spoke regarding the status of the Art Mural restoration efforts. She stated the Sedona Arts Center recently received a large grant for an entrepreneurial development program. She invited all to the next opening and the Myrna Harrison Exhibit on October 6th.

Brought back to Council at 4:53 p.m.

7. Proclamations, Recognitions & Awards - None.

8. Regular Business

Items 8c and 8d were moved ahead of item 8b.

- a. **AB 3089 Public Hearing/possible action regarding a request for the Sedona City Council to take administrative action to extend or remove the schedule for development or take legislative action to cause the property to revert to its former zoning classifications. The property is currently zoned PD**

(Planned Development) - The Preserve at Oak Creek Condominiums and is located on both sides of N State Route 89A in the area generally surrounding the Owenby Way Roundabout. APN 401-08-002A; 401-08-006A; 401-09-001A; 401-09-001B; 401-09-001C; 401-13-059; 401-14-015; 401-14-016; 401-14-017; 401-14-064; 401-14-065; 401-14-075A; 401-14-163; 401-14-164. Case Number: PZ24-00008 (ZC) Applicant: Dutchman's Cove, LLC Owner: Axys Capital Total Return Fund, LLC.

Presentation by Cari Meyer, Stephen W. Polk, Esq., Boyle, Pecharich, Cline, Whittington & Stallings, P.L.L.C., and Nicholas J. Wood, P.L.L.C.

Questions and comments from Council.

Opened Public Hearing at 5:56 p.m.

The following spoke in favor of item 8a: Heiner Zacher, Sedona, Joe Huff, Sedona, Nicolas Pigati, Clarkdale, Lew Hoyt, Sedona, Joe Franquero, Phoenix, Christina Hemingson, Sedona, Deborah Waldvogel, Sedona, Joetta Winer, Sedona, Patrick Schweiss, Sedona, Mike Wise, Sedona,

Gabriel Browne, Sedona, asked a question regarding the proposal adjacent to Ownby Way.

Joe Huff left prior to his turn to speak.

Closed Public Hearing at 6:20 p.m.

Questions and comments from Council.

Motion: Vice Mayor Ploog moved to go into executive session for legal consultation per 9a, regarding item 8a at 6:21 p.m. Councilor Williamson seconded. Entered into executive session at 6:30 p.m. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

Reconvened in open session 6:56 p.m.

Questions and comments from Council.

Motion: Councilor Kinsella moved to approve Ordinance No. 2024-02, case number PZ 24-00008 (ZC), reverting the zoning of the property identified herein from PD (Planned Development) to CO (Commercial), RS-35 (Single Family Residential), and RM-2 (Multifamily Residential), based on conformance with the 2018 LDC conversion chart and the requirements for reversionary rezoning of A.R.S. § 9-462.01(E) and LDC § 8.6(B)(3)(g)(2). Seconded by Councilor Williamson. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

- b. AB 3071 Public hearing #1/discussion on the Land Use Assumptions and Infrastructure Improvement Plan (IIP) developed by consultant Tischler/Bise, Inc. as required by A.R.S. § 9-463.05 for the City of Sedona to adopt updated Development Impact Fees.**

Presentation from Anette Spickard and Ben Griffin, Senior Fiscal/Economic Analyst, Tischler Bise, Inc.

Questions and comments from Council.

Opened the Public Hearing at 9:30 p.m.

Sean Smith, Sedona, spoke regarding using an increase in fees to support the construction of more city shared use paths.

Closed Public Hearing at 9:31 p.m.

Questions and comments from Council.

Public Hearing only, no action taken.

- c. **AB 3072 Public hearing/possible action regarding adoption of a Resolution and Ordinance updating the City of Sedona's Fee Schedule to reflect a 3.6% Wastewater rate increase, effective October 2024.**

Presentation by Renee Stanley, Bernadette Krchnavy, and Roxanne Holland.

Comments and questions from Council.

Opened Public Hearing at 7:58 p.m.

The following spoke against the wastewater rate increase in Thunder Mountain Ranch: Donna Foreman, Sedona, Glenn Mann, Sedona, Patricia Corral, Sedona.

Kate Mauldi, Oracle AZ, spoke regarding the rate structure and usage.

Ronald Rovey, Sedona, spoke against the increase at his commercial property.

Closed Public Hearing at 8:12 p.m.

Questions and comments from Council.

