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BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY
RESOLUTION NO. 8 SERIES 2000

A RESOLUTION APPROVING PHASE I AND II OF FILING 3 OF SKYLAND, GRANTING A
LAND USE CHANGE PERMIT FOR THOSE PORTIONS OF LAND USE CHANGE
APPLICATION NO.1995-36,

and WHEREAS, N.D. Enterprises has submitted the final plan for Phases I and II of Filing 3 of Skyland;

WHEREAS, after a review of the application and all information, documentation and testimony related to it, the Gunnison County Planning Commission did, on January 21, 2000 forward a Recommendation of approval of that application with certain findings and conditions;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Gunnison County, Colorado, that the Final Plan of Phases I and II, Filing 3 of Land Use Change Permit No. 1995-36 is hereby approved, by the adoption in full of the Planning Commission's January 21, 2000 Recommendation, which is attached as "Exhibit A," with this additional condition:

That the final survey of the trail easement include monumentation on the ground of the public trail access easement every 300 feet, or as reasonably close to that as possible, appropriate to the terrain; and

AND FURTHER, that the full execution of the grant of easement for the trail is a condition of recording of this Resolution; a copy of that fully executed grant of easement is included as part of this approval, which document is attached as "Exhibit B";

THIS APPROVAL is effected noting that decision documentation includes, but is not limited to the application and the entire Planning Department land use change permit file relative to this application; and

THIS APPROVAL, as of the date of the recordation of the Final Plat for Phases I and II of Filing 3, initiates a statutory three-year vested right of this Land Use Change Permit for Phases I and II, Filing 3 of Skyland.

THIS RESOLUTION AND THE APPROVAL GRANTED HEREBY shall not be effective unless and until a copy is recorded in the Office of the Clerk and Recorder of Gunnison County.

INTRODUCED by Commissioner Jim Starr seconded by Commissioner Marlene Zanetti and passed on this 7th day of March, 2000.

BOARD OF COUNTY COMMISSIONERS

Fred R. Field
Fred R. Field
Chairperson

Marlene Zanetti
Marlene Zanetti
Commissioner

Jim Starr
Jim Starr
Commissioner

ATTEST:

Jeanne Rodriguez
Gunnison County Clerk and Recorder



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SUBJECT: Recommendation, Final Plan, Skyland Filing 3, Phases 1 and 2
PREPARED BY: Joanne Williams
DATE: Planning Commission meeting date, February 4, 2000

At its regular meeting of January 21, 2000 Planning Commissioner Frank Vader moved to approve the following recommendation. Seconded by Cathy Benson and the motion passed unanimously.

PROJECT DESCRIPTION:

N. D. Enterprises, Inc. has submitted a Final Plan for Filing 3 in the Initial Filing of Skyland (formerly "Skyland Properties"). The property is located approximately two miles east of the Town of Crested Butte, east of Colorado Highway 135 and in the east side of the Slate River Valley (parts of Sec. 1 and 12, Twn 14 S, R 86 W, and parts of Sec. 6 and 7, Twn 14 S, R 85 W).

The Skyland development was approved by Gunnison County in 1981 (LUC No. 1979-70); and parcels in the Initial Filing received final approval. The area now labeled Filing 3 was then identified for future development, but no conceptual plans, nor technical analysis of the physical characteristics of the filing were submitted, reviewed or approved.

The Planning Commission recommended approval of the Preliminary Plan of this filing June 3, 1999. The Board approved the Plan, adopting the Commission's Findings and Conditions with additional conditions (by Resolution No. 28 Series 1999).

Numbers and Locations of Lots and Units. As detailed by letter of February 1, 2000 from the applicant's attorney, the current application for final plan Filing No. 3 Phases 1 and 2 includes a total of 87 single family residential lots and 25 multifamily units on Multi Family Tract 6, totaling 112 units. Phase 3, which has not yet received Preliminary Plan approval, is proposed to have another 12 single family lots, for an overall total of 124 units. Three single family lots have been eliminated, to correspond to concerns about visual impact, to existing property owners, and the need for a small park. Three additional units have been added to the total number of multifamily units allowed on MF Tract 6.

Lot S-155 adjacent to the Lodge Tract was deleted, and that site has been dedicated as a park. Building envelopes on Lots previously numbered S-180, S-181 and S-182 have been relocated east of their original proposed locations and are now numbered as Lots 177, 178 and 179 on the Preliminary Plan, so that only the top floor of any structure will be visible above the knoll of the hill on which they are located; this change responds to a condition of approval by the Board, and to concerns raised by existing homeowners in previous filings.

