


## REPORT TO CITY COUNCIL

**Approved by:**

  
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Gary Conte, Planning Manager

  
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Arnoldo Rodriguez, City Manager

**Council Meeting of:** August 19, 2020

**Agenda Number:** B-9

**SUBJECT:**

Agreement with Self-Help Enterprises to Ensure Precise Plan Compliance (Sugar Pine Village)

**RECOMMENDATION:**

Approve a Minute Order Authorizing City Manager to Enter into an Agreement, Subject to Approval as to Legal Form by the City Attorney, with Self-Help Enterprises to Ensure Site Plan to Comply with Conditions of Approval for Precise Plan PPL 2018-07 Previously Approved for the City Sugar Pine Village.

**SUMMARY:**

The City approved Precise Plan (PPL) 2018-07 with conditions specific to completing an acoustical analysis to demonstrate and confirm Highway 99 traffic noise levels can and will be reduced to acceptable levels within the affected PPL. The required acoustical analysis was not provided to the City until August 10, 2020. The findings of the analysis demonstrated portions of the affected PPL to be either “tentatively compatible” or “completely incompatible” with the City’s General Plan Noise Element acceptable noise exposure criteria. Moreover, the PPL does not meet City specifications or standards for alleys. Per Self-Help Enterprises, issuance of the Building Permits by August 21, 2020 is a funding requirement of the project. Insufficient time exists to correct and resubmit plans for approval and to issue one or more building permits by August 21, 2020. The proposed Agreement enables and requires the Applicant to correct PPL deficiencies to the City satisfaction subsequent to the issuance of building permit(s).

**DISCUSSION:**

PPL 2018-07 was approved in January 2019. Condition 51 of the PPL’s Conditions of Approval specified an acoustical analysis be completed prior to any submittal for building permit plan check to confirm noise levels will be reduced to acceptable levels. At a minimum, a 10-foot high decorative split-faced solid masonry block wall was to be constructed along the property line abutting Highway 99 to assist in reducing noise levels to within the City’s General Plan Noise Element standards.

The required acoustical analysis was not provided to the City in conjunction with the applicant’s first or second plan check submittals. The City ultimately received an acoustical analysis on August 10, 2020. The findings of the analysis demonstrated portions of the affected PPL to be either “tentatively compatible”

or “completely incompatible” with the City’s General Plan Noise Element acceptable noise exposure criteria for the PPL’s common outdoor use areas or for its second- or third-story receiver locations even with the construction of a 10-foot high sound wall abutting the Highway 99 right-of-way.

Conditions 27 and 32 of the PPL’s Conditions of Approval require the developer to pave all alleys butting the site or to be utilized for ingress to or egress from the site to be paved per current standards. The PPL propose to improve the alley to be used for ingress and egress purposes to only a width of 15 feet. City standard is 20 feet. Alley improvements, pursuant to City standards, will require PPL modifications such as, but not limited to, relocation of driveway, security gate, fencing, landscape, walkways to provide the additional 5 feet.

As an affordable housing project, the project is subject to a series of federal and State funding programs. The funding programs include conditions such as strict adherence to pre-determined schedules (i.e., issuance of building permits). Failure to comply, jeopardizes receipt of funds. Building Permit(s) must be issued no-later than August 21, 2020 to comply with funding program specifications. Insufficient time exists to correct and resubmit plans for approval to issue Building Permit(s) by August 21, 2020.

The proposed Agreement enables building permits to be issued on or before August 21, 2020 and for the City to work with the Applicant to bring the project in compliance with the approved Conditions of Approval. Agreement includes specifications removing balconies from second- and third-floors facing or perpendicular to Highway 99 and replacing balcony doors with fixed windows with appropriate treatment and widening the alley to meet City standards and specifications. Project plans will be corrected to the satisfaction of the City. Site construction, apart from grading, cannot commence until the Revised Site Plan meets the satisfaction of the City and the plan is consistent with the Conditions of Approval. Costs for corrections to plans and all subsequent change orders will be borne by the Applicant. Final inspection and occupancy permit will be subject to corrections being implemented.

**FISCAL IMPACT:**

City will not be fiscally impacted by the Authorization of an Agreement between the City and Self-Help Enterprises, Inc. Costs necessary to bring the site plan in compliance with approved PPL Conditions of Approval will be borne by Self-Help Enterprises, Inc. and related parties.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The first of the four vision statements, “A Well-Planned City” promotes affordable, quality housing that is accessible to all its residents.” Strategy 134, which envisions “well-planned neighborhoods throughout Madera that promote connectivity and inclusiveness with a mix of densities,” and Strategy 101.8, which “promote[s] and encourage[s] development and redevelopment of low- and moderate-cost housing.” The PPL’s Conditions of Approval advances both the vision statement and strategies are intended to provide affordable quality housing for low- and moderate-cost housing.