Motion: Councilor Williamson moved to approve Resolution No. 2024-18, creating a public record entitled "Exhibit A - Proposed Changes to the Sedona Consolidated Fee Schedule, Finance, Wastewater Rates". Seconded by Councilor Furman. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

Motion: Councilor Williamson moved to approve Ordinance No. 2024-03, adopting by reference that document known as "Exhibit A - Proposed Changes to the Sedona Consolidated Fee Schedule, Finance, Wastewater Rates" reflecting a 3.6% Wastewater rate increase, effective October 2024, providing for a savings clause, and repealing all ordinances or parts of ordinances or code provisions in conflict herewith. Seconded by Councilor Dunn. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

- d. **AB 3081 Public hearing/possible action regarding proposed revisions to the Sedona Land Development Code. The proposed revisions include revisions to the Urban Agriculture Section (LDC Section 3.4.D(2)) to comply with recently adopted state legislation and a change to purpose statements of the M1 and M2 districts (LDC Sections 2.11.A & 2.12.A) to accurately reflect the permitted uses. Case Number: PZ24-00007 (LDC) Applicant: City of Sedona.**

Presentation by Cari Meyer.

Opened Public Hearing at 9:54 p.m.

No public comments heard.

Closed Public Hearing at 9:54 p.m.

Questions and comments from Council.

Motion: Councilor Williamson moved to approve Resolution 2024-19, establishing as a public record “Exhibit A – August 13, 2024 Proposed Land Development Code Revisions”. Seconded by Councilor Dunn. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

Motion: Councilor Williamson moved to approve Ordinance 2024-04 consistent with the approval criteria in Section 8.6.C(4) of the LDC, amending the LDC, adopting by reference that document known as “Exhibit A – August 13, 2024 Proposed Land Development Code Revisions”, providing for a savings clause, and repealing all ordinances or parts of ordinances or code provisions in conflict herewith. Seconded by Councilor Dunn. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

- e. **AB 3075 Discussion/possible action regarding approval of the Small Grant Review Committee recommendations for the fiscal year 2025 small grants program in the amount of \$350,000.**

Presentation by Small Grants Chair and Program Facilitator Stephanie Geisberg and Teresah Arthur.

Questions and comments from Council.

By majority consensus, Council requested the Bridge Group reach out to the community to recruit new members.

Motion: Vice Mayor Ploog moved to approve the Small Grants Review Committee Fiscal Year 2025 recommendations in the total amount of \$350,000 as itemized in Agenda Bill 3075, Exhibit A, and subject to approval by the City Attorney’s Office of a Small Grants Agreement with each grantee. Seconded by Councilor Kinsella. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

- f. **AB 3097 Discussion/possible action regarding a Resolution approving the canvass of the City's Primary Election held on July 30, 2024.**

Presentation by JoAnne Cook.

Motion: Vice Mayor Ploog moved to approve Resolution No. 2024-20, a Resolution of the Mayor and Council of the City of Sedona, Arizona declaring and adopting the results of the Primary Election held on July 30, 2024. Seconded by Councilor Fultz. Vote: Motion passed with seven (7) in favor (Jablow, Ploog, Dunn, Fultz, Furman, Kinsella, Williamson) and zero (0) opposed.

- g. **AB 3066 Discussion/possible action regarding future meeting/agenda items.**

Councilor Kinsella requested a detailed discussion regarding the closure of the Tlaquepaque pedestrian crossing HWY179 during the next SIM update. Councilor Fultz supported her request.

9. Executive Session

Upon a public majority vote of the members constituting a quorum, the Council may hold an Executive Session that is not open to the public for the following purposes:

- a. **To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).**
- b. **Return to open session. Discussion/possible action on executive session items.**

10. Adjournment

Mayor Jablow adjourned the meeting at 10:03 p.m. without objection.

I certify that the above are the true and correct actions of the Regular City Council Meeting held on August 13, 2024.


JoAnne Cook, CMC, City Clerk

9/10/24
Date



City Of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • www.sedonaaz.gov/cd

May 22, 2024

Dutchman's Cove LLC
c/o Stephen Polk
BPCWS Law Firm
125 N. Granite St.
Prescott AZ 86301

Re: Zoning Verification Letter

40 Art Barn Rd., 586 N SR 89A

APN 401-08-002A, 401-09-001A, 401-09-001B, 401-09-001C, 401-13-059, 401-08-006A

(not requested but a part of the PD zoning: 401-14-015, 401-14-016, 401-14-017, 401-14-064, 401-14-065, 401-14-075A, 401-14-175)

Dear Mr. Polk:

Thank you for your request for a Director's Interpretation for the above-mentioned parcels. However, a Director's Interpretation is only an interpretation of the Land Development Code, and, based upon the questions you have posed in your request letter dated May 1, 2024, a Zoning Verification is more appropriate.

The following is a summary of the entitlement history and current status of these properties.