The history of density and parcel changes is this:

EXHIBIT A

Sketch Plan		Preliminary Plan		Final Plan	
Parcel	#Units/Unit type	Parcel	#Units/Unit type	Parcel	#Units/Unit type
Parcel 4	40 multi-family	Multi-family Tract 6	22 multi-family	Multi-family Tract 6	25 multi-family
Parcel 5	15 single family	Lots S-156-S170 Lots S183-186	15 single family 4 single family	Lots S 153-S167 Lots S180-183	15 single-family 4 single family
Parcel 6	48 single family	Lots S97-S155	59 single family	Lots S97-S152	56 single family
Parcel 7	13 single family	Lots S171-182	12 single family	Lots S168-179	12 single family
Parcel 8	8 single family	Lots S187-198	12 single family	Phase 3	12 single family
Total	124		124		124

Changes to Language of the Declaration of Protective Covenants. The Declaration of Protective Covenants of Skyland Filing 3 includes this language: "Section 4.1. Site Specific Engineering. As a condition of approval for the construction or erection of any building within Skyland Filing No. 3, the applicants shall submit to the Association a detailed site specific geotechnical investigation by a qualified engineer as to the structural design and foundation of any such building." This paragraph supercedes original language, which required that recommendations of the Colorado Geological Survey guide any engineering of building design and foundation. Identification and explanation of critical geologic hazards in reports submitted and reviewed during the Preliminary Plan review refer to the area located in proposed Phase III, not in Phases I and II. Those hazards are not indicated for Phases I and II.

Other elements which have been included in the *Protective Covenants*, and respond to conditions of Preliminary Plan approval include language affecting landscaping, and limiting unsightly growth requiring removal of County and State-listed noxious weeds, and that seed used for landscaping must be certified weed-free; reference to required compliance with the Weed Management Plan of the Skyland Community Association; and language noting that building permits issued by Gunnison County may include costs imposed by Gunnison County reflecting Skyland Filing 3's pro rata share of improvements to the Brush Creek Road.

Weed Management Plan. The Board of Directors of the Skyland Community Association have adopted a Weed Management Plan in compliance with Gunnison County Board of Commissioners' *Resolution Series 1998 No. 13*, "A Resolution Adopting a Policy Requiring the Implementation of Earthmoving Site Revegetation and Noxious Weed control Plans for Development and Land Use Changes." This responds to a condition of Preliminary Plan approval.

Pesticide and Herbicide Application and Monitoring. The Skyland Metro District has both approved the weed control policy which addresses the application of pesticides and herbicides (District minutes, December 8, 1999). By letter of February 1, 2000, Jim Murry,



Manager of the Skyland Metropolitan District, has noted that, "the Skyland Metropolitan District will periodically monitor surface run-off and ground water discharges within the District to ensure that the requirements of the Weed management Plan are being met for the discharge of herbicides and pesticides and the effect on both surface water and ground water in the area.

The Skyland Metropolitan District's "Policy Concerning the Use of Pesticides, Herbicides and Fertilizers," adopted December 7, 1999, limits the types of pesticides and herbicides used to only those that contain no ingredient or substance banned by the "...federal or other government agency or department," and application once per year. Herbicides cannot be applied when winds exceed fifteen miles per hour, and allows the District the authority to limit or control any herbicide "...that by continual or regular usage might injure or damage any adjoining property, water supply system or drainage system." These same rules apply to fertilizer applications, and only granular, slow-release fertilizer products are allowed, at application rates no greater than those specified on product labels.

The policy notes also that, "The Board of Directors of the Skyland Metropolitan District may at any time amend, revise, or supplement this policy to limit or ban the use of pesticides, herbicides or fertilizers that may have an injurious effect, either by occasional use or cumulated use, to the environment."

This policy and letter respond to a request in the Board of Commissioners' Resolution of approval that additional relevant information regarding this issue be submitted as part of the Final Plan.

Stormwater Discharge Permit. The Colorado Department of Public Health and Environment has issued the Final Permit for Stormwater Discharge (Certification No. COR-033127, effective January 16, 2000, submitted to the Planning Department February 3, 2000), which allows stormwater discharge from Skyland to the Slate River. This meets the condition of Preliminary Plan approval.

