

2007-009818

Klamath County, Oregon



05/31/2007 03:58:40 PM

Fee: \$36.00

AFTER RECORDING, RETURN TO:

Dean Hill
Connie Hill
Post Office Box 544
Merrill OR 97633

Returned @ Counter

WILLIAM GANONG

AFFIRMATIVE COVENANT

This Affirmative Covenant is made as of the 29th day of May, 2007 by Wasburn Bristol Investments, Inc. ("Owner").

RECITALS:

A. Owner owns certain real property in Klamath County, Oregon described as Parcel No. 1 of Land Partition 05-06, being a portion of Tract 11 of the Supplemental Plat of Altamont Ranch Tracts situated in the NW1/4 SW1/4 of Section 10, Township 39 South, Range 9 E., W.M., and also referred to as Klamath County Tax Assessor Lot No. R-3909-010CB-01000-000.

B. Owner filed an Application with Klamath County, Oregon ("County") requesting a Comprehensive Land Use Plan Map and Change of Zone from Heavy Industrial to General Commercial for the property described above, which totals approximately 2.77 acres.

C. On December 28, 2006, County entered its Order approving said request and rezoning the property to General Commercial (CG).

D. During the application and hearing process on Owner's CLUP and Zone Change request, Owner obtained from Kittelson & Associates, Inc. a detailed review of the traffic impacts likely to occur from the development of Owner's land for commercial purposes. In preparing said review and Technical Memorandum setting forth the findings of its study, Kittelson & Associates assumed that for purposes of the study the property would be developed at its most intense use, generating the maximum possible amount of average daily trips. In conducting its study, said consultant considered the potential impact of traffic generated by the development of the subject property at all major intersections in the general area including, but not limited to, Bristol Avenue/Washburn Way, Bristol Avenue/Altamont Avenue, Washburn Way/Laverne Avenue, Washburn Way/Southern Bypass (OR-140) westbound ramps, and Washburn Way/Southern Bypass (OR-140) eastbound ramps. The analysis prepared by said consultant was done to specifications of the Oregon Department of Transportation and Klamath County.

The Consultant's Technical Memorandum is dated December 12, 2006 and references

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Project #: 8296.0. Said analysis projects the impact of development of the subject property on the transportation system in the general area of the subject property occurring over the next 15 years. The conclusion of said study is:

"As described above, there is no adverse traffic impact to the system as a result of the proposed rezone of the site at Bristol Avenue & Washburn Way. With respect to traffic, it is recommended to approve the application." Page 22 "Technical Memorandum"
Project #: 8296.0.

E. Said Technical Memorandum was considered by County's Planning Commission and Board of County Commissioners on December 19, 2006 at public hearings by said bodies concerning Owner's Application.

F. Owner intends to construct a veterinary clinic on a portion of the property. However, the ultimate development plan for the remainder of the property is not yet known. To protect the Owner from any requirement during the next 15 years that the Owner incur the expense of a new traffic study, the Planning Commission recommended to the Board of Commissioners that Owner's property be exempt from requirements of a future traffic study for any development occurring during the period of the traffic study, i.e. 15 years. Said condition was acceptable to the Owner, and said condition was included in the Final Order approving the CLUP and Zone Change for the subject property.

G. By this Affirmative Covenant, Owner desires to provide an affirmative covenant that will run with the land described above, exempting said land for a period of 15 years from any requirement of County for a further or additional traffic study.

AGREEMENT

1. In consideration of the grant of the Comprehensive Land Use Plan map change and Zone Change described above, Owner hereby covenants and agrees that for a period of 15 years, commencing on December 19, 2006 and ending on December 18, 2021, Owner and Owner's successors in interest shall not be required by County to perform an additional or supplemental traffic impact analysis with respect to the development of the subject property.

2. This Affirmative Covenant is limited to development of the subject property for uses allowed outright or by conditional use in Klamath County's General Commercial Zone, as currently existing or as may be hereafter amended.

3. In the event that Owner or its successors in interest desire to change the zoning of the property or any portion thereof, as a condition of said zone change or any associated Comprehensive Land Use Plan map change, County may require Owner or its successors in interest to perform such additional traffic impact analysis as County may determine appropriate.

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4. Owner also agrees that Owner and its successors in interest shall not be financially responsible or otherwise required to participate in any traffic structure improvements in the study area including, but not limited to, traffic lights, traffic turn lanes, overpasses, bypasses, traffic lane widening, traffic signage, or any other traffic infrastructure improvements during said 15-year period.

5. No waiver, amendment, modification, or cancellation of any term or condition of this Affirmative Covenant shall be effective unless executed in writing.

6. This Affirmative Covenant shall be construed according to the laws of the state of Oregon, and Owner hereby submits to the jurisdiction of the courts of the state of Oregon for the county of Klamath.

7. This Affirmative Covenant shall be appurtenant to and run with the ownership, title, and development of the above-described property and any division thereof.

IN WITNESS WHEREOF This Affirmative Covenant has been executed by Owner as of the date first herein set forth.

WASBURN BRISTOL INVESTMENTS, INC.

By: Connie M. Hill

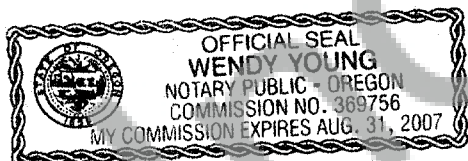
Its Authorized Agent

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me this 29 day of May, 2007 by Connie M. Hill, Authorized Agent of Wasburn Bristol Investments, Inc.

Wendy Young
Notary Public for Oregon

My Commission Expires: 8.31.2007



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ACKNOWLEDGMENT AND ACCEPTANCE

Klamath County, Oregon hereby acknowledges receipt of the foregoing Affirmative Covenant and acknowledges that it satisfies the requirements of #4 of the Staff Report incorporated by reference in the Final Order entered by the Board of Commissioners of Klamath County, Oregon in the Matter of CLUP/ZC 5-06, dated December 28, 2006.

Dated this 30th day of May, 2007.

Klamath County, Oregon

By: 
Alwin Turiel, Planning Director

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