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June 19, 2024

VIA HAND-DELIVERY AND EMAIL

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

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

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

Steve Mertes, Community Development Director
smertes@sedonaaz.gov

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

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

Enclosed with this letter are:

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

I. REQUEST FOR CITY-INITIATED ZONING REVERSION

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

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

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

² The Preserve development plan includes the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. CONCLUSION

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

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

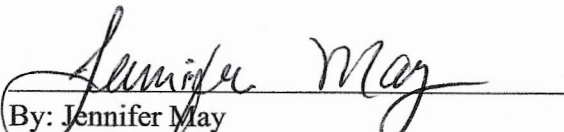
We appreciate your immediate attention to this matter and await your confirmation of the City's intention to proceed with the necessary legislative rezoning process.

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

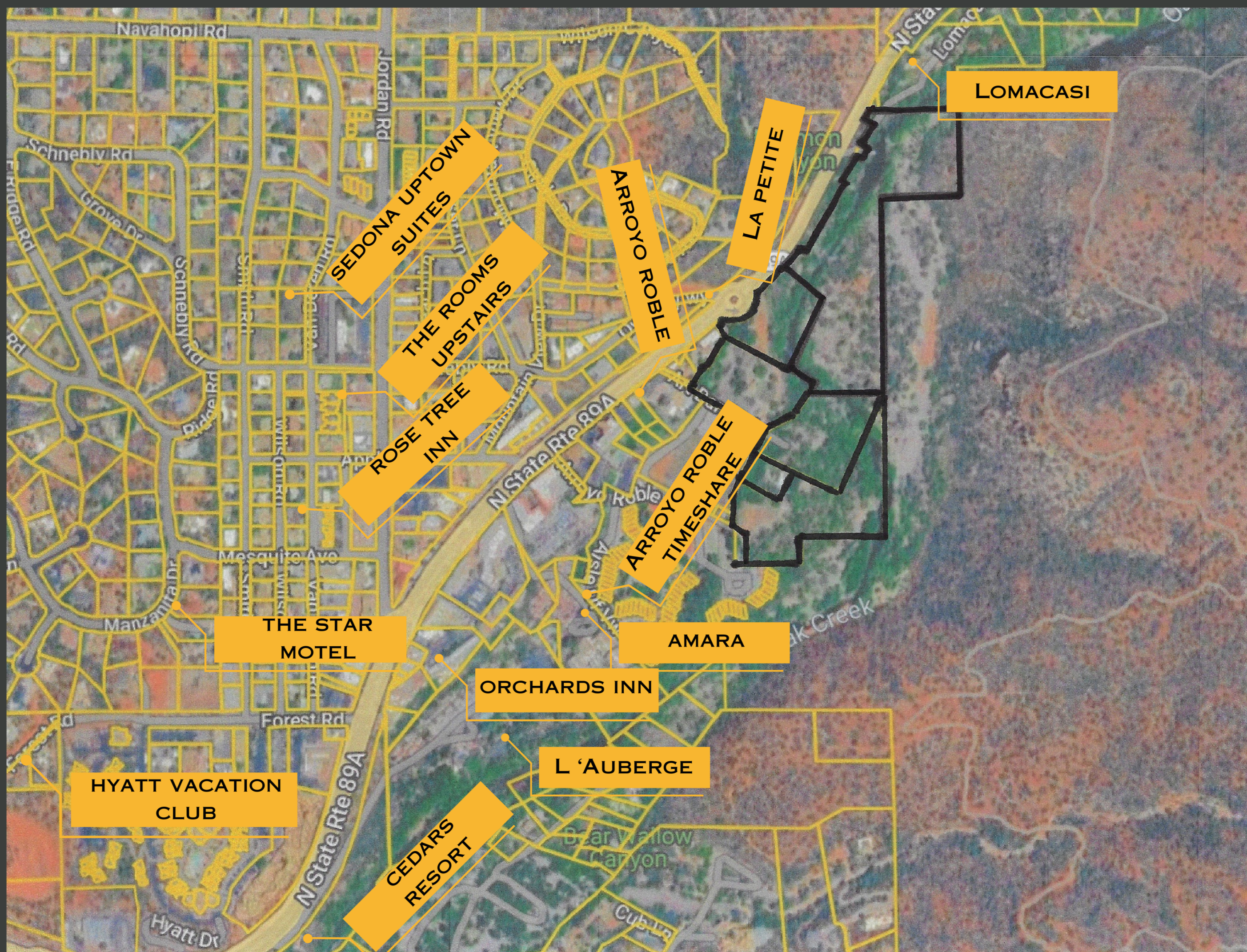


Stephen W. Polk, Esq.

APPROVED:
Dutchman's Cove LLC, an Arizona limited liability company



By: Jennifer May
Its: Manager



LOMACASI

LA PETITE

ARROYO ROBLE

ARROYO ROBLE
TIMESHARE

AMARA

ORCHARDS INN

L 'AUBERGE

CEDARS
RESORT

HYATT VACATION
CLUB

THE STAR
MOTEL

ROSE TREE
INN

THE ROOMS
UPSTAIRS

SEDONA UPTOWN
SUITES

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

June 18, 2024

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

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

To Whom It May Concern,

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

1. Reversionary Zoning Request:

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

2. Development Negotiations:

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

3. Diminution in Value Claim:

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

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

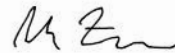
Please direct all correspondence and inquiries regarding this matter to the following contact person at Dutchman's Cove:

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

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

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

Sincerely,



Michael Zislis
Axy's Capital Total Return Fund LLC