Property History

Based on records from the City of Sedona and Coconino County, the following is the history for this parcel:

- The properties identified above are within the city limits of the City of Sedona, AZ.
- The parcels identified above are currently zoned Planned Development (PD).
- The building entitlements provided by the PD zoning through Ordinance 2006-04 and Resolution 2006-10 have expired.

1. A complete entitlement history of these properties is included as Attachment 1.
 - a. Project files for the applications listed in the entitlement history are available for review in the Community Development Department Office.
 - b. The entitlement history includes Planning and Zoning Commission and City Council hearing dates for the various applications. Agendas, packets, and minutes from these meetings are available online at www.sedonaaz.gov > Your Government > Employee Access > Laserfiche. If you have trouble accessing documents, please contact City Staff.
2. As outlined in the entitlement history, the properties have been the subject of three different PDs beginning in 1998. Ordinance 1998-15/Resolution 1998-38 was repealed by Ordinance 2005-

05/Resolution 2005-13. Likewise, Ordinance 2005-05/Resolution 2005-13 was repealed by Ordinance 2006-04/Resolution 2006-10.

3. These properties are currently zoned PD (Planned Development). This is a site-specific zoning and the zoning approvals outline the allowable uses, building design and placement, parking requirements, public amenities, etc. Specifically, Ordinance 2006-04 and Resolution 2006-10 rezoned the property to consist of one hundred fifty-eight (158) single-ownership condominiums, publicly accessible viewing areas of Oak Creek, a publicly accessible botanical preserve, a public park, 12 affordable offsite housing units, etc., as further described in the development agreement and master plan attached to Resolution 2006-10.
4. The Preserve at Oak Creek Condominiums PD zoning brought all the properties listed above (including the parcels not of your zoning verification request) under one unified development plan with an expiration date of March 14, 2008 unless building permits had been issued by that date. A time extension was granted by City Council on April 22, 2008, extending the deadline for granting building permits to March 14, 2010. As no building permits were granted by the expiration date, the entitlements for this property are currently expired.
5. As building entitlements have expired, pursuant to A.R.S. 9-462.01(E) and LDC § 8.6(B)(3)(g)(2), the Sedona City Council at a properly noticed public hearing may take:
 - a. Administrative action to extend or remove the schedule for The Preserve at Oak Creek Condominiums development; or
 - b. Legislative action to rezone the property, including a reversion to Commercial, Multi-Family and Single-Family zoning consistent with current zoning regulations.
6. A zoning application would be required for any future development inconsistent with the current PD zoning. In addition to a zoning application, other applications, such as development review, subdivision, or conditional use permit, may be required based on the proposal.
7. At a minimum, any future zoning application would be required to comply with the underlying Community Plan designations for the properties. If the proposed development does not comply with the Community Plan designation, a Community Plan amendment would be required. The current Community Plan designations for the above-mentioned properties are as follows:
 - a. 401-08-002A: West of Oak Creek: Commercial/Lodging; East of Oak Creek: Open Space
 - b. 401-09-001A, 401-09-001B, 401-09-001C, 401-13-059, 401-08-006A, 401-14-015, 401-14-016, 401-14-017, and 401-14-075A: Multifamily Medium Density.
 - c. 401-14-175: Commercial/Lodging
 - d. 401-14-064 and 401-14-065: Open Space
8. In addition to complying with the Community Plan land use designations, a zoning application would be expected to demonstrate that it is implementing other Community Plan goals and objectives. The Community Plan can be reviewed online at www.sedonaaz.gov/communityplan.
9. The property is within the Uptown Community Focus Area (CFA). CFAs were identified in the latest Sedona Community Plan as areas in need of additional planning. For more information on the CFA process, please contact Cynthia Lovely, Principal Planner, at (928) 203-5035 or clovely@sedonaaz.gov.

The Community Development Department welcomes discussions with the owner or developer regarding the City's options as explained above. As the Community Development Director this is my interpretation of the PD Zoning District for the above-mentioned parcels. Any person aggrieved by this decision may appeal this decision in accordance with the provisions of LDC 8.8.D (Appeal).

This Zoning Verification Letter supersedes the Zoning Verification Letter dated May 30, 2019.

If you have any questions, please contact Cari Meyer, Planning Manager, at (928) 203-5049, or cmeyer@sedonaaz.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve Mertes", is written over a faint, larger signature.

Steve Mertes, Director
Community Development Department

Attachments

1. Entitlement History for Requested Parcels

Entitlement History for APN 401-08-002A, 401-08-006A, 401-09-001A, 401-09-001B, 401-09-001C, 401-13-059, 401-14-015, 401-14-016, 401-14-017, 401-14-064, 401-14-065, 401-14-075A, 401-14-175

The above referenced properties have been the subject of various development approvals over the years. The following contains a comprehensive history of the development approvals for these properties.

