

# Town of Bayfield

## Planning Commission Meeting

Tuesday, February 13, 2024 – 6:30 pm

1199 Bayfield Parkway – Bayfield Town Hall – Boardroom

Ordinance 485 (Sec. 2-1(a)(1)g. Conditions to withdraw a remote option or restrict remote meeting participation: When conditions for a meeting can reasonably be mitigated to avoid and protect against

harms identified in Section 2-1 (a) (1) a. declared emergencies, the Town Manager has the discretion to prepare the agenda and withdraw the remote option. In the event a remote option is available, participation will be restricted to Planning Commission members, presenting applicants, consultants or members of the public that have indicated, a minimum of thirty-six (36) hours in advance of the meeting start date and time, the agenda item and their desire to participate via a remote link. Participation restrictions in place for remote meetings shall not restrict any person to observe via remote attendance if available.

### Planning Commission Regular Meeting

#### 1. Opening Ceremony:

- a. Call Meeting to Order
- b. Roll Call
- c. Pledge of Allegiance
- d. General Public Input: Limited to Ten (10) Minutes (Three Minutes per Speaker)
- e. Planning Commissioners disclose conflicts of interest
- f. Approve Agenda

#### 2. Public Hearing Agenda:

- a. 2024-05 Orchard PUD Guide Amendment
- b. 2024-02 Flood Damage Prevention LUC Text Amendment & Resolution #2024-02

#### 3. Action Agenda:

- a. Approval of January 9, 2024 Minutes
- b. 2024-05 Orchard PUD Guide Amendment
- c. 2024-02 Resolution #2024-02

#### 4. Discussion and Adjourn:

- a. Update on Pet Licensing and Pet Stores
- b. February 20, 2024 Next Board of Trustees Meeting
- c. March 12, 2024 Next Planning Commission Meeting
- d. Adjourn

Hearing Procedures: 1. Staff Presentation; 2. Applicant Presentation 3. Public Input; and 4. Planning Commission Consideration

General Rules: 1. Public comment is only allowed during portions of the meeting called "Public Input"; Please no interruptions. The Commission will call on the Applicant or the Public with any questions they might have.  
2. Not all items on the Agenda are open for Public Input due to their nature.



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## PLANNING COMMISSION STAFF REPORT

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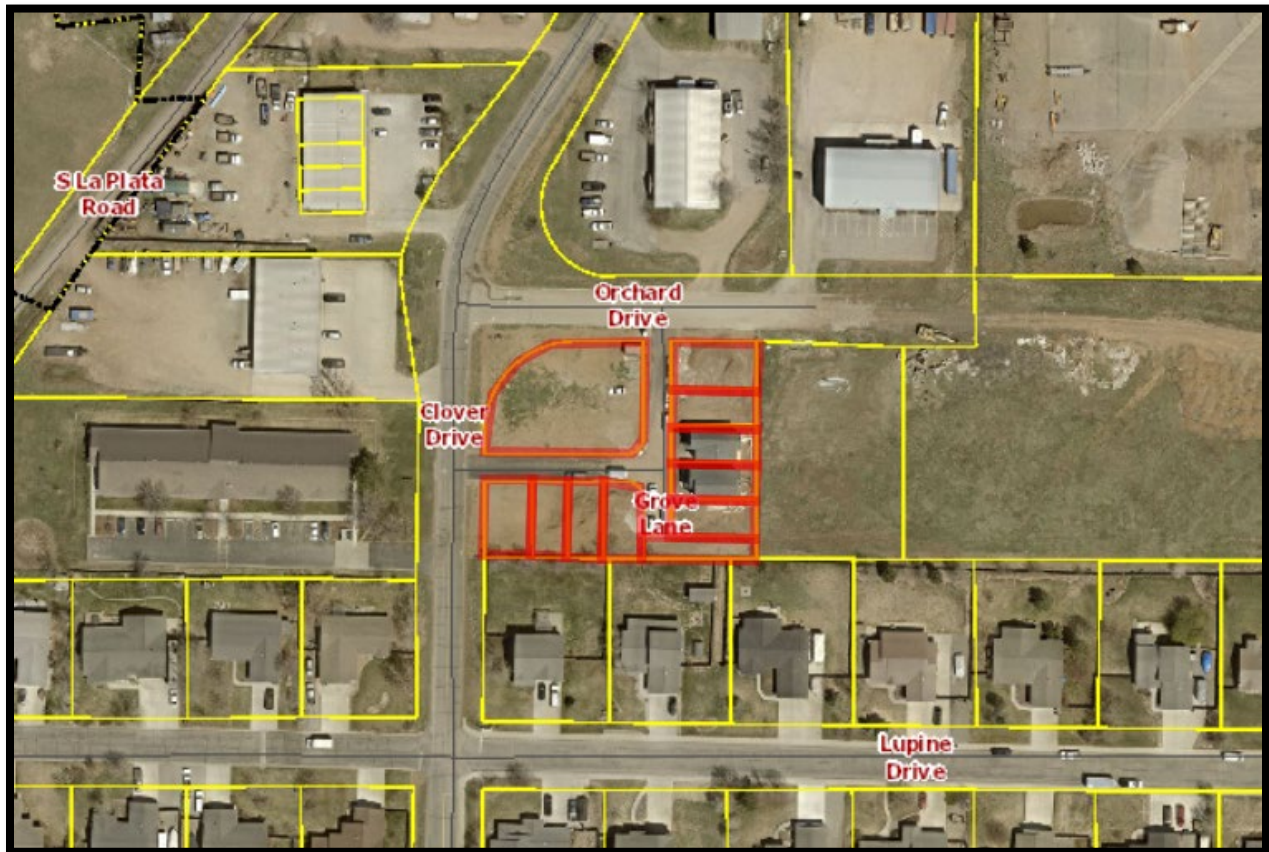
**TO:** PLANNING COMMISSION  
**FROM:** NICOL KILLIAN, AICP, COMMUNITY DEVELOPMENT DIRECTOR  
**PROJECT:** ORCHARD PUD AMENDMENT (PROJECT # 2024-05)  
**DATE:** TUESDAY, FEBRUARY 13, 2024

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### PROJECT SUMMARY

<b>Property Owner/Applicant</b>	SMG Orchard LLC
<b>Property Location</b>	Corner of Clover Drive and Orchard Drive
<b>Property Size</b>	1 acre
<b>Current Zoning District</b>	Planned Unit Development (PUD)
<b>Future Zoning</b>	Planned Unit Development (PUD)
<b>Current Uses</b>	Under Construction
<b>Previous Approval</b>	14 units (9 single-family lots and 5 townhome units)
<b>Previous Approval</b>	13 units (9 single-family lots and 4 duplex/townhome units)
<b>Surrounding Uses</b>	Bayfield Industrial Park to the north, Pine River Valley Manor Senior Housing to the west, Clover Meadows Phase 5 to the south, and Clover Meadows Phase 7 to the east.
<b>Comp Plan Land Use Designation</b>	High Density Residential
<b>Proposed Density</b>	13 units per gross acre

VICINITY MAP



**BACKGROUND**

SMG Orchard LLC is requesting an amendment to the Orchard Planned Unit Development (PUD) approval from April 19, 2022. The original approval was for 14 units, including 9 single-family lots and 5 townhome units on the 1 acre property. The applicants are proposing to reduce the unit count to 13 units, including 9 single-family lots and 4 duplex/townhome units. This requires amendments to the Subdivision Improvement Agreement (SIA) and the Planned Unit Development Guide Agreement, which will both need to be re-recorded with the Office of the La Plata Country Clerk Recorder.

The applicants paid the Park Land Dedication In-Lieu Fee of \$776 per unit on August 10, 2022. For 14 units they paid \$10,864. With the reduction of 1 unit, the town will owe them a refund of \$776 from the Park In-Lieu restricted fund account.

**Project History**

On October 12, 2021 the Planning Commission heard, and on October 19, 2021 the Board of Trustees approved the Orchard PUD Sketch Plan with the following findings and conditions:

**Finding:**

- a. With the conditions below, the plat as submitted is consistent with the intent of the Comprehensive Plan and all requirements of the land use code.

ORCHARD PUD AMENDMENT (PROJECT # 2024-05)

**Condition:**

1. The preliminary plan shall include all requirements in LUC sec. 3-5. Plans for sidewalk improvements along Clover and Orchard Drive should be included.

On March 8, 2022 the Planning Commission heard, and on March 15, 2022 the Board of Trustees approved the Orchard PUD Preliminary Plan with the following findings and conditions:

**Finding:**

- a. With the conditions below, the Preliminary Plan, as submitted, is consistent with the intent of the Comprehensive Plan and all requirements of the Land Use Code.

**Condition:**

1. The Final Plan submittal shall include all requirements in Land Use Code Sec. 3-6.
2. The Final Plan submittal shall include a plan for installation of public sidewalks along the Clover Drive and Orchard Drive project frontages per LUC Sec. 5-2.
3. The Final Plan submittal shall include a Sewer Main Easement Dedication on the Final Plat.
4. The Final Plan submittal shall include an Erosion Control Plan per LUC Sec. 3-5.
5. The Final Plan submittal shall include a Final Geotech report per LUC Sec. 3-6.
6. The Final Plan submittal shall include a Utility infrastructure analysis report Per LUC Sec. 3-5.
7. The Final Plan submittal shall include a Planned Unit Development Guide agreement per LUC Sec. 4-6-B(4).
8. The Final Plan submittal shall include construction cost estimates and a Subdivision Improvement Agreement per LUC Sec. 3-6.

On April 19, 2022 the Board of Trustees approved the Orchard PUD Final Plan/Plat with the following findings and conditions:

**Finding:**

- a. With the conditions below, the Final Plan/Plat, as submitted, is consistent with the intent of the Comprehensive Plan and all requirements of the Land Use Code.

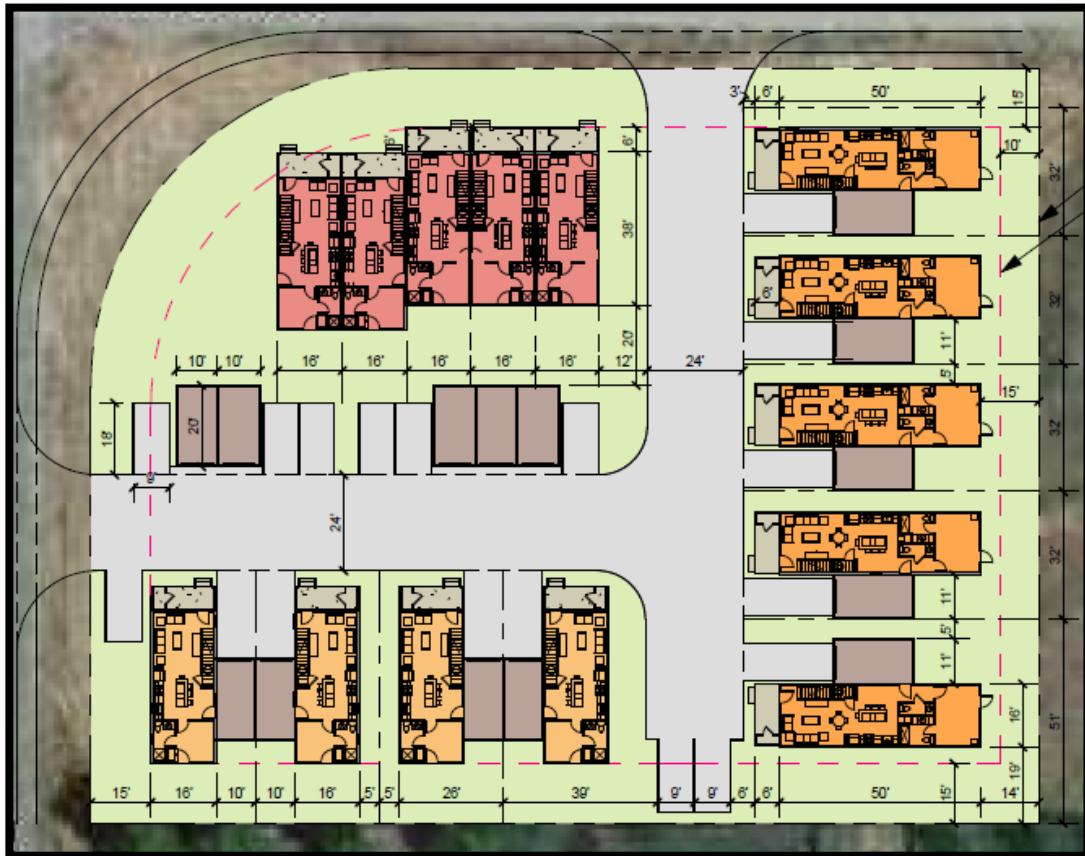
**Conditions:**

1. Prior to the issuance of any Development Permits, the applicant's shall provide a Final Geotech report per LUC Sec. 3-6.
2. Prior to the issuance of any Development Permits, the Orchard PUD Final Plat shall be finalized and recorded per LUC Sec. 3-6.
3. Prior to the issuance of any Development Permits, the Planned Unit Development Guide Agreement shall be finalized and recorded per LUC Sec. 4-6-B(4).
4. Prior to the issuance of any Development Permits, the Subdivision Improvement Agreement, with cost estimates, shall be finalized and recorded per LUC Sec. 3-6.

ORCHARD PUD AMENDMENT (PROJECT # 2024-05)

5. Prior to the issuance of any excavation or building permits, the applicants need to acquire any necessary stormwater construction permits from the Colorado Department of Health and Environment, if necessary, or from the Town of Bayfield.

*Previously Approved PUD Layout*



**PUBLIC NOTIFICATION**

Notice of Public Hearing was published in the Durango Herald. The Town received a copy of certified mail receipts from the applicant for notification to property owners within 200 feet of the perimeter of the proposed development. No public comments on the amendment were received by the time this staff report was completed.

**Referral Agency Comments**

The amendment request was sent out to the following referral agencies: La Plata Electric Association, Century Link, Black Hills Energy, Upper Pine Fire Protection District, iKAV Energy, La Plata County, Colorado Department of Transportation, San Juan Basing Public Health, US Army Corp of Engineers, Bayfield Public Works, Bayfield Police Department, Bayfield Parks and Recreation Departments, SGM, and the Bayfield School District.

All referral agencies that responded back to staff are good with the proposed amendment.

## **PUBLIC HEARING**

A public hearing shall be held for this project. A quorum of the Planning Commission membership is required to hold the hearing. All pertinent information is entered into the record and when the Commission determines that all information needed to make a decision has been received, the hearing is closed. A hearing may be continued. If for any reason, testimony on any matter set for public hearing cannot be completed on the day set for such hearing, the person presiding at such public hearing may, before the adjournment or recess thereof, publicly announce the time and place to, and at which, said hearing will be continued and no further notice will be required.

## **Possible Recommendations**

Staff has prepared the following options for the Planning Commission:

Alternative Action A: Recommend **approval** of the Orchard PUD amendment with the following finding and conditions:

### **Findings:**

- a. With the conditions below, the amendment, as submitted, is consistent with the intent of the Comprehensive Plan and all requirements of the Land Use Code.

### **Conditions:**

1. Prior to the issuance of any new Building Permits, the Planned Unit Development Guide Agreement shall be finalized and recorded per LUC Sec. 4-6-B(4).
2. Prior to the issuance of any new Building Permits, the Subdivision Improvement Agreement shall be finalized and recorded per LUC Sec. 3-6.

Alternative Action B: Recommend **denial** of the Orchard PUD amendment with specific reasons and findings stated.

Alternative Action C: Recommend **continuance** of the Orchard PUD amendment with specific direction to staff and/or the applicant.

## **Staff Recommended Action**

Staff recommends the Planning Commission, by motion, approve the Orchard PUD amendment with the finding and conditions as stated in Alternative Action A above.

## **ATTACHMENTS**

- Draft PUD Guide Agreement
- Draft Subdivision Improvement Agreement (SIA)

**AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT**

~~THIS The original Orchard Planned Unit Development Guide AGREEMENT Agreement, Project # 2022-07, is was made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ on May 3, 2022 per Reception # 1211427 recorded at the office of the La Plata County Clerk Recorder, by SGM Orchard, LLC and successors and assigns (hereinafter referred to as the "Developer"), and the Town of Bayfield, Colorado, (hereinafter referred to as the "Town").~~

This amended Orchard Planned Unit Development Guide Agreement, Project # 2024-05, replaces the original agreement in its entirety on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by SGM Orchard, LLC and successors and assigns (hereinafter referred to as the "Developer"), and the Town of Bayfield, Colorado, (hereinafter referred to as the "Town").

**WITNESSETH:**

WHEREAS, the Developer desires to develop lands described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**"); and

WHEREAS, the Developer desires to develop the approximately 1 acre Property as a Planned Unit Development (PUD) pursuant to the provisions and regulations as set forth in the Town Land Use Code (LUC) Sections 3-3, 3-4, 3-5, 3-6, 4-6.B, and 5-8, and as per the approved Final PUD filed in the Community Development Department Project File No. 2022-07; and

WHEREAS, pursuant to the due legal notice and advertisement in the manner provided by law, the Bayfield Planning Commission and the Board of Trustees have held public hearings as prescribed by LUC Section 3-2 and made recommendations and decisions for approval of rezoning the Property to PUD; and

WHEREAS, LUC Section 4-6.B(4), states that a PUD Guide is required and becomes the governing document for land use and dimensional limitations on the Property, along with the final plat, and current Town land use regulations may be incorporated into the guide, and the current in-place regulations shall prevail in the event that the guide is silent as to a particular standard.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, the parties agree as follows:

1. Zoning. The Property is hereby zoned "Planned Unit Development (PUD)" pursuant to Ordinance No.477 recorded \_\_\_\_\_, June 10, 2022, in the Office of the La Plata County Clerk and Recorder under Reception No. \_\_\_\_\_ 1211427.

## AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT

2. Land Use and Density. The project's approved land uses shall include a total of ~~fourteen~~ thirteen (13) units including ~~five-four~~ (4) duplex/townhomes units on Lot 1, and nine (9) single family homes on Lots 2-10, on approximately 1 acre with an approved specific density of ~~14-13~~ units per gross acre as depicted on the PUD Final Plat attached as Exhibit "B". No uses other than residential and residential accessory uses as defined in LUC Section 4-7-A(8) shall be permitted in this PUD. Changes from the approved land uses and densities as indicated on the PUD Final Subdivision Plat shall require a PUD amendment approval by the Planning Commission and Board of Trustees. Proof of notification to all owners within the PUD and certification of approval of not less than two-thirds (67%) of the membership of the owners within the unincorporated association must be submitted as part of the request for approval of the PUD amendment.
3. Phasing. This project will be constructed in one (1) phase.
4. Dimensional Limitations. Project development shall be in conformance with the approved PUD Final Subdivision Plat recorded \_\_\_\_\_, June 10, 2022, in the Office of the La Plata County Clerk and Recorder under Reception ~~No.# \_\_\_\_\_~~, 1211429, and as filed in the Bayfield Community Development Department. Dimensional limitations and heights shall be as follows:
  - Lot 1 – Duplex/Townhomes (Attached Units)
    - Front Setbacks - 10-foot minimum
    - Corner Side Setbacks – 10-foot minimum
    - Along Private Drive – No setback required
    - Height - 35-foot maximum
  - Lots 2-5 - Single Family Lots
    - Front Setbacks – No setback required for living space  
- 20-foot minimum for garages to accommodate driveway parking
    - Side Setbacks – 8-foot minimum between houses
    - Corner Side Setbacks - 10-foot minimum
    - Rear Setbacks - 10-foot minimum
    - Height - 35-foot maximum
  - Lots 6-10 - Single-Family Lots
    - Front Setbacks – No setback required for living space  
- 20-foot minimum for garages to accommodate driveway parking
    - Side Setbacks – 8-foot minimum between houses
    - Corner Side Setbacks - 10-foot minimum
    - Rear Setbacks - 15-foot minimum
    - Height - 35-foot maximum



## AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT

5. Architectural Compatibility/Design Standards. Per LUC Section 5-8.A(3), the developer shall address architectural compatibility through design standards. Design standards developed for each PUD shall, at a minimum, define the overall style of buildings in terms of massing, finish materials and placement. The Developer has stated that the design of the buildings will be reflective of the agricultural and rural nature of Bayfield. The homes will be two-stories and include a front porch, a single car garage with a surface parking spot for each unit, and have a simple gabled roof for the single family units. Finish materials will consist of board and batt siding, stucco, natural wood siding, stone siding and/or corrugated metal.
  
6. Public Improvements. The following public improvements shall be installed in accordance with Town of Bayfield Infrastructure Standards and Construction Specifications, with the approved Subdivision Improvements Agreement, and with the final improvement plans on file in the Community Development Department within one (1) year of the date of final PUD approval:
  - Water meters and meter pits
  - Sewer main extension
  - Sidewalks and ramps
  - Curbs & gutters
  - Storm drainage system per the plat and engineered drawings

Per LUC Section 3-6, installation of required public improvements shall be assured through a Subdivision Improvements Agreement with adequate cost estimates and security (bond, letter of credit, etc.) provided. Public improvements shall not be phased with building construction but shall be constructed and accepted within one year of the date of the final PUD approval. Notwithstanding the above, all required public improvements listed in the Subdivision Improvement Agreement must be installed and inspected prior to the issuance of any Certificates of Occupancy (C.O.) for units within the Orchard Planned Unit Development.

Per LUC Sec. 1-19 any public improvements required or approved under the LUC must be warranted for a minimum period of two years after acceptance by the Town, which approval by the Town shall not be unreasonably withheld. The warranty will not commence until all provisions of the Subdivision Improvement Agreement, including submission of as-builts and digital plans, if required, have been completed.

7. Private Improvements. Private, on-site development improvements must be installed in accordance with the final improvement plans and the Final Plat on file in the Community Development Department. Private improvements will be:
  - On-site access/circulation (the private road)
  - Required Parking
  - Landscaping and irrigation
  - Mailboxes

## **AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT**

- Drainage improvements
- Snow storage or easements for same

On-site improvements must be completed for each section being constructed which will provide adequate access, parking and the other improvements listed above. No Certificates of Occupancy will be issued for a particular section of homes until the improvements listed above for that section of homes are completed. Landscaping and parking lot paving for the townhomes on Lot 1 may be deferred due to weather considerations which make installation impractical, provided that an agreement is in place with the Town with proposed installation timeframes. Installations so deferred must be installed as soon as reasonably practicable.

The developer shall be responsible for the initial installation of landscaping in accordance with approved landscaping plans. The developer shall further be responsible for maintenance of said landscaping for a minimum period of one (1) year from the date of installation or until the landscaping becomes established and is accepted by the unincorporated association.

Through the recorded unincorporated association Declaration, the developer shall disclose to all buyers that the Town is not a participant in, and is not responsible for, private improvements within the project.

8. Future Subdivision. The subdivision of the townhomes, on Lot 1, to create separate ownership interests in individual units has been considered throughout the PUD review process and has been reviewed by the Planning Commission and Board of Trustees. Separate ownership interests may be created by the filing of an as-built final subdivision plat subject to review and final approval by the Board of Trustees.
9. Building/Fire Codes. Project development shall conform to all relevant requirements of all building and fire codes adopted by the Town of Bayfield at the time of construction.
10. Fees. Building permit fees, Plant Investment fees, tap fees, park dedication fees and school district fees (paid directly to the Bayfield School District) shall be paid at the time building permits are issued and shall be in accordance with the adopted fee schedule in effect at that time.
11. Commencement of Construction. The developer may commence excavation, at its own risk, upon approval of the Final Grading and Drainage Plan and Final Utility Plan approved by the Town Engineer.

The developer will take measures necessary to minimize erosion of undeveloped lots in accordance with the Town's Infrastructure Design Standards and Town Construction Specifications.

**AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT**

12. Notice. All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective on the earlier of actual receipt or seven days after deposit in the United States Mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

TOWN: Town of Bayfield  
PO Box 80  
Bayfield, Colorado 81122

DEVELOPER: SMG Orchard, LLC  
10 Town Plaza, # 450  
Durango, CO 81301

COPY TO: Law Firm of Marla C. Underell, LLC  
101 West 11<sup>th</sup> Street, Suite 104  
Durango, Colorado 81301

13. Modifications to Construction Plans and Specifications. Any modifications to public improvement plans or specifications must be approved by the Town Engineer. Any major modifications to on-site improvement plans must be approved by the Community Development Director, which approval shall not be unreasonably withheld. Failure to secure written approval of major changes shall not relieve the Developer from the obligation to remove or replace the unapproved changes.
14. Amendments. This Agreement may only be amended through a written instrument executed by the parties hereto which shall thereafter be appended hereto to become a part hereof. Verbal amendments shall be ineffective for any purpose.
15. Severability. Should any term, provision, or condition of this Agreement be determined invalid or unenforceable, the invalidity or unenforceability of any such term, provision, or condition shall not affect the validity or enforceability of any other term, provision, or condition herein contained, all terms, conditions, and provisions herein being independent and severable.
16. Binding Effect. This Agreement shall run with the land described on Exhibit "A" attached hereto and shall be binding upon the respective parties hereto, their heirs, successors, grantees, personal representatives, and assigns.

**AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT**

17. Effective Date. This Agreement shall become effective upon execution and recording of the Final Plat for the Orchard PUD.

IN WITNESS HEREOF, the parties have executed this Agreement the day and year first above written.

**PROPERTY OWNER/DEVELOPER:**

\_\_\_\_\_  
Ian Barrowclough, Member, SMG  
Orchard, LLC

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public

**AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT**

**PROPERTY OWNER/DEVELOPER:**

\_\_\_\_\_  
Andrew Klotz Member, SMG  
Orchard, LLC

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public

**AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT**

**TOWN OF BAYFIELD, COLORADO**

By: \_\_\_\_\_

Ashleigh Tarkington, Mayor

ATTEST:

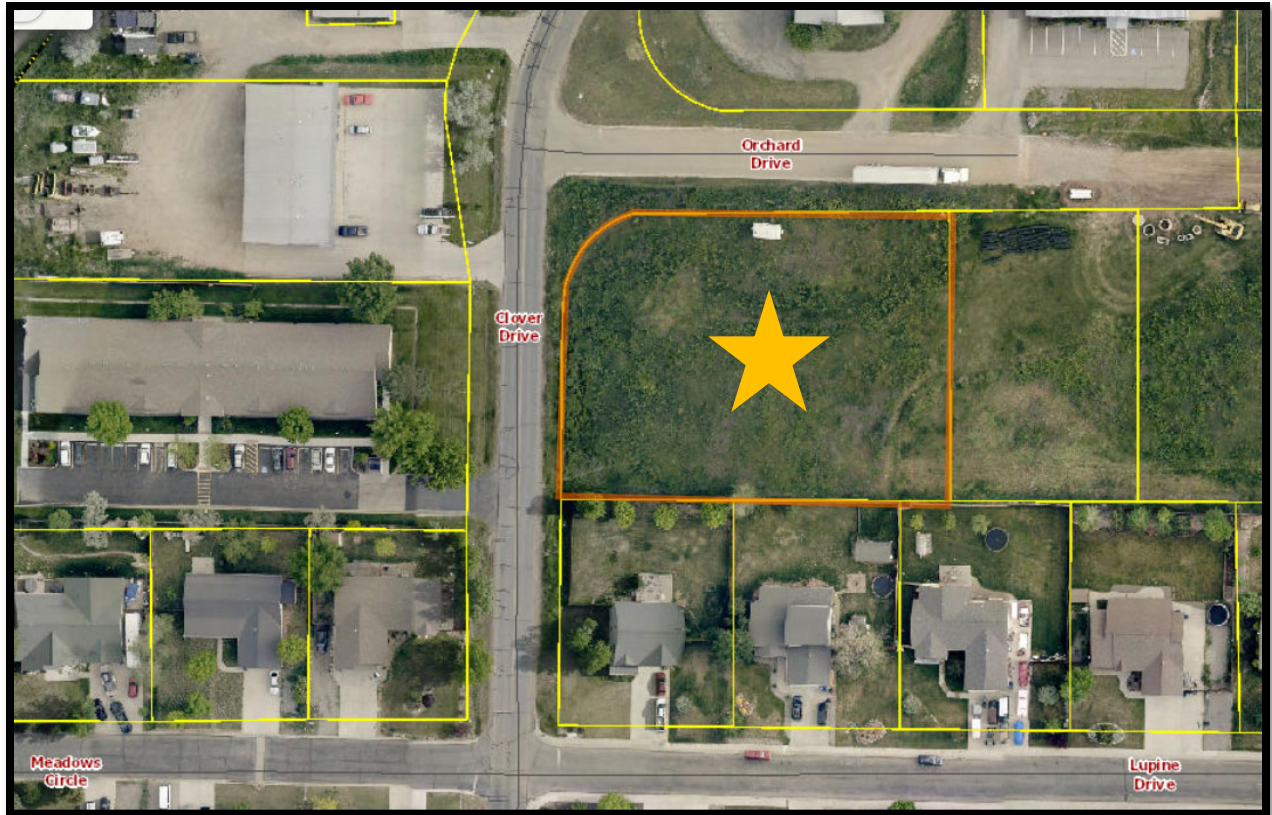
\_\_\_\_\_

Kathleen S. Cathcart, Town Clerk

**AMENDED ORCHARD PLANNED UNIT DEVELOPMENT GUIDE AGREEMENT**

**EXHIBIT A**

**Legal Description:** Lot 9, Bayfield Industrial Park Phase One, according to the plat thereof filed for record February 3, 1983 as Reception No. 479295



**TOWN OF BAYFIELD, COLORADO**  
**AMENDED**  
**SUBDIVISION IMPROVEMENT AGREEMENT**  
**FOR THE ORCHARD PLANNED UNIT DEVELOPMENT**  
**PROJECT # 20242-057**

~~This—The original~~ Subdivision Improvement Agreement For The Orchard Planned Unit Development, Project # 2022-07 ~~is was~~ entered into ~~this \_\_\_\_\_ day of \_\_\_\_\_ on May 3, 2022~~ per Reception # 1211426 recorded at the office of the La Plata County Clerk Recorder.

This amended Subdivision Improvement Agreement for the Orchard Planned Unit Development, Project # 2024-05, replaces the original agreement in its entirety on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the TOWN OF BAYFIELD, a municipal corporation of the State of Colorado (“Town”), and SMG Orchard LLC. (Referred to herein as “Developer”). Town and Developer are collectively referred to as “Parties,” or occasionally in the singular as “Party.”

WHEREAS, Developer owns certain real property in fee simple located within the Town, as more particularly described in **Exhibit A** (the “Property”); and

WHEREAS, Developer desires to develop the Property and has submitted to Town for approval and execution a Final Plat designated as The Orchard Planned Unit Development, Project # 2022-07 (hereinafter referred to as the “Development Plan”), a copy of which is on file with the Town and made a part hereof by reference; and

WHEREAS, Town and Developer agree that the development of the Property as specified in the Development Plan will require increased municipal services from the Town and will require the installation of certain public Improvements, that are of benefit to the proposed development and to the Town as a whole; and

WHEREAS, Town is willing to approve and execute said Development Plan upon the agreement of Developer to the matters hereinafter described and subject to all the requirements, terms and conditions of the ordinances, rules, regulations and standards of the Town including but not limited to: the approved Orchard Planned Unit Development Guide Agreement; the Bayfield Municipal Code; the Bayfield Land Use Code; the Bayfield Infrastructure Design Standards and Construction Specifications; and all other governing regulations (collectively, the “Standards”) in effect at the time the Construction Plans (as hereinafter defined) are approved by Town; and

WHEREAS, Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by Town in consideration of its approval and execution of the Development Plan, and that such matters are necessary to protect, promote, and enhance the public welfare.



NOW, THEREFORE, in consideration of these premises, the mutual obligations herein contained, and Town's approval and execution of the Development Plan, it is agreed as follows:

**Section I. Obligation to Provide Public Improvements-Construction Plans-Engineer's Cost Estimates**

- A. The Developer is obligated to provide for the construction and installation of certain public Improvements to serve the Property as specifically identified in the schedule of Public Improvements (collectively "Improvements") attached hereto as **Exhibit B**. The Improvements shall be constructed in compliance with all requirements contained in the Standards and the approved Development Plan.
- B. The Developer shall submit to the Town for approval final construction and engineering plans and drawings ("Construction Plans" or "Plans") and engineer's cost estimate of Improvements ("ECE") suitable to identify the quantity and type of the Improvements and for the construction of the Improvements in a form approved by Town as more specifically described in the Standards. Said Construction Plans, to be incorporated herein by reference, shall bear the stamp of a Colorado licensed engineer with experience in the design and engineering of the Improvements. Such ECE shall include a cost contingency of fifteen percent (15%) of the total estimated construction costs of the Improvements. The ECE shall be attached hereto as **Exhibit B**.

**Section II. Site Specific Development Plan Approval**

- A. Prior to and as a condition of constructing any improvements to the Property, Developers shall have received Town approval for a Site Specific Development Plan as that term is defined per Land Use Code (LUC) Section 1-12. Approved Site Specific Development Plans shall remain vested for a period of three (3) years. The establishment of a vested property right shall not preclude the application of new ordinances or regulations which are general in nature and are applicable to all properties, including but not limited to, the adoption of new building, fire, plumbing and mechanical codes. Developers shall start construction before their vesting period expires or seek an extension.

**Section III. Construction of Improvements**

- A. Developer shall provide notice to Town at least forty-eight (48) hours before commencement of construction of the Improvements or prior to Town's inspection of the Improvement during or after construction. To the extent Developer determines that any decisions become necessary during construction of the Improvements as to the quality or acceptability of the materials furnished,

**AMENDED SUBDIVISION IMPROVEMENT AGREEMENT**  
**ORCHARD PLANNED UNIT DEVELOPMENT**  
**PROJECT # 20222024-0705**

the work performed or the manner of performance of the work, Developer shall give Town three (3) business days notice and the opportunity to mutually confer and to timely make joint decisions with Developer as to how to remedy any of these issues.

- B. The Improvements shall be constructed and installed in accordance with the Construction Plans and in accordance with applicable provisions of the Standards and all other applicable local ordinances, resolutions and regulations, including but not limited to all local building, fire, plumbing, and safety codes in effect at the time of construction. If Town reasonably determines that construction or installation of the Improvements is not in compliance with the approved Construction Plans or applicable local ordinances, rules and regulations, it shall notify Developer in writing of the required corrections, which Developer shall make within forty-five (45) business days of receipt of such notification or, if the nature of the corrections is such that the same cannot be reasonably completed within forty-five (45) business days, then Developer shall undertake such corrections within forty-five (45) business days and shall diligently prosecute the same to completion. In the event the Developer fails to make or commence the required corrections within either of the forty-five (45) day periods, Town may direct Developer to stop work until corrections are made to the reasonable satisfaction of Town.
- C. Developer shall at its sole cost and expense engage a Colorado licensed professional engineer to provide inspection, and testing if required by Town, during the construction process of the Improvements. Copies of all such tests shall be provided to Town promptly upon request. Developer shall contact Town immediately upon the failure of any performance testing of any of the Improvements, and of any problems that arise which may prevent construction or installation of the Improvements in accordance with the approved Construction Plans.
- D. At all times during construction of the Improvements, and in accordance with this Agreement, Town shall have the reasonable right to require Developer conduct appropriate testing and inspection of the Improvements, if the testing requested that has not already been performed, by independent consultants retained by Developer, with Town's agreement, at Developer's expense. If Developer fails to do so within ten (10) business days of a notice from Town reasonably detailing the required test or inspection, or if Town reasonably believes that any required tests or inspections were either performed incorrectly or falsified and has notified Developer of same and provided Developer with the opportunity to cure or prove otherwise, Town may conduct the same and charge the cost to Developer. None of the Improvements, including excavation for Improvement installation, shall be

covered until timely inspected by Town, or timely inspected by the applicable service provider, or until such inspection is waived in writing by the Town or applicable service provider. If Town or an applicable service provider requires inspection, then they shall timely perform the inspection so as not to delay construction. Construction of the Improvements shall not proceed beyond required inspections or testing unless timely approved by Town, whose approval shall not be unreasonably withheld. No liability shall attach to Town by reason of any inspections, observations, testing, or reviews, or by reason of the issuance of any approval or permit for any work subject to this Agreement except in the event of Town's negligence or willful misconduct arising out of the aforementioned. Developer shall reimburse Town for all reasonable costs incurred by Town in the performance of the above services within thirty (30) days after receipt of the Town's invoice for said services.

**Section IV. Completion of the Improvements**

- A. Except where a shorter time period is prescribed, the Improvements set forth on Exhibit B and performance of the same shall be installed, constructed, or performed by Developer within two (2) years from the date of Town's issuance of the Development Permit. Extensions of time up to an additional one (1) year period for completion of the Improvements may be granted by Town in writing for good cause shown. "Good Cause" shall be determined by Town in its sole discretion; notwithstanding the foregoing, Good Cause may include: (a) force majeure events and officially declared pandemics; (b) unreasonable delay in the receipt of approval, notice, inspection, testing or other required response from Town; and (c) any extension agreed upon in writing by Developer and Town.

**Section V. Ownership and Maintenance of the Improvements**

- A. The Improvements set forth on Exhibit B shall be owned and maintained by Town, (except for utilities located within a Lot and private roadway), shall be specifically identified in the ECE and shall become the sole property of Town, free and clear of all liens, encumbrances, and restrictions upon Final Acceptance by Town. Prior to and as a condition of Final Acceptance, Developer shall furnish to Town unconditional lien waivers that all claims and payments to be made in connection with construction of the Improvements have been satisfied.
- B. Except for the Improvements to be owned and maintained by Town, completed private improvements shall be owned and maintained by Developer and its successors and assigns; provided that Town reserves the right to enter upon and access Developer/Association-owned Improvements, if any, for purposes of

emergency repair or emergency maintenance as reasonably deemed necessary by Town in the interest of the public health, safety and welfare of Town residents.

**Section VI. As-Built Record Drawings for the Improvements**

- A. When Developer has completed the Improvements as provided herein, Developer shall at the time of Developer's request for Probationary Acceptance of the Improvements by Town provide the Town with a set of As-Built Drawings, in accordance with Town Standards, at the completion of installation of the Improvements, verifying all elevations, all public utility locations (including public service line locations), which shall include any changes from the approved Construction Plans that occurred during construction of the Improvements. Three 24"x 36" paper copies of the As-Built Drawings, stamped by a Colorado Licensed Professional Engineer, shall be submitted to the Town prior to final acceptance of the Improvements. In addition, electronic drawings (CAD or GIS) of the Improvements (which may be in the same format as the As-Built Drawings), shall be submitted to the Town prior to final acceptance of the Improvements, which final acceptance shall not be unreasonably withheld. Electronic Drawings provided to the Town shall be survey grade. The Electronic Drawing information shall specifically include public water line locations, all public tees, mechanical joints, valves, hydrants, curb stops, meter pits and horizontal and vertical alignment information at every 100 feet. Electronic Drawing information for the public sanitary sewer systems shall include at a minimum, locations of manholes, service taps and horizontal alignment data for every 100 feet. Electronic Drawing information for storm sewer systems shall include at a minimum location of manholes, depths and alignment data in 100 foot intervals. No certificate of occupancy or final approval from the Town shall occur until submittal of As-Built Drawings and Electronic Drawings. Developer shall reimburse Town for all costs incurred by the Town with regard to updating the Town's water, sanitary sewer and storm sewer computer models or any infrastructure GIS, surey or CAD mapping updates as they relate to the Improvements for this project

**Section VII. Collateral**

- A. In order to secure the performance of the construction and installation of the Improvements by Developer, the Developer shall provide Town with security ("Collateral"), at the time prior to the Final Plat being recorded, in the form of a cash deposit, bond or letter of credit for 100% of the ECE of the Improvements including the 15% contingency. If at any time prior to Final Acceptance, Town determines that the Collateral is not sufficient to cover all costs of construction of the Improvements, Developer shall be required to post additional or supplemental Collateral in an amount deemed sufficient and approved by Town

to pay for all costs of construction, including any administrative costs and contingency amount.

- B. If Developer fails to perform or observe any obligation or condition to be performed by Developer under this Agreement in respect to the Improvements, and such default remains uncured for more than forty-five (45) days after Developer's receipt of written notice thereof from Town, Town may cure the default at Developer's expense and draw on the Collateral from time to time to pay the costs incurred in connection therewith. In the event Developer fails to complete, install or perform any portion of work and/or Improvements within the two (2) year warranty period or any period of extension granted by the Town, Town may complete such remaining work and Improvements within a reasonable time by such means and in such manner as it may deem advisable, at Developer's expense. Town shall be entitled to draw against such Collateral to pay for Town's actual costs and expenses incurred in contracting for said work and Improvements, including the cost of obtaining required permits from the Town or any other applicable jurisdiction plus a five percent (5%) administrative fee, plus legal expenses incurred, to cover costs associated with completing the Improvements described herein.
- C. In the event the amount of Collateral is not sufficient for Town to complete the Improvements as determined by Town in its sole discretion, Town shall be entitled to reimbursement from Developer upon demand for such cost overruns, including but not limited to labor and material costs as well as engineering and legal fees. In the event the Developer fails to maintain Collateral in the amount required pursuant to the terms of this Agreement through Final Acceptance of the Improvements, Developer shall be in default of this Agreement and Town shall be authorized to make demand on the then existing Collateral.

**Section VIII. Partial Release of Collateral – Limited Circumstances**

- A. The Town shall not make any partial release.

**Section IX. Standards for Acceptance**

- A. Probationary Acceptance and Warranty Period. As soon as all of the Improvements are installed and Town determines that the Improvements have been constructed in accordance with the approved Construction Plans, which determination shall not be unreasonably withheld, Town will issue to the Developer a certificate of Probationary Acceptance granting Probationary Acceptance of the Improvements. The probation and warranty period will terminate two (2) year from the date of Probationary Acceptance. Until Final Acceptance, Town may notify Developer of any defective Improvement and

provide Developer with 14 days to inspect the defective Improvement to determine its deficiencies, and if determined defective after Developer's inspection and Town's review, then Developer shall complete, repair or replace the defective Improvement within thirty (30) days. In the event Developer fails to so complete, repair or replace such defective Improvement, Town may draw upon the Collateral to complete, repair or replace the same at Developer's cost.

- B. Final Acceptance. The Improvements constructed pursuant to this Agreement are eligible for Final Acceptance in accordance with the Standards no sooner than twenty four (24) months following the Probationary Acceptance date. Developer shall request Final Acceptance by Town in writing. After inspection for Final Acceptance, Town will identify and provide a written list of deficiencies, if any, based on a physical inspection of the Improvements. Developer shall correct all deficiencies to Town's satisfaction within three (3) months from the date said deficiency list was issued. If deficiencies have been identified, when they have been corrected, Town will issue a certificate of Final Acceptance to the Developer within the time period provided in the Standards. Upon issuance of said certificate of Final Acceptance, all Improvements specified in said certificate shall be deemed approved and accepted by Town, whereupon such Improvements shall be owned and maintained by Town.. At such time, Town will release any remaining Collateral to Developer.

#### **Section X. Remedies**

- A. Town's rights and remedies provided in this Agreement shall not be exclusive and are in addition to any other rights or remedies provided by law. Upon breach of any provision of this Agreement by Developer beyond any notice and right to correct specified herein, Town may initiate any one or more of the following actions:
1. Delay processing of any pending land development related application;
  2. Issue stop work orders;
  3. Refuse to issue or approve any land development permit, including but not limited to, right-of-way access, street cut, over-lot grading or building permits, certificates of occupancy, or final plats;
  4. Draw from the Collateral to cover the costs associated with correcting the Developer's breach;
  5. Issue a citation to the Developer or any contractor or subcontractor for violating requirements of the Bayfield Municipal and/or Land Use Codes;  
or

6. Initiate legal proceedings in any appropriate court of law.

- B. Any amounts due and owing to Town under this Agreement that are not paid in a timely manner may be certified to the La Plata County Treasurer for collection with taxes.

**Section XI. Responsibility for Installing Utilities and for Permitting Installation of Public Utilities**

- A. Developer agrees to be responsible for contracting for installation of any or all utilities necessary for its development, including, but not limited to water, sewer, telecommunications, natural gas and electricity. The Parties agree that electrical, fiber optic, cable, and telephone service for the Development Plan shall be underground in accordance with the Standards. Developer understands that no building permits shall be issued until all utilities as well as adequate rights-of-way and streets are available or provided for each lot for which a building permit is sought by Developer.
- B. Subject to the Standards, Town, as the owner of public rights-of-way depicted on the Development Plan, retains the right to issue right-of-way use permits to utility companies or to other persons, companies, corporations or organizations prior to the Final Acceptance of the Improvements.

**Section XII. Construction Site Maintenance**

- A. Developer shall take all reasonable steps necessary to prevent its construction activities from damaging adjacent properties, including Town property. If any adjacent property is damaged or destroyed by and during the construction of the Improvements, Developer shall, at its cost, promptly repair or replace the same to a condition similar or equal to that existing before such damage or injury.
- B. During construction, Developer shall use proper air quality control and erosion and sedimentation control and maintain streets and roads in such a manner that they may be reasonably traveled upon. If Town determines in its sole discretion that dust emanating from the Property related to construction activities is unacceptable, it may order reasonable measures be taken, and Developer shall comply with such order. In the event that Developer does not comply with such abatement measures within fifteen (15) days, Town may order construction to cease until Developer has complied with such abatement measures and Developer shall so comply. The Collateral shall be sufficient to include costs associated with re-vegetation of areas destroyed by such construction.

**Section XIII. Maintenance and Workmanship of the Improvements**

- A. Developer shall keep and maintain all the Improvements in good order and condition until Town issues a certificate of Final Acceptance pursuant to Section IX of this Agreement. Developer shall, at its cost, repair or replace any damage or destruction of the Improvements that occurs prior to such Final Acceptance by Town, except to the extent that such damage or destruction is caused by agents or employees of Town.
- B. Unless otherwise specified, all materials for the Improvements shall be new and both workmanship and materials shall be of good quality.

**Section XIV. Contractual Obligation**

- A. Developer agrees that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress. Developer agrees and desires that the agreements contained herein regarding the payment of fees, installation and dedication of the Improvements, and conditions for subdivision and building approvals, including the incorporation of any provision of applicable Standards, are imposed by contract, independent of the continued validity or invalidity of any of the provisions of state law or Standards. The agreements to pay fees, and construct and dedicate public Improvements or provide security are reasonable and binding commitments on the part of Developer and reasonably relate to Developer's estimates of the extent and timing of impacts that are expected to occur from the development of the Property, and are in rough proportion to such impacts.

**Section XV. Miscellaneous**

- A. Section Headings. The section headings in this Agreement are inserted herein only for convenience of reference and in no way shall they define, limit or describe the scope or intent of any provision of this Agreement.
- B. Assignment and Release. This Agreement may not be assigned or delegated by the Developer without the written consent of Town. Any such written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution of the Board of Trustees for the Town of Bayfield, which approval will not be unreasonably withheld. No assignment shall release the Developer from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment. Prior to approving any release of the Developer, Town may, at its sole discretion, require the party assuming any duty, obligation, or responsibility of the Developer



**AMENDED SUBDIVISION IMPROVEMENT AGREEMENT**  
**ORCHARD PLANNED UNIT DEVELOPMENT**  
**PROJECT # 20222024-0705**

to provide to Town written evidence of financial or other ability to meet the particular duty, obligation or responsibility being assumed by the party.

- C. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective legal representatives, successors and assigns. This Agreement shall continue upon subdivision of the Property and bind the subdivision and all purchasers, lessors and subsequent owners of any property within the subdivision, except a bona-fide homebuyer, until all provisions of this Agreement are satisfied.
- D. Recording; Benefit. This Agreement shall be recorded with the Clerk and Recorder of La Plata County, Colorado and shall run with the land. Developer shall pay the associated recording fee imposed by La Plata County.
- E. Subordination. If the Property upon which the Improvements are constructed is subject to any liens, mortgage, deed of trust or similar encumbrance, the holder of such indebtedness or encumbrance shall subordinate its interest or encumbrance to this Agreement and all its terms, conditions and restrictions.
- F. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is intended to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing to the other Party. Such notice shall be deemed to have been given when deposited in the U.S. Mail.
- G. Additional Documents or Action. Parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
- H. Waiver of Breach. The waiver by any Party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.
- I. Indemnification. Developer hereby expressly binds itself to indemnify and save harmless Town and its officers and employees, against all suits or actions of every kind and nature brought, or which may be brought against them or any of them, or loss, cost or expense incurred by them or any of them for, or on account of, any injury or damage received or sustained by any persons, firms or corporations during the construction of the Improvements and through Final Acceptance as a result of Developer's material and proven breach of any of its obligations hereunder, or the negligent or willful misconduct of Developer or any of its

**AMENDED SUBDIVISION IMPROVEMENT AGREEMENT**  
**ORCHARD PLANNED UNIT DEVELOPMENT**  
**PROJECT # ~~2022~~2024-0705**

employees, agents or contractors. Developer shall also indemnify and hold Town harmless from any liability it may have on account of Developer's construction which is proven to cause any change in direction, nature, quality, or quantity of historical drainage flow, resulting from the development of the Property, or from Developer's construction of streets and storm sewers within or serving the Property, or damages to the Property resulting from natural conditions including but not limited to expansive soils, geologic hazard, wildfire hazard or flood hazard, if Developer is proven to be negligent. Developer shall not indemnify Town against Town's employees, agents or assigns' negligent or willful and wanton acts causing damages as set forth above. Town shall assert, to the fullest extent permitted by law, its immunity from suit under the Colorado Governmental Immunity Act, § 24-10-101 *et seq.* C.R.S., as well as the limitations upon liability provided herein.

- J. Contractors. Developer shall give notice of the terms of this Agreement in all contracts for construction of the Improvements and provide a copy of this Agreement to the contractors and subcontractors.
- K. Entire Agreement. This Agreement represents the entire agreement between the Parties and, supersedes any prior oral or collateral agreements or understandings.
- L. Amendment. This Agreement may be amended only by an instrument in writing signed by the Parties.
- M. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and the Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of Town and Developer that any person other than Town or Developer and their successors and assigns receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- N. Governing Law, Venue and Enforcement. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within La Plata County, Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or specific performance.
- O. Vested Rights. Approval of the Development Plan affords Developer with all applicable vested property rights under C.R.S. Section 24-68-101 *et. seq.*

- P. Authorization of Parties' Representative. The undersigned hereby represent that they serve as representatives of the Party for which they have executed this Agreement and are fully authorized to execute this Agreement on behalf of such party.
  
- Q. Compliance with Law. Developer, in developing the Property and constructing the Improvements herein described, shall fully comply with all applicable rules, regulations, standards, and ordinances of Town and other governmental agencies and bodies having jurisdiction over the Project in effect at the time of construction.

**Section XVI. Special Terms and Conditions**

- A. Developer shall comply with the following special terms and conditions:
  - 1. Fee in Lieu of Park Land Dedication. The Developer agrees to pay a fee of \$ ~~10,864~~10,088 in lieu of park land dedication to the Town. The fee in lieu of park land dedication is \$776 per residential unit. The Development Plan includes ~~14~~13 residential units
  
  - 2. As a condition to any person seeking a building permit for any Improvement on the Property, the person seeking such building permit shall be required to pay all fees, charges and costs required by the Code at the time of application for the building permit.

IN WITNESS HEREOF, the parties have executed this Agreement the day and year first above written.

*Signature Pages Follow*

**PROPERTY OWNER/DEVELOPER:**

\_\_\_\_\_  
Ian Barrowclough, Member, SMG  
Orchard, LLC

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

**AMENDED SUBDIVISION IMPROVEMENT AGREEMENT  
ORCHARD PLANNED UNIT DEVELOPMENT  
PROJECT # ~~2022~~2024-0705**

The foregoing instrument was subscribed, sworn to, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

( S E A L )

\_\_\_\_\_  
Notary Public

**PROPERTY OWNER/DEVELOPER:**

\_\_\_\_\_  
Andrew Klotz Member, SMG  
Orchard, LLC

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_                    )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

( S E A L )

\_\_\_\_\_  
Notary Public

**TOWN OF BAYFIELD, COLORADO**

By: \_\_\_\_\_  
Ashleigh Tarkington, Mayor

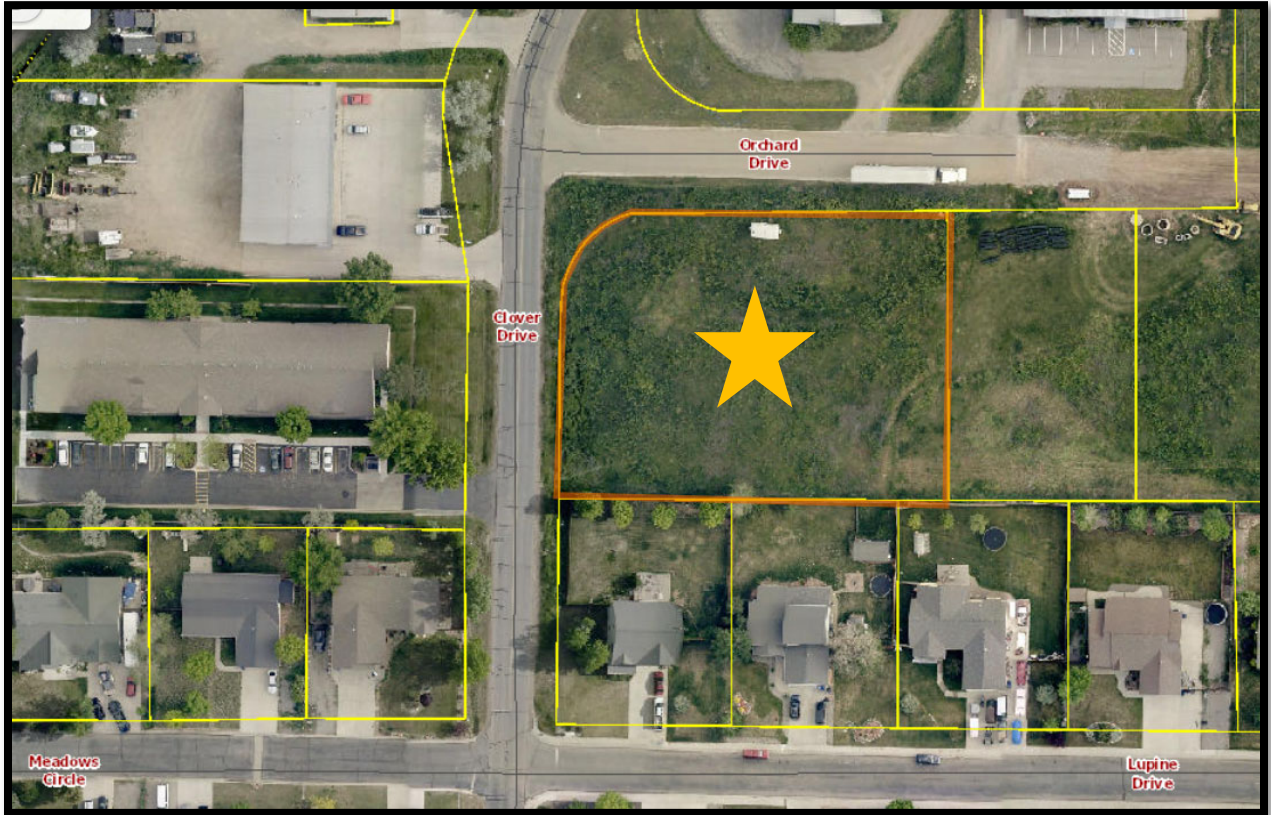
ATTEST:

**AMENDED SUBDIVISION IMPROVEMENT AGREEMENT  
ORCHARD PLANNED UNIT DEVELOPMENT  
PROJECT # ~~2022~~2024-0705**

~~Kathleen S. Cathcart~~Dustin Hayden, Town Clerk

**EXHIBIT A**  
**PROPERTY LEGAL DESCRIPTION**

Lot 9, Bayfield Industrial Park Phase One, according to the plat thereof filed for record February 3, 1983 as Reception No. 479295



**EXHIBIT B  
PUBLIC IMPROVEMENT  
ENGINEER'S COST ESTIMATE**

<b>Description</b>	<b>Quantity</b>	<b>Unit of Measurement</b>	<b>Unit Cost</b>	<b>Total Cost</b>
5' Concrete Sidewalk		2230 SQ FT.	\$6.50 per sq. ft.	\$14,495
Concrete Curb/Gutter on Clover Drive		196 LF	\$20 LF	\$3,920
ADA Ramp				\$785
8" Sewer Main & 4' Sewer Manhole				\$49,813
			<b>TOTAL</b>	<b>\$69,013</b>

**EXHIBIT C  
FORM OF LETTER OF CREDIT (IRREVOCABLE LETTER OF CREDIT)**

Town of Bayfield  
Number: \_\_\_\_\_

Date: \_\_\_\_\_  
Expiration: \_\_\_\_\_

Dear Sir or Madam:

[Name of Bank] ("Bank") hereby establishes in favor of Town fo Bayfield ("Beneficiary"), for the account of [Property Owner/Developer Name], a Colorado \_\_\_\_\_ ("Customer"), an Irrevocable Letter of Credit in the amount of \_\_\_\_\_ Dollars (\$xxx,xxx) available by immediate payment upon presentation at Bank's office at [Bank's address – provide Colorado branch or affiliate] of Beneficiary's sight draft(s) in an amount not exceeding \$xxx,xxx, and each sight draft must bear the reference: "Drawn on [Bank] Irrevocable Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_."

In addition, Beneficiary's sight draft(s) must be accompanied by this Irrevocable Letter of Credit and an Affidavit of Certification in the form attached hereto as Exhibit A (the "Affidavit"). The Affidavit shall certify that Customer has failed to meet its obligations under the terms of a Subdivision Improvement Agreement relating to LU-XXXX-XXX, [Project Name] Final Development Plan. Upon presentation of such Affidavit in compliance with the terms contained herein, Bank shall honor the accompanying sight draft(s) and shall not be required to determine questions of fact or law between Beneficiary and Customer.

This Irrevocable Letter of Credit sets forth the full understanding of the parties hereto and Bank hereby promises to Beneficiary that any drafts drawn under or in substantial compliance with the terms of this Irrevocable Letter of Credit will be duly honored if presented to [Bank] on or before \_\_\_\_\_.

This Irrevocable Letter of Credit is nontransferable.

This Irrevocable Letter of Credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce. The forum for all disputes regarding this letter of credit shall be the District Court for the County of La Plata, State of Colorado.

Very truly yours,

[Name of Bank]  
\_\_\_\_\_  
Title



**EXHIBIT C**

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

Dated: \_\_\_\_\_

AFFIDAVIT OF CERTIFICATION

STATE OF COLORADO )

) ss.

COUNTY OF ARAPAHOE )

I, \_\_\_\_\_, being duly sworn, state as follows:

Title and Authority of Affiant. I am \_\_\_\_\_ for Town of Bayfield, Colorado and am authorized to act on behalf of the Town of Bayfield, Colorado in this matter.

Certification. Under penalty of law, I hereby certify that the Customer has failed to meet its obligations under the terms of a Subdivision Improvement Agreement relating to the \_\_\_\_\_ Final Development Plan, and the Town of Bayfield is entitled to draft this Letter of Credit.

TOWN OF BAYFIELD

By: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

( S E A L )



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## PLANNING COMMISSION STAFF REPORT

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**TO:** PLANNING COMMISSION  
**FROM:** NICOL KILLIAN, AICP, COMMUNITY DEVELOPMENT DIRECTOR  
**PROJECT:** LAND USE CODE TEXT AMENDMENT FOR ARTICLE 9 FLOOD DAMAGE PREVENTION (PROJECT # 24-02)  
**DATE:** TUESDAY, FEBRUARY 13, 2024

### BACKGROUND

The Federal Emergency Management Agency (FEMA) has recently issued a final determination for La Plata County and Incorporated Areas, in compliance with Title 44, Chapter I, Part 67, Section 67.11 of the Code of Federal Regulations (CFR), adopting an updated Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM). The Town of Bayfield has until April 25, 2024 to adopt the new FIS and FIRM, as required by FEMA, in order to continue to participate in the National Flood Insurance Program (NFIP). The NFIP enables property owners in the community to purchase flood insurance. In return, communities agree to adopt and implement local flood damage prevention regulations that contribute to protecting lives and reducing risk of new construction and substantial improvements from future flooding. The loss of NFIP participation will result in harm to citizens of Bayfield who need and obtain flood insurance to protect their property.

Per the Land Use Code Section 3-12, amendments to the Land Use Code (LUC) may be proposed by Town staff. The purpose of the LUC is to promote the health, safety, and general welfare of Bayfield residents; to lessen congestion in the streets; to secure safety from fire, panic, floodwaters, and other danger; to provide adequate light and air; to identify and secure, for present and future residents, the beneficial impacts of development; to identify and avoid the negative impacts of development; to ensure that future development is of the proper type, design and location and served by an adequate range of public services and facilities; to achieve the goals and implement the policies of the Bayfield Comprehensive Plan, as may be amended from time to time.

### PROPOSED LAND USE CODE AMENDMENT

Bayfield staff has worked closely with the State of Colorado's NFIP Community Assistance Program Coordinator to determine the specific amendments needed. To comply with FEMA and NFIP requirements, the Land Use Code of the Town of Bayfield (LUC) Article 9 Flood Damage Prevention, Sections 9-5 and 9-7, need to be amended as follows:

#### Sec. 9-5. Definitions.

**Base flood means a flood which has a one percent chance of being equaled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP)**

## LAND USE CODE AMENDMENT FOR ARTICLE 9 FLOOD DAMAGE PREVENTION

**to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.**

### **Sec. 9-7. Basis for establishing the special flood hazard area.**

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for La Plata County, Colorado and Incorporated Areas," dated ~~August 19, 2010~~ **April 25, 2024**, with accompanying flood insurance rate maps (FIRM) and any revisions thereto are hereby adopted by reference and declared to be a part of this article.

These special flood hazard areas identified by the FIS and attendant mapping are the minimum area of applicability of this article and may be supplemented by studies designated and approved by the Town of Bayfield. The floodplain administrator shall keep a copy of the flood insurance study (FIS), DFIRMs, and/or FIRMs on file **and on the Town's website and available** for public inspection.

### **PUBLIC HEARING**

A public hearing shall be held for this project. A quorum of the Planning Commission membership is required to hold the hearing. All pertinent information is entered into the record and when the commission determines that all information needed to make a decision has been received, the hearing is closed. A hearing may be continued. If for any reason, testimony on any matter set for public hearing cannot be completed on the day set for such hearing, the person presiding at such public hearing may, before the adjournment or recess thereof, publicly announce the time and place to, and at which, said hearing will be continued and no further notice will be required.

### **Possible Recommendations**

Staff has prepared the following options for the Planning Commission:

**Alternative Action A:** **Approve** Resolution 2024-02 recommending the Board of Trustees adopt the Land Use Code Amendments for Article 9 Flood Management Prevention with the following findings:

#### **Finding:**

- a. The Town has until April 25, 2024 to adopt the new FIS and FIRM, as required by FEMA, in order to continue to participate in the National Flood Insurance Program.
- b. The proposed Land Use Code Text Amendment is consistent with the intent of the Comprehensive Plan.

**Alternative Action B:** **Deny** Resolution 2024-02 recommending the Board of Trustees adopt the Land Use Code Amendments for Article 9 Flood Management Prevention with specific reasons and findings stated.

**Alternative Action C:** **Continue** Resolution 2024-02 recommending the Board of Trustees adopt the Land Use Code Amendments for Article 9 Flood Management Prevention with specific direction to staff.

### **Staff Recommended Action**

Staff recommends the Planning Commission, by motion, **Approve** Resolution 2024-02 recommending the Board of Trustees adopt the Land Use Code Text Amendments for Article 9 Flood Management Prevention with the findings as stated in Alternative Action A above.

The FEMA documents can be found on the Town's website at: <https://www.bayfieldgov.org/FEMA>

**Town of Bayfield  
Planning Commission Meeting Minutes  
January 9, 2024, Bayfield, Colorado**

**I. Opening Ceremony**

Chair Nyberg called the January 9, 2024, Town of Bayfield Planning Commission meeting to order at 6:31 p.m.

**Planning Commissioners Present:** Bryan Gadd, Mayor Ashleigh Tarkington, Tish Nelson, Cash Snooks, Jason Evans, Chris O’Shea Heydinger (via Zoom) and Chair Matthew Nyberg.

**Commissioners Absent:** None

**Staff Present:** Nicol Killian, Community Development Director; Katie Sickles, Town Manager; Jeremy Schulz, Public Works Director; Amber Lamb, Deputy Town Clerk; Kristin Dallison, Administrative Assistant

**Media Present:** None

**Pledge of Allegiance**

**General Public Input:**

Chair Nyberg opened public comment. Seeing none, Chair Nyberg closed public comment.

**Disclosure of Conflicts of Interest:** None

**Approval of Agenda:** Commissioner Nelson moved to approve the agenda for the November 14, 2023, meeting as presented. Mayor Tarkington seconded.

Vote:

Commissioner Gadd – Yes  
Commissioner Nelson – Yes  
Commissioner Snooks – Yes  
Commissioner Evans – Yes  
Commissioner O’Shea Heydinger – Yes  
Mayor Tarkington – Yes  
Chair Nyberg – Yes

**II. Public Hearing Agenda:**

**a. 2024-01 Land Use Code Test Amendment for Pet Stores**

Nicol Killian, Community Development Director, presented the staff report provided in the packet and asked the board if they had any questions or comments. Staff is recommending approval. The Board of Trustees would have this item on their February 6, 2024 agenda.

Commissioner O’Shea Heydinger made a comment about this possibly having an impact on a Bayfield business, due to taking in some stray dogs on occasion and giving them away. Nicol Killian, Community Development Director said that they would still be in compliance with the revised code as the animals would not come from puppy mills.

Chair Nyberg opened the public hearing.

**Joyce Cohen, 20 Creekside Drive** – Thanks the board for considering this action. She wanted to address a couple of comments that she has received. First, that it is a slippery slope and that next action will be to put restrictions on livestock animals. She wants to clarify that this is only for companion animals, cats and dogs. Livestock are not what she considers a companion animal. Second, that the government should not be putting restrictions on businesses. She believes this action is protecting those who cannot speak for themselves and believes it is important for the town to step up. Adoption rates are going down and euthanasia rates going up. She wants to make a statement to the State of Colorado that this is the correct action to take.

Mayor Tarkington asked her about the statistics. She said that fifteen (15) towns in the State of Colorado have passed this ordinance. Twelve (12) cases have been brought to state and federal courts and the ordinance has been proven legal and constitutional.

Commissioner O’Shea Heydinger said she had read an article about Amish communities in Pennsylvania and Ohio running puppy mills. Joyce Cohen agreed.

Chair Nyberg closed public hearing.

### **III. Action Agenda**

#### **a. Approval of November 14, 2023 Minutes**

Mayor Tarkington moved to approve the November 14, 2023 minutes. Commissioner Snooks seconded the motion.

Vote:

Commissioner Gadd – Yes  
Commissioner Nelson – Yes  
Commissioner Snooks - Yes  
Commissioner Evans – Yes  
Commissioner O’Shea Heydinger - Yes  
Mayor Tarkington - Yes  
Chair Nyberg – Yes

#### **b. 2024-01 Land Use Code Text Amendment for Pet Stores**

Finding: The proposed Land Use Code Text Amendment is consistent with the intent of the Comprehensive Plan.

Mayor Tarkington made a motion to approve. Commissioner Gadd seconded the motion.

Vote:

Commissioner Gadd – Yes  
Commissioner Nelson – Yes  
Commissioner Snooks – Yes  
Commissioner Evans – No  
Commissioner O’Shea Heydinger – Yes  
Mayor Tarkington – Yes  
Chair Nyberg – Yes

### **IV. Discussion and Adjourn**

**a. Memo on Pet Licensing**

Community Developer Killian presented the staff memo for the changes proposed for pet licensing and is looking for any comments or changes that the planning commission would like to make.

Commissioner O'Shea Heydinger had a question about how many animals you could have under the ordinance. Currently the code is three (3) total cats and dogs.

Commissioner Snooks suggested "companion animals" instead of the use of cats and dogs. Community Developer Killian said that many animals could be "companion animals".

There was a discussion on service animals and if they will be charged and what questions staff will be able to ask to qualify the service animal. Commissioner Evans said that service animals should not be free. Would consider a senior citizen (65 and older) discount.

The Commission discussed raising the number of total cats and dogs to four (4). Any citizen above the total would need to apply for a kennel license. A kennel license would go through the land use code process. Mayor Tarkington asked to Community Developer Killian to look into what other communities similar to Bayfield have in their code.

There was a discussion on if cats would have licenses in the future. Town would not deny the citizen a license, but currently cat licensing is not part of the code and not planned to be.

Mayor Tarkington asked about foster animals. Fostering will continue to be allowed, unless they are reported for becoming a nuisance.

- b. Community Development Annual Update**
- c. January 16, 2024 Next Board of Trustees Meeting**
- d. February 13, 2024 Next Planning Commission Meeting**
- e. Adjourn**

Commissioner Gadd moved to adjourn the January 9, 2024 meeting and Mayor Tarkington seconded.

Chair Nyberg adjourned the meeting at 7:08 p.m.

Approved:

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Matthew Nyberg, Chairperson

Attest:

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Kristin Dallison, Administrative Assistant,  
Town of Bayfield

**RESOLUTION NO. 2024-02**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF BAYFIELD RECOMMENDING THE BOARD OF TRUSTEES ADOPT THE LAND USE CODE AMENDMENT FOR ARTICLE 9 FLOOD DAMAGE PREVENTION**

**WHEREAS**, the Town of Bayfield is a statutory town organized under and pursuant to the laws of the State of Colorado and has authority pursuant to the Colorado Revised Statutes to adopt floodplain regulations; and

**WHEREAS**, the Federal Emergency Management Agency (FEMA) has issued a final determination adopting an updated Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for La Plata County and Incorporated Areas; and

**WHEREAS**, as part of the Town's participation in the National Flood Insurance Program (NFIP), the Town is mandated by FEMA and the Colorado Water Conservation Board (CWCB), together with federal and state laws, to adopt the updated FIS and FIRM by April 25, 2024 or risk being suspended from the NFIP: and

**WHEREAS**, the loss of NFIP participation will result in harm to citizens of Bayfield who need and obtain flood insurance to protect their property; and

**WHEREAS**, on February 13, 2024 the Planning Commission held a noticed public hearing on the proposed amendments; and

**WHEREAS**, after considering the recommendation by staff and any public testimony received, the Planning Commission finds the amendments to Article 9 of the Land Use Code of the Town of Bayfield to be in the best interest of the citizens of the Town of Bayfield.

**NOW THEREFORE, BE IT RESOLVED BY THE BAYFIELD PLANNING COMMISSION AS FOLLOWS:**

**Section 1:** The Planning Commission is an advisory commission recommending to the Board of Trustees that the following Flood Damage Prevention language be considered as an amendment to Article 9 of the Land Use Code:

**Section 2:** The Bayfield Land Use Code Article 9 Sec. 9-5 should be amended by adding the following definition:

**Sec. 9-5. Definitions.**

*Base flood* means a flood which has a one percent chance of being equaled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

**Section 3:** The Bayfield Land Use Code Article 9 Sec. 9-7 should be amended as follows:

**Sec. 9-7. Basis for establishing the special flood hazard area.**

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for La Plata County, Colorado and Incorporated Areas," dated April 25, 2024, with accompanying flood insurance rate maps (FIRM) and any revisions thereto are hereby adopted by reference and declared to be a part of this article.

These special flood hazard areas identified by the FIS and attendant mapping are the minimum area of applicability of this article and may be supplemented by studies designated and approved by the Town of Bayfield. The floodplain administrator shall keep a copy of the flood insurance study (FIS), DFIRMs, and/or FIRMs on file and on the Town's website for public inspection.

**INTRODUCED AND PASSED AS A RESOLUTION at a meeting of the Town of Bayfield Planning Commission on the 13<sup>th</sup> day of February, 2024.**

**Planning Commission Chair:**

*Attest:*

\_\_\_\_\_  
Matt Nyberg

\_\_\_\_\_  
Amber Lamb, Deputy Town Clerk