

BILL NO. 2040

ORDINANCE NO. 1819

**AN ORDINANCE ADDING, CHANGING AND DELETING PORTIONS OF SECTION 1003.187 PLANNED ENVIRONMENT UNIT PROCEDURE (PEU) OF THE CITY OF CHESTERFIELD ZONING ORDINANCE (PZ 37-2001 CITY OF CHESTERFIELD)**

**WHEREAS**, new types of development in residential uses have become available and have not been addressed by the Zoning Ordinance, and,

**WHEREAS**, other types of changes have become necessary for clarification and administration of said Zoning Ordinance; and,

**WHEREAS**, the Planning Commission concurs with the recommendation of the Department of Planning to approve these changes; and,

**WHEREAS**, the Planning and Zoning Committee, having considered said request, recommended approval of P.Z. 37-2001 City of Chesterfield; and,

**WHEREAS**, the City Council recommended approval of P.Z. 37-2001.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS, COUNTY, MISSOURI, AS FOLLOWS:**

**Section 1.** The City of Chesterfield Zoning Ordinance is hereby amended and agrees to make the necessary changes thereto, as set out in Attachment "A" which is attached hereto and made a part hereof..

**Section 2.** The City Council, pursuant to the petition filed by City of Chesterfield in P.Z. 37-2001, requesting the amendment embodied in this ordinance, and pursuant to the recommendations of the City of Chesterfield Planning Commission that said petition be granted and after public hearing, held by the Planning Commission on November 26, 2001, does hereby adopt this ordinance pursuant to the power granted to the City of Chesterfield under Chapter 89 of the Revised Statutes of the State of Missouri authorizing the City Council to exercise legislative power pertaining to planning and zoning.

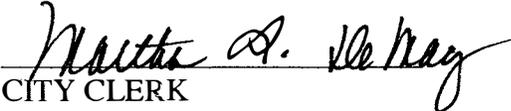
**Section 3.** This ordinance shall be codified within the Municipal Code of the City of Chesterfield.

**Section 4.** This ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 4th day of February, 2002.

  
MAYOR

ATTEST:

  
CITY CLERK

## Attachment A

**1003.187 Planned environment unit procedure (PEU) to be amended to read as follows (changes are shown in bold):**

1. *Scope of provisions.* This section contains the regulations of the planned environment unit procedure. These regulations are supplemented and qualified by additional general regulations appearing elsewhere in this appendix which are incorporated as part of this section by reference.

2. *Statement of intent.* **The intent of this section is to provide a voluntary and alternate zoning procedure in the “E-1”, “E-2”, “E-3”, “R-2”, “R-3”, “R-4”, “R-5”, “R-6A”, “R-6AA”, “R-6”, “R-7”, and “R-8” all Residence Districts in order to permit flexibility in building types, encourage economic and energy efficient subdivision design, and encourage the provision of supporting community facilities in the development of diverse, sound, urban developments under conditions of approved site and development plans.**

3. *Applicable zoning districts and permitted variations.* The applicable zoning districts in which the density development procedure may be used and the variations that may be permitted through use of the procedure shall be as set out below:

- (1) The planned environment unit procedure may be utilized for developments containing five (5) or more lots or units in the ~~“E-1”, “E-2”, “E-3”, “R-2”, “R-3”, “R-4”, “R-5”, “R-6A”, “R-6AA”, “R-6”, “R-7”, and “R-8”~~ all Residence Districts.
- (2) This procedure may be used to reduce the sizes and yard setbacks of some lots, as described below.

Lots that have a portion of their area within 50 feet of a boundary of the site will be treated as perimeter lots, unless the boundary they are on or close to adjoins a more dense residence district. Lots that have no portion of their area within 50 feet of a boundary of the site or are located on or close to a boundary that adjoins a more dense residence district will be treated as interior lots. [Note: A lot that is on or close to more than one boundary of the site shall be considered to be a perimeter lot if at least one of the boundaries it is on or close to does not adjoin a more dense residence district.]

Perimeter lots in detached single family developments must have areas in accordance with the Required Minimum Lot Area of District column in the table below. No reductions in setbacks are permitted for perimeter lots.

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In single family attached developments and multi family developments, perimeter units/buildings/structures (including decks) must maintain a fifteen (15) foot setback from the site boundary.

Interior lots may be reduced in size in accordance with the table below. Yard setbacks for interior lots may also be reduced in accordance with the table.

Zoning District	Required Minimum Lot Area of District	Permissive Minimum Lot Area of interior lots of Planned Environment Unit –Procedure for single- family detached developments	Permissive Minimum Land Area per unit in Planned Environment Unit Procedure for single-family attached developments	Permissive Minimum Land Area per unit in Planned Environment Unit Procedure for multi-family developments	Permissive Yard Setback Requirement of interior lots of Planned Environment Unit Procedure
"R-2"	15,000 sq. ft.	10,000 sq. ft.	10,000 sq. ft.	N/A	As in "R-3" District
"R-3"	10,000 sq. ft.	7,500 sq. ft.	7,500 sq. ft.	N/A	As in "R-4" District
"R-4"	7,500 sq. ft.	6,000 sq. ft.	6,000 sq. ft.	N/A	As in "R-5" District
"R-5"	6,000 sq. ft.	4,500 sq. ft.	4,500 sq. ft.	N/A	As in "R-6A" District
"R-6A"	4,500 sq. ft.	4,500 sq. ft.	4,500 sq. ft.	4,000 sq. ft.	As in "R-6AA" District
"R-6AA"	4,500 sq. ft.	4,500 sq. ft.	4,500 sq. ft.	3,000 sq. ft.	As in "R-6" District
"R-6"	4,500 sq. ft.	4,500 sq. ft.	4,500 sq. ft.	2,000 sq. ft.	As in "R-7" District
"R-7"	4,500 sq. ft.	4,500 sq. ft.	4,500 sq. ft.	1,750 sq. ft.	As in "R-8" District
"R-8"	4,500 sq. ft.	4,500 sq. ft.	4,500 sq. ft.	500 sq. ft.	As in "R-8" District

~~For minimum lot sizes allowable for other than single family detached developments, please see the Zoning District requirements referenced for the setbacks.~~

Each lot shall provide frontage in accordance with the Subdivision Ordinance of the City of Chesterfield.

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- (3) The planned environment unit procedure may authorize attached single-family dwellings in the **R2, R3, and R4 Residence Districts**. The maximum number of units permitted shall be calculated as set out in subsection 5(2).

4. *Authorized developments and limitations.* The planned environment unit procedure may authorize the following development types and standards:

- (1) Any residential use **as established in the underlying district**, including earth sheltered housing, and supporting community facilities.
- (2) Any noncommercial use permitted in the zoning district within which the planned environment unit lies. The area and yard requirements for non-dwelling uses shall not be diminished unless authorized by the ordinance authorizing the planned environment unit.
- (3) Local public utility facilities.
- (4) In planned environment unit developments containing forty (40) or more lots or units, the following commercial may be authorized, under the restrictions listed below:

Uses authorized:

- (a) Barber or beauty shops.
- (b) Child care centers, nursery schools, or day nurseries.
- (c) Newspaper stands.
- (d) Food or drug stores.
- (e) Laundry or dry cleaning pick-up stations.
- (f) Self service laundries or dry cleaning facilities.
- (g) Restaurants, excluding fast food restaurants.

Restrictions:

- (a) The commercial uses shall not occupy more than five (5) percent of the total gross floor area of all residential buildings within the development, excluding garages.
- (b) Primary access to the commercial uses shall be from roads and walkways within the development and uses shall be oriented to and coordinated with the total development. The commercial uses may not be located on any roadway that existed prior to the submission of the request for the PEU. The commercial uses must be screened from any pre-existing arterial or collector street by at least one row of lots for residential use.
- (c) No freestanding signs shall be allowed for the commercial uses. Attached business signs, attached to the fronts of the buildings with commercial uses, may be authorized by the ordinance authorizing the development, but no one sign shall exceed fifty (50) square feet in size. Attached business

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signs must be oriented toward the development - if attachment to the front of the building would orient them toward the outside of the development, they shall not be permitted.