In the following summary, the following abbreviations are used:

- CPA (Community Plan Amendment)
- ZC (Zone Change)
- DEV (Development Review)
- SUB (Subdivision)
- DA (Development Agreement)
- P&Z (Planning and Zoning Commission)
- CC (City Council)
- PH (public hearing)
- WS (Work Session)
- Zoning District Abbreviations
 - PD (Planned Development)
 - C-1 (General Commercial)
 - RM-2 (Multifamily Residential, Medium High Density, 12 units per acre)
 - RS-36 (Single Family Residential, Minimum lot size of 36,000 square feet)

Application	Applicable Parcels	P&Z Meeting Dates	CC Meeting Dates
CPA 94-3	401-14-064, -065, -075, -163, -164	January 18, 1994 (PH, recommended approval)	March 22, 1994 (PH, approved)
	Summary: CPA to redesignate property from Multi-family Medium and High Density to General Commercial/Lodging (-075) and Open Space Preservation/Conservation (remainder of parcels)		
CPA96-3 ZC95-7	401-08-002A, -006 401-09-001A, -001B, -001C, -004 401-13-017, -019, -059 401-14-015, -016, -017, -018A, -064, -065, -075	March 5, 1996 (conceptual review, recommended denial of CPA, continued ZC) July 2, 1996 (PH, continued to allow for modifications to proposal) August 15, 1996 (WS) August 20, 1996 (PH, recommended approval of ZC)	October 22, 1996 (granted 60 day continuance) November 26, 1996 (consent, sent modified development plan back to P&Z) **Project did not proceed
	Summary: ZC from C-1, RM-2, and RS-36 to PD PD contained design guidelines, formal DEV was to come at a later date. The PD allowed for the following: <ul style="list-style-type: none"> • 276 lodging units • 60,000 square feet of retail/office space • 26,000 square feet of restaurant space • 7 acre public park CPA only applied to a portion of the project, would have redesignated an area from Single-family Low Density to Commercial/Lodging. Staff recommended denial of the CPA and this request was ultimately withdrawn and the area was added to the public park. After P&Z recommendation of approval, one of the properties involved (401-14-018A) withdrew authorization, applicant was given time to amend proposal to remove this parcel, the project ended up being dropped.		

Application	Applicable Parcels	P&Z Meeting Dates	CC Meeting Dates
ZC98-3 DEV98-4 CPA98-2 O1998-15 R 1998-38	401-08-002A, -006 401-09-001A, -001B, -001C 401-13-059 401-14-015, -016, -017, -064, -065, -075	February 3, 1998 (Conceptual) May 5, 1998 (PH, recommended approval)	June 23, 1998 (PH, approved, ORD 98-15)
Summary: ZC from C-1, RM-2, and RS-36 to PD; DEV and CPA applications withdrawn, only ZC went to public hearing/was approved. The PD allowed for the following: <ul style="list-style-type: none"> • 195 timeshares, all with double lockout suites • 12 apartments • 56,680 sf retail • 25,087 sf restaurant (including 3,287 microbrewery) • 6,160 sf outdoor dining space • 17,777 sf clubhouse • 194 space parking structure • 150 seat outdoor amphitheater • 7 acre park with 2,000 feet creek frontage 			
DEV99-3	401-14-014, -016, -017, -064, -065, -075	March 2, 1999 (PH, continued) March 11, 1999 (WS) March 16, 1999 (PH, approved)	
Summary: The Cliffs at Oak Creek Phase 1, including: <ul style="list-style-type: none"> • 30 timeshare units, all with double lockout suites • 15,000 sf retail • 8,600 sf restaurant • 224 space parking structure (reduced to 171) Building permits for this development were submitted July 1999, approved by building in January 2000 & planning "some months later"; all building permits expired before construction began.			
ZC2004-1 SUB2004-1 DEV2004-1 O2005-05 R2005-13	401-08-002A, -006 401-09-001A, -001B, -001C 401-13-059 401-14-015, -016, -017, -064, -065, -075	October 21, 2004 March 15, 2005 (PH, approved) DEV, recommended approval of ZC, SUB, and DA	April 26, 2005 (PH, approved), zoning contingent on building permits being issued within 2 years
Summary: The Preserve at Oak Creek Hillside Development (west of 89A) <ul style="list-style-type: none"> • 2.5 acres • 6 buildings and associated parking • 107 parking spaces • 17,973 sf spa • 7,668 sf botanical reserve • 6 units affordable housing • 27 timeshares Creekside Development (east of 89A) <ul style="list-style-type: none"> • 18.5 acres • 8 acres west of the creek; no habitable buildings; future public park • 111 timeshares • 19,876 sf resort amenity space (restaurant, lounge, sales & administration offices, children's camp, fitness room/gym) and a viewing platform • 269 parking spaces 			

Application	Applicable Parcels	P&Z Meeting Dates	CC Meeting Dates
CPA2005-5 ZC2005-7 DEV2005-12 SUB2005-19	401-08-002A, -006 401-09-001A, -001B, -001C 401-13-059 401-14-015, -016, -017, -064, -065, -075	December 6, 2005 (PH, approved DEV, recommended approval on other applications)	February 14, 2006 (PH, approved) zoning contingent on building permits being issued within 2 years
O2006-04 R2006-10 R2006-09 Community Plan Minor Amendment	<p>Summary: The Preserve at Oak Creek, amended previous approval (April 26, 2005 CC approval)</p> <p>CPA: Minor amendment from Commercial/Lodging to Multifamily Medium and High Density Residential</p> <p>ZC: Amendment to site plan (see below)</p> <p>SUB: Preliminary Plat approval</p> <p>DEV: Phase 1 (Hillside Development)</p> <ul style="list-style-type: none"> • Overall amendments <ul style="list-style-type: none"> ○ 138 timeshares to 158 condominiums ○ 6 affordable rental units @ 100% AMI to 12 affordable for sale units @ 100-150% of AMI <ul style="list-style-type: none"> ▪ Phase 1 (Hillside) <ul style="list-style-type: none"> • 28 timeshares to 32 condominiums • 6 affordable units to 6 affordable offsite units • 16,065 sf spa to no spa ▪ Phase 2 (East of Highway) <ul style="list-style-type: none"> • 59 timeshares to 69 condominiums • 21,438 sf of offices and children's camp to nothing • Pool stayed ▪ Phase 3 (Creekside) <ul style="list-style-type: none"> • 51 timeshares to 57 condominiums • 6 new affordable offsite units • Stayed the same: Preserve Jordan well house and Jordan preserve and open space 		
TE2008-1	401-08-002A, -006 401-09-001A, -001B, -001C 401-13-059 401-14-015, -016, -017, -064, -065, -075	February 28, 2008 (WS) March 4, 2008 (PH)	April 22, 2008 (PH, approved by motion of Council)
	Summary: The Preserve at Oak Creek, Time Extension for ZC2005-7, DEV2005-12, and SUB2005-19 New expiration date March 14, 2010		

LAW OFFICES

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Nancy Hargiss-Tatlock
Devon M. White
John C. Stallings, Of Counsel

June 19, 2024

VIA HAND-DELIVERY AND EMAIL

City of Sedona
Anette Spickard, Town Manager
102 Roadrunner Drive
Sedona, AZ 86336
aspickard@sedonaaz.gov

JoAnne Cook, City Clerk
102 Roadrunner Drive
Sedona, AZ 86336
jcook@sedonaaz.gov

With email copies to:
Kurt Christianson, City Attorney
kchristianson@sedonaaz.gov

Steve Mertes, Community Development Director
smertes@sedonaaz.gov

**Re: City-Initiated Zoning Reversion and Alternate Development Proposal
Ambiente Creekside: A Landscape Hotel
APNs 401-08-002A, 401-08-006A, 401-13-059, 401-09-001A, 401-09-001B,
401-09-001C (the "Property")**

This Law Firm represents Dutchman's Cove LLC, an Arizona limited liability company ("Dutchman's Cove") and its principals, Mike Stevenson, Jennifer May, and Colleen TeBrake. Dutchman's Cove have contracted to purchase APNs 401-08-002A, 401-08-006A, 401-13-059, 401-09-001A, 401-09-001B, 401-09-001C (hereinafter, the "Property") from Axys Capital Total Return Fund LLC ("Axys"). The Property will be developed as Ambiente Creekside: A Landscape Hotel.

Enclosed with this letter are:

1. Property Map
2. Owner Authorization Letter for Zoning Reversion

I. REQUEST FOR CITY-INITIATED ZONING REVERSION

We hereby request that *the City* revert the zoning for the Property to its former zoning classification as required by A.R.S. § 9-462.01(E) and the Sedona Land Development Code § 8.6(B)(3)(g)(2).