**ALTERNATIVES:**

Should Council take no action on the Agreement, project financing will be jeopardized. Should the request be denied, the possibility the project would not be constructed exists.

**ATTACHMENTS:**

1. Agreement for Amendment of Site Plan to Substantially Comply with the Conditions of Approval for Precise Plan 2018-07

**AGREEMENT FOR AMENDMENT OF SITE PLAN TO SUBSTANTIALLY COMPLY WITH  
CONDITIONS OF APPROVAL FOR PRECISE PLAN 2018-07**

This Agreement is entered into effective the \_\_\_\_ day of August, 2020, between the City of Madera, a Municipal Corporation, herein referred to as “City” and Self-Help Enterprises, Incorporated, a Professional Corporation, herein referred to as “Applicant.”

**RECITALS**

**WHEREAS**, City approved Precise Plan 2018-07 (“Precise Plan”) in January 2019 for the Self-Help Apartment Complex (now commonly referenced as “Sugar Pine Village”) submitted by Applicant, for the property generally located approximately 300 feet east of the intersection of Lewis Street and Madera Avenue; and

**WHEREAS**, the Conditions of Approval for the Precise Plan included conditions specific to completing an acoustical analysis to confirm noise levels will be reduced to acceptable levels; and

**WHEREAS**, the acoustical analysis was not provided to the City in conjunction with the Applicant’s first or second plan check submittals; and

**WHEREAS**, an acoustical analysis (Revised Acoustical Analysis Sugar Pine Village / State Route 99) was subsequently provided to the City on August 10, 2020; and

**WHEREAS**, the acoustical analysis findings demonstrated portions of the project development to be “tentatively compatible” or “completely incompatible” with the City’s General Plan Noise Element acceptable noise exposure criteria; and

**WHEREAS**, the construction of 10-foot high sound wall along the Highway 99 right-of-way will not provide effective noise attenuation for common outdoor use areas or for second- and third-floor receiver locations; and

**WHEREAS**, the plans recently submitted for plan check does not meet City specifications or standards for alleys; and

**WHEREAS**, the plans still have more than a dozen Building, Engineering, Fire and Planning comments that have not been resolved / corrected by the Applicant; and

**WHEREAS**, the plans are not currently “Permit Ready;” and

**WHEREAS**, the plan recently submitted for plan check, approval, and issuance of a Building Permit were not in substantial compliance with Conditions of Approval; and

**WHEREAS**, the Project has received funding from multiple sources and requires issuance of a Building Permit on or before August 21, 2020; and

**WHEREAS**, there is insufficient time for the Applicant to prepare, submit, and obtain approval of updated building elevations from the City on or prior to August 21, 2020; and

**WHEREAS**, Applicant has represented to the City that the failure to receive Building Permit on or before August 21, 2020, will jeopardize project funding; and

**WHEREAS**, project may proceed with construction allowed under a grading permit, but may not proceed with construction allowed under a building permit; and

**WHEREAS**, City is desirous of ensuring that affordable housing gets built in the City and is amenable to issuance of a building permit(s) if Applicant shall immediately commence work on amendment of the site plan improvements consistent with the Precise Plan Conditions of Approval and obtains approval of the same from the City within 180 days of execution of this Agreement.

## **AGREEMENT**

Based on the foregoing recitals and the terms and conditions herein, City and Applicant agree as follows:

### **A. APPLICANT REQUIREMENTS**

1. Applicant understand that time is of the essence and commit to the following in consideration of the City's issuance of the building permits.
  - a. In consultation and coordination with the City, Applicant will develop a Revised Site Plan for Precise Plan (PPL) 2018-07 (Sugar Pine Village) previously approved by the City ("Revised Site Plan").
  - b. The Revised Site Plan shall remove individual balconies from the second- and third-floors facing and perpendicular to Highway 99. Balcony doors to be replaced with fixed windows with a minimum STC rating of 35.
  - c. The Revised Site Plan shall relocate outdoor activity areas (i.e., BBQ and sports areas) to an area or areas which meet the City's exterior noise "Completely Compatible" for all residential (single- and multi-family) land use designations.
  - d. The applicant shall submit to the City a revised acoustical analysis demonstrating noise exposure at all planned outdoor activity areas, individual balconies and patios, and building interiors meet the City's "Completely Compatible" noise level requirements when mitigated. Where City's noise level requirements are not met, the Applicant shall revise Site Plan to meet requirements.

- e. The Revised Site Plan shall widen the north-south aligned alley leading from the Site Plan's easterly most access to East Dunham Street along the Site Plan's frontage to meet City standards and specifications.
  - f. Revised Site Plan shall incorporate all City comments / corrections resulting from Applicant's first and second plan check submittals.
2. The Revised Site Plan shall be updated, revised, or modified to the satisfaction of the City as the City determines in its sole discretion is reasonably necessary to bring the Revised Site Plan into consistency with the Conditions of Approval. Applicant commits to complete the Revised Site Plan for submission to City within 90 days of the date of this Agreement.
  3. Applicant shall perform the requirements of this Agreement at no expense to City. Applicant shall bear design, permitting, inspection and change order costs and fees incurred to implement this Agreement, and shall pay the City for all costs associated with processing and approving the Site Plan, the preparation and approval of this Agreement, and any other related expenses incurred by the City.
  4. Applicant agrees that it is not entitled to final inspection or the issuance of an occupancy permit until the Revised Site Plan has been approved by the City, and building is constructed in accordance with said Revised Site Plan.
  5. Applicant agrees that site construction, apart from site grading, cannot commence until the Revised Site Plan meets the satisfaction of the City and the Plan is consistent with the Conditions of Approval.
  6. If the Revised Site Plan is not resolved by the time construction arrives at the stage to construct building pads, buildings, drives, on-site utilities or infrastructure, Applicant agrees the City has the authority to stop construction until resolved to the City's satisfaction.

**B. CITY RESPONSIBILITIES:**

1. City shall issue building permit(s) for PPL 2018-07 on or before August 21, 2020 subject to approval of this Agreement.
2. City shall expedite plan check(s) of the Revised Site Plan. Expedited plan check(s) to be completed within 2 to 4 weeks from date of each submittal.
3. If the Revised Site Plan is not resolved by the time construction arrives at the stage to construct building pads, buildings, drives, on-site utilities or infrastructure, City has the authority to stop construction until resolved.

4. Nothing herein requires that City issue occupancy permits that do not meet City standards and applicable codes.

### **C. ADDITIONAL REQUIREMENTS**

1. It is understood and agreed that Applicant and the Applicant's Architect, Engineers, Acoustical Consultant and others retained by the Applicant to perform the necessary duties to prepare and submit a Revised Site Plant to the satisfaction of the City are and shall remain independent contractors under this Agreement.
2. To the furthest extent allowed by law, Applicant agrees to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Applicant or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making or performance of this Agreement; (ii) the design, installation, operation, removal or maintenance of the work, including those associated with the Improvements, by Applicant and Applicant's employees, officers, agents, contractors or subcontractors; (iii) the inspection, maintenance, or other work, including those associated with the Improvements, by City including that necessitated by Applicant's failure to timely perform under this Agreement; and iv) the refusal by a subsequent owner to comply with this Agreement. Applicant's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.
3. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
4. If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses

incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

5. Except as provided by Paragraph 4 of Section C regarding attorney's fees and legal expenses, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed Applicant's sole legal remedy for breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.
6. The provisions of this Agreement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any one provision thereof. The Courts shall liberally interpret this Agreement in favor of the City and any benefited properties.
7. This document shall constitute an Agreement in favor of the City of Madera and shall run with the land subject to the Precise Plan and be binding upon the undersigned, its grantees, heirs, and successors and assigns. The Applicant shall provide to every prospective purchaser of any portion of the property subject to the Precise Plan of notice of this Agreement and its obligations.
8. This Agreement shall remain in full force and effect until such time as the City approves the Revised Site Plan, and is paid in full for all of its costs. Notwithstanding, Paragraphs 2, 4, and 5 of this Section shall survive termination of this Agreement. The Planning Manager or Director of the Planning Department of the City of Madera is authorized to issue and record a release of this Agreement with the Madera County Recorder.
9. This Agreement requires Applicant to obtain a subordination agreement from any person, entity, partnership, or corporation that may have a beneficial interest in the property subject to the Precise Plan. The subordination agreement(s) shall be in the form approved by the City and shall be recorded at the same time that this Agreement is recorded.

**IN WITNESS WHEREOF**, the parties duly executed this Agreement.

**CITY OF MADERA:**

By: \_\_\_\_\_  
Arnoldo Rodriguez, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Alicia Gonzales, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Hilda Cantú Montoy, City Attorney

**COVENANTOR:**

Self-Help Enterprises, Incorporated

By: \_\_\_\_\_\*  
Print Name:  
Title: President and Chief Executive  
Officer

**\*NOTARY ACKNOWLEDGEMENT  
REQUIRED**