Trail Access: A February 3, 2000 memorandum, the Gunnison County Trails Commission noted that, "...the exact location of the trail will not be finalized until construction of the trail in the late spring or summer...[The County attorney has indicated that he would] have to review and edit the exact language, but he indicated that the Planning Commission and the board of County commissioners could have a condition state that the property owner was to grant a recreational trail easement (or a permanent highway/trail easement) for a trail that was to be built to Forest service standards and specifications on an alignment that was agreed to by the Trails commission...[and that] the condition would also state that the construction was to be done by a specific date or before any building permits were issued. If the final plat needs to be filed before the trail is constructed it would need to acknowledge the width and general location of the easement. After the trail was built the developer would have to provide a centerline survey to go with the conveyance of the easement and the final plat would need to be amended to show the actual location of the easement. The condition also needs to clearly indicate the type of easement and who is going to pay for construction, surveying and amending the plat if that is necessary."

The applicant has agreed to provide an easement for the trail, and to formally agree to convey the easement after the Trails Commission is able to conduct an onsite



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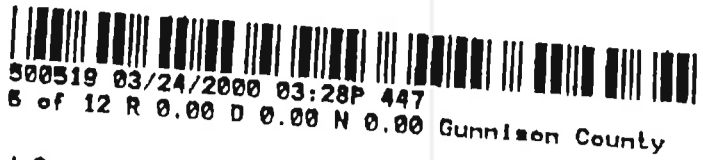
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observation of the trail location. The applicant has also agreed to construct the trail located on the Skyland 3 property in compliance with U.S. Forest Service standards. Estimates of costs of trail construction have been included within the submitted Development Improvements Agreement, which information responds to a condition of Preliminary Plan approval.

FINDINGS:

The Commission finds that:

1. This Final Plan submittal and approval address only Phase 1: Lots S-97 through S-152 and Phase 2: Lots S-153 through S-183 and Multi-family tract 6. Phase 3: Lots S-184 through S-196 shall be held in abeyance and no further action shall be taken on it, subject to additional review.
2. A development improvement agreement has been submitted, and is subject to approval by the County Attorney prior to action by the Board.
3. The applicant has requested that a number of residential units be added to Multi-family Tract 6 equal to the number which has been deleted from the single family homesites. The Commission finds that the resulting added density on Multi-Tract 6 is compatible with densities of lots adjacent to it, and therefore the request is reasonable and not in conflict with County land use policies. This approval, therefore, includes that requested change, and allows a total of 25 units on Multi Family Tract 6.
4. The Colorado Department of Health and Environment has granted the Final Permit for Stormwater Discharge.
5. The conditions of Preliminary Plan approval have been met in this Final Plan submittal.
6. The County has not yet adopted an impact fee structure, nor determined at this time any specific prorate share requirements to be imposed for any developer whose development accesses the Brush Creek Road. Should the Board of Commissioners in the future adopt such fees, particularly as they might affect construction of individual homes, and therefore the related building permit fees, construction on these sites would be subject to those fees. Language to that effect, alerting future home buyers and builders, has been included in the *Declaration of Protective Covenants*.
7. Final plan submittal does not include the final route alignment and trails design, but includes within the *Declaration of Protective Covenants* how trails improvements and maintenance are to be funded, and by what guaranteed means. Estimates of costs for design and construction of trails will be included in the development improvements agreement, which will ensure construction of trails will be completed by November 2000.
8. This is an existing developed area, an area in which development has been contemplated for many, many years; the decrease in density of the single family lots improves the original concept of the development design by including a "pocket park" and additional open space in the layout. The addition of three units allowed to be



constructed on Multi Family Tract 6 complies with the character of the area, and results in no material or substantive impact to infrastructure or adjacent lots.

9. Based on the facts set forth in this Decision and on the material facts represented by the applicant, whether or not repeated herein, this application does not substantially conflict with any land use policy.
10. This Decision is made in reliance on the present and continued existence of all physical features of the property (geological, topographical and vegetative including trees) cited in this Decision as mitigating a possible conflict with County land use policies.

RECOMMENDED ACTION:

The Gunnison County Commission recommends that the Final Plan Phases I and II for Skyland Filing III be approved with the following requirements.

1. Prior to action of the Board of County Commissioner's, the applicant's attorney will prepare a draft easement and conveyance document addressing potential relocation of the public access trail.
2. This approval addresses *only* Phase: Lots S-97 through S-155 and Phase 2: Lots S-155 through S-186 and Multi-family tract 6. Phase 3: Lots S-187 through S-198 shall be held in abeyance and no further action shall be taken on it, subject to the Planning Commission's conducting further review.
3. That the Development Improvements Agreement between the County and the proponent be reviewed and approved by the County Attorney prior to action by the Board.
4. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.
5. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.