- (5) Perimeter setbacks and height requirements shall be as established in the ordinance authorizing the planned environment unit, with the following restrictions:
- (a) Height limitations for structures may be modified by the Planning Commission with respect to any structure proposed in an application for a planned environment unit, provided that any residential structure exceeding three (3) stories in height or thirty-five (35) feet shall be set back from all planned environment unit boundary lines at least one additional foot for each foot of height above thirty-five (35) feet above the average finished ground elevation at the perimeter of such structure.
  - (b) Setbacks along boundary lines of a planned environment unit and off-street parking requirements applicable in any district shall in no event be diminished by the Planning Commission. However, the Planning Commission may require that open parking spaces be depressed below the grade of the remainder of the property or screened by walls, fences, or plant material, or by both methods in order to preserve and complement the general character of any existing developments on adjacent properties.
  - (c) In the event that greater than fifty (50) percent of the existing dwelling structures on the same side of a street and in both directions from the proposed development, for a distance of five hundred (500) feet or to the nearest intersecting street, whichever distance is less, have a variation in front yard setbacks of no more than ten (10) feet, the required front yard for structures on that side of the street in the proposed development shall be the average setback of the existing dwelling structures with less than a ten (10) foot variation in front yard setback. However, in no case shall any building be located closer than fifteen (15) feet from any roadway right-of-way line, nor shall a setback of greater than sixty (60) feet be required.

5. *Procedures.* Procedures for filing, review, and approval of the planned environment unit procedure shall be as follows:

- (1) *Application.* Application for a planned environment unit for a specific tract of land shall be initiated by the filing of a verified application by the owner or owners of record, or owners under contract of a lot or tract of land, or their authorized representatives. Application shall be addressed to the City of Chesterfield Planning Commission and submitted to the Department of Planning

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upon forms prescribed for such purpose by the Planning Commission and accompanied by the following:

- (a) Filing fee per requirements of Section 1003.210, "Fees."
- (b) Preliminary development plan, which shall contain not less than the information required on a sketch plan in accord with Section 1005.050 of the City of Chesterfield Subdivision Ordinance, and shall also include the following:
  - (i) An outboundary plat of the tract with a land surveyor's seal and statement of verification regarding the source of boundary dimensions, bearings, and source of contour data.
  - (ii) Type, number, and general location of proposed lots or units.
  - (iii) Existing and proposed contours at vertical intervals of not more than five (5) feet referred to sea level datum utilizing USGS data. Floodplain areas shall be delineated.
- (2) *Density calculations.* The planned environment unit shall not contain more units than would be permitted under the regulations of the residence district or districts within which the development lies. The maximum number of lots or units allowable shall be calculated by dividing the net area of the development by the minimum lot area requirements for a residential unit of the residence district or district in which the subdivision is located. The net area is gross area of the development minus the following:
  - (a) Land within the one-hundred-year floodplain elevation, as identified by the effected Flood Insurance Rate Maps, excluding land to be reclaimed from the floodplain.
  - (b) Land within the one-hundred-year floodplain elevation, as identified by the effected Flood Insurance Rate Maps, excluding land to be reclaimed from the floodplain, which is in excess of one-third (1/3) of the land not within or to be reclaimed from the floodplain.
  - (c) Land which is utilized for roadway right-of-way purposes, excluding right-of-way dedication for widening existing roadways.
- (3) *Public hearing.* A public hearing on the petition shall be held by the Planning Commission in the same manner and with the same public notice procedure as required for a change of zoning. The public hearing shall be held within forty-five (45) days of verification that the application meets the minimum application requirements.