1. The Property was conditionally zoned PD (Planned Development), conditioned on the schedule for development specified in Ordinance 2006-04/Resolution 2006-10.
2. The prior developer, Steve Cole, died in 2008.
3. The development schedule expired March 14, 2010.
4. Upon expiration of the development schedule, City Council “shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to **revert to its former zoning classification.**”¹
5. The City is estopped from extending the development schedule for the following reasons:
 - a. Fourteen years have passed since the conditional zoning expired.
 - b. The prior developer is deceased.
 - c. The property owner objects to extending the development schedule and requests reversion of the zoning to its former zoning classification.
 - d. The Preserve development plan² can no longer be implemented, due to the City having acquired a portion of the property under threat of condemnation to construct Owenby Way.
6. It should be noted that the Sedona Community Plan and the Uptown CFA have no legal effect on the City’s obligation to revert the zoning to its former zoning classification.
7. Simply put, A.R.S. § 9-462.01(E) requires Council to revert the zoning.

¹ ARS. 9-462.01(E) “The legislative body may approve a change of zone conditioned on a schedule for development of the specific use or uses for which rezoning is requested. If, at the expiration of this period, the property has not been improved for the use for which it was conditionally approved, the legislative body, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.”

² The Preserve development plan includes the following:

- 195 timeshares, all with double lockout suites
- 12 multi-family apartments
- 56,680 sf retail
- 25,087 sf restaurant space (includes 3,287 sf microbrewery, excludes 6,160 sf outdoor dining areas)
- 6,160 sf outdoor dining space
- 17,777 sf clubhouse
- 194 space parking structure
- 150 seat outdoor amphitheater
- 7 acre publicly accessible park with 2,000 feet creek frontage

II. DEVELOPMENT UNDER BY-RIGHT ZONING OF AMBIENTE: CREEKSIDE – A LANDSCAPE HOTEL (36 UNITS)

1. City staff have determined that the former zoning classification for each of the parcels is C-1, with those portions of the parcels east of Oak Creek being RS-36.
2. C-1 allows six (6) lodging units by right, for a total thirty-six (36) lodging units across the 6 parcels.
3. Upon reversion to the former zoning classification, the property will be developed as Ambiente: Creekside.
4. The development will be subject to site plan review but not the Planning & Zoning Commission.
5. Because this is by-right zoning, the City is legally prohibited from requiring any exactments, such as a public park.
6. This new 36 lodging-unit hotel will be comparable in scope to the current 40-unit Ambiente Hotel now in operation.

III. DIMINUTION IN VALUE CLAIM (if Council fails to revert the zoning to its original zoning classification)

In the Zoning Verification Letter, Director Mertes states that Council has the option to revert the zoning “consistent with current zoning regulations.” This is incorrect. A.R.S. § 9-462.01(E) unequivocally requires reversion of the Property to its “former zoning classification”. Failure to revert to its former zoning classification would trigger a Diminution in Value Claim pursuant to A.R.S. § 12-1134 for the reduction in the fair market value of the Property.

1. The former zoning classification is C-1.
2. C-1 no longer exists in the Land Development Code, except on grandfathered properties.
3. C-1 allows 6 lodging units per parcel.
4. It is unclear what zoning would even be applied that is “consistent with current zoning regulations.” Presumably it would not allow 6 lodging units per parcel.
5. The value of the Property without 6 lodging units per parcel is de minimis (the property has been unsaleable for 14 years and would remain unsaleable).
6. The value of the property with C-1 zoning is calculated as follows:
 - a. Current appraised value of the Ambiente Hotel
 - b. Minus construction costs

This discussion is provided as a response to the position taken in the Zoning Verification Letter, which would clearly violate the law. Dutchman's Cove would then have grounds to assert

a diminution in value claim for the loss sustained, which will undoubtedly be pursued vigorously. As you can imagine, the diminution in value claim would be substantial.

IV. ALTERNATE DEVELOPMENT PROPOSAL: 5-acre Park and 50 Lodging Unit Ambiente Hotel.

If the City is opposed to simply reverting the zoning and allowing development of the 36-unit hotel under by-right zoning, Dutchman's Cove would be willing to negotiate a simple development agreement for the Property.

Dutchman's Cove would in this case require an additional fourteen (14) lodging units across the Property (the "Alternative Development Proposal"), to make a total of fifty (50) lodging units.

As consideration for the increased number of units, Dutchman's Cove would be willing to reserve five (5) acres to be dedicated to the City for use as a public park. The City would be responsible for the maintenance and constructions costs of the park.

The Sedona Community Plan highlights a park in this prime location as a crucial community goal. The rationale is clear: currently, there is no public access to Oak Creek within city limits, and this represents the last undeveloped land where such access is feasible. The public benefits of providing creek access are immense. This would include seamless access to the Huckaby Trail and connectivity to the Munds Wagon Trail, Jim Thompson Trail, and the greater Sedona trails system. Imagine a short, 2.5-mile day hike from Uptown, starting at the proposed public park along Huckaby Trail to Grasshopper Point, becoming an iconic must-do activity. Why drive to Grasshopper Point and deal with the traffic nightmare when you can hike from Uptown along the scenic Oak Creek? This park not only fulfills a key community goal but also enhances Sedona's natural appeal and accessibility for both residents and visitors.

It should be noted that the request for this public park was initiated by City staff, drawing from the Community Plan and prior development agreements for the property. While the City Council has not yet had the chance to discuss this proposal, and it may not necessarily reflect their views, it underscores a critical point: this is the City's last opportunity to secure public access to Oak Creek. Without an agreement on Option 2, the property will be fully developed privately under by-right zoning, as previously outlined. This is a pivotal moment for Sedona, where the community can choose to preserve and enhance its natural beauty and accessibility for future generations. The creation of this park aligns with the community's long-term vision and ensures that Oak Creek remains a treasured and accessible part of Sedona's landscape.

Under this alternate proposal, the zoning would revert to C-1 and development would follow the relevant zoning regulations. The 50 units, along with ancillary hotel facilities (such as a restaurant, spa, lobby, pool, etc.), would be positioned in their optimal locations without regard to parcel boundaries.

V. CONCLUSION

1. Dutchman's Cove and Axys formally request that City Council initiate the legislative process to revert the zoning of the Property to its former zoning classification of C-1 (west of Oak Creek) and RS-36 (east of Oak Creek), with by-right zoning for 6 lodging units per parcel, in strict compliance with LDC Section 8.6(B)(3)(g)(2) and ARS 9-462.01(E).
 - a. We specifically request that the public hearing be scheduled for the July 9, 2024, Council meeting.
2. In the alternative, enter into a development agreement with Dutchman's Cove to proceed with the Alternate Development Proposal for a 5-acre public park and 50 total lodging units.
 - a. We anticipate that Council will meet in executive session to consider this matter at its June 25, 2024, Council meeting.

The City's prompt and appropriate action will ensure adherence to legal requirements and prevent significant financial detriment to the Property's value. Please respond **no later than June 28th** as to whether Council will schedule the public hearing to revert the zoning for July 9th, or whether they instead wish to negotiate the details of the Alternate Proposal.

We appreciate your immediate attention to this matter and await your confirmation of the City's intention to proceed with the necessary legislative rezoning process.

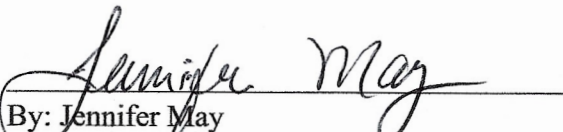
Sincerely,
BOYLE, PECHARICH, CLINE
WHITTINGTON & STALLINGS, P.L.L.C.



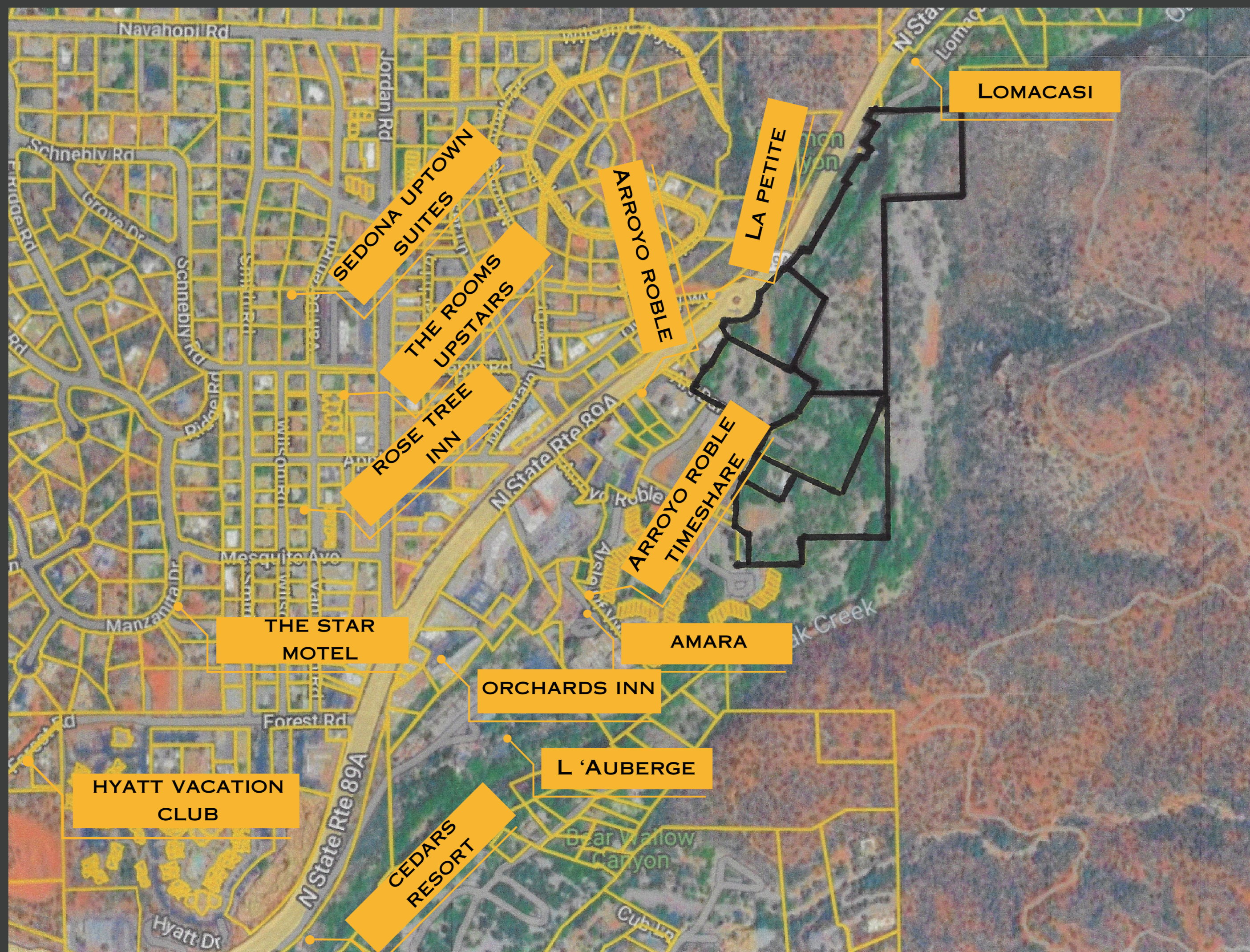
Stephen W. Polk, Esq.

APPROVED:

Dutchman's Cove LLC, an Arizona limited liability company



By: Jennifer May
Its: Manager



LOMACASI

SEDONA UPTOWN
SUITES

THE ROOMS
UPSTAIRS

ROSE TREE
INN

ARROYO ROBLE

LA PETITE

ARROYO ROBLE
TIMESHARE

THE STAR
MOTEL

AMARA

ORCHARDS INN

HYATT VACATION
CLUB

L 'AUBERGE

CEDARS
RESORT

Axys Capital Total Return Fund, LLC
c/o Timothy A. Birch
1900 St James Place, Suite 300
Houston, Texas 77056

June 18, 2024

City of Sedona
Attn: City Manager
102 Roadrunner Drive
Sedona, AZ 86336-3710

Re: Authorization for Dutchman's Cove to Act on Behalf of Axys in Reversionary Zoning Request and Related Matters

To Whom It May Concern,

This letter serves as formal authorization for Dutchman's Cove LLC ("Buyer") to act on behalf of Axys Capital Total Return Fund, LLC ("Owner") in matters related to the property located at 586 N. SR 89A, Sedona, AZ 86336, currently assigned Coconino County Assessor's Parcel Nos. 401-08-006A, 401-08-002A, 401-09-001A, 401-09-001C, 401-13-059, and 401-09-001B (together, the "Property"). Specifically, Owner grants Buyer the authority to:

1. Reversionary Zoning Request:

- Submit a request for reversionary zoning and any associated documents to the City of Sedona, including but not limited to applications, plans, reports, and supporting materials required for the processing and approval of the reversionary zoning request.

2. Development Negotiations:

- Engage in negotiations with the City of Sedona and any other relevant governmental authorities or agencies regarding the development of the Property, including but not limited to zoning changes, permits, approvals, and any other matters necessary for the development and use of the Property.

3. Diminution in Value Claim:

- Pursue, file, and manage any claims for diminution in value related to the Property, as provided under ARS § 12-1134, including all necessary communications, filings, and legal actions required to assert and enforce such claims.

This authorization includes the right for Buyer to execute, deliver, and perform any and all agreements, documents, instruments, and certificates in connection with the foregoing, and to take any and all actions necessary or appropriate to effectuate the purposes described herein.

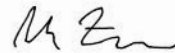
Please direct all correspondence and inquiries regarding this matter to the following contact person at Dutchman's Cove:

Dutchman's Cove LLC
Attn: Jennifer E. May
900 West State Route 89
Sedona, Arizona 86336

Copy to: Boyle, Pecharich, Cline, Whittington & Stallings, P.L.L.C.
Attn: Stephen W. Polk, Esq.
125 N. Granite Street
Prescott, AZ 86301

If you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Zislis', with a stylized, cursive script.

Michael Zislis
Axys Capital Total Return Fund LLC