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- (4) *Planning Commission recommendation.* Upon review of the application, the Planning Commission may recommend approval subject to appropriate conditions or denial. Conditions may relate to, but need not be limited to, the following:
- (a) Conditions relative to the type and extent of improvements and landscaping.
  - (b) Conditions governing development, improvements, and maintenance of common ground.
  - (c) Conditions relative to the maximum or minimum gross floor area per dwelling unit.
  - (d) Conditions relative to sign regulations.

When approval has been recommended subject to conditions, and the conditions would cause a substantial change in the site plan presented at public hearing, the Commission shall withhold forwarding a recommendation to the City Council pending receipt of a revised plan from the petitioner reflecting compliance with the conditions. The petitioner shall be allowed a maximum of forty-five (45) days to submit the revised plan to the Department of Planning. Said plan shall be reviewed by the Planning Commission at its next executive meeting. If the petitioner fails to submit the revised plan, the Planning Commission shall forward its recommendations to the City Council. The Planning Commission's recommendation shall be based upon whether the planned environment unit proposal is consistent with good general planning practice and with good site planning; can be constructed and operated in a manner that is not detrimental to the permitted uses in the district; would be visually compatible with the uses in the surrounding area; and is deemed desirable to promote the general welfare of the City of Chesterfield. The Planning Commission shall also consider the architectural, landscape, and other relationships, which may exist between the proposed development and the character of the surrounding neighborhood and shall prescribe and require such physical treatment or other limitations as will, in its opinion, enhance the neighborhood character. The recommendation, along with preliminary plans and conditions where approval has been recommended, shall be forwarded to the City Council for its consideration.

- (5) *City Council action.* Upon receipt of the Planning Commission's recommendation, the City Council shall either approve the planned environment unit by approving an ordinance authorizing the development or deny the application. If the application is approved, the matter shall be returned to the Planning Commission for consideration of a site development concept plan.

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6. *Appeal or protest, procedure.*

- (1) *Appeal by petitioner to recommendation of denial.* The petitioner may file an appeal to the City Council of a Planning Commission recommendation of denial of an application for a planned environment unit procedure or an amendment thereto in accord with the provisions of Section 1003.193, "Appeal and Protest Procedure for Special Procedures."
- (2) *Protest by specified nearby property owners to recommendation of approval.* Specified nearby property owners may file a protest with the City Council against the Planning Commission's recommendation of approval of an application for a planned environment unit development procedure or an amendment thereto in accord with the provisions of Section 1003.193, "Appeal and Protest Procedure for Special Procedures."

7. *Site concept plan and section plan.* Requirements for site development concept plans and section plans shall be as follows:

- (1) *Site development concept plan requirements.* Site development concept plans shall include, in addition to specific information required by the ordinance authorizing the development, the following general information:
  - (a) Outboundary plat and legal description of the property.
  - (b) Location of all roadways adjacent to the property and general location, size, and pavement widths of all interior roadways.
  - (c) General design of the development including unit types (i.e., single-family detached, single-family attached, garden apartment), number of each unit type proposed, location of units, minimum and maximum size of single-family lots, approximate size of multiple-family structures, and location and size of common areas and recreation facilities.
  - (d) Location and size of any commercial uses; types of uses proposed and general parking layout.
  - (e) Zoning district lines and floodplain boundaries.
  - (f) Density calculations.
- (2) *Planning Commission review.* The Planning Commission shall determine if the site development concept plan complies with the conditions of the ordinance authorizing the development. The Planning Commission's approval or disapproval of the site development concept plan shall also be based upon whether the plan is

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consistent with good general planning practice, consistent with good site planning, can be constructed and operated in a manner that is not detrimental to the permitted uses in the district, would be visually compatible with the uses in the surrounding area, and is deemed desirable to promote the general welfare of the City of Chesterfield. The Planning Commission shall also consider architectural, landscape, and other relationships which may exist between the proposed development and the character of the surrounding neighborhood and shall prescribe or require such physical treatment or other limitations as will, in its opinion, enhance the neighborhood character.

- (3) *Recording.* Upon approval of the site development concept plan by the Planning Commission, the owner(s) shall, within sixty (60) days of the approval date, record the plan with the St. Louis County Recorder of Deeds as a planned environment unit. Failure to record the site development concept plan within the time specified shall cause approval of the plan to terminate. An extension of recording time may be granted by the Planning Commission for a period not to exceed one hundred eighty (180) days from the date of approval by the Planning Commission. A copy must also be filed with the City of Chesterfield.
- (4) *Site development section plans.* A site development section plan for each plat or phase of the planned environment unit shall be submitted to the Department of Planning for review and approval. The site development section plan shall contain such information as is required by the ordinance establishing the planned environment unit, in addition to such other information required on a preliminary plat in accord with Section 1005.060 of the City of Chesterfield Subdivision Ordinance. The plans shall be retained on file by the Department of Planning. An approved site development section plan shall constitute an approved preliminary plat for subdivision purposes. Site Development Plan submittal shall include a Tree Preservation Plan and Grading Plan. No building permits or authorization for improvement, development, clearing, grubbing or grading for any use authorized under provisions of the P.E.U. ordinance governing the tract shall be issued prior to approval of such plans.

With the approval of the site development section plan for the last phase, plat or when 80% of the total project tract has been developed or platted, a plan indicating the approved design for the entire development shall be recorded with the St. Louis County Recorder of Deeds, and a copy filed with the City of Chesterfield.

Where elements within the designated planned environment unit boundary are necessary to the support of a given section, but not included within the section boundary, these elements shall be included on a site plan accompanying, or a part of, the site development section plan.

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For developments consisting of a single plat or phase, the site development concept plan may include all the information required for concept plans and section plans, and the requirement for site development section plans may be waived.

8. *Procedures to amend the planned environment unit ordinance or required plans.* In order to amend provisions of an existing planned environment unit ordinance or to amend a site development concept or section plan approved for the planned environment unit, the procedure shall be as follows:

- (1) *To amend the planned environment unit ordinance:*
  - (a) The property owner or authorized representative shall submit a written request to amend ordinance conditions to the Department of Planning for review. The Department shall then evaluate the request for consistency in purpose and content with the nature of the proposal as originally advertised for public hearing.
  - (b) If the Department of Planning determines that the requested amendment is consistent in purpose and content with the original proposal as advertised, the Department shall so report to the Planning Commission. The Planning Commission shall review the request and the report of the Department, and then forward a recommendation to the City Council. A recommendation of approval shall include conditions to be included in the amended ordinance.
  - (c) If the Department of Planning determines that the requested amendment is not consistent in purpose and content with the nature of the proposal as originally advertised for public hearing, the Department shall so report to the applicant and the Planning Commission. The Planning Commission shall then review the proposed ordinance amendment and forward a recommendation to the City Council. The Planning Commission may, if deemed necessary, forward a resolution of intent to the City Council for the purpose of a new public hearing on the matter in accord with proceedings specified in Section 1003.300, "Procedure for Amending the Zoning Ordinance."
- (2) *To amend the site development concept or section plans:*
  - (a) The property owner or authorized representative shall submit an amended site development concept or section plan to the Department of Planning for review. The Department shall then evaluate the request for consistency in purpose and content with the nature of the proposal as originally advertised for public hearing, the preliminary development plan approved

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by the City Council, and the initial site development concept plan approved by the Commission.

- (b) If the Department of Planning determines that the proposed amendment to the site development concept plan is not in conflict with the original proposal as advertised and the approved preliminary development plan, and meets all conditions of the planned environment unit procedure ordinance, said plan shall be reviewed and approved by the Planning Commission. Said amended plan shall be recorded with the St. Louis County Recorder of Deeds within sixty (60) days of Commission approval, with a copy to be filed with the City of Chesterfield.

However, when conditions of a particular planned environment unit procedure ordinance are amended which necessitate an amended site development concept plan, the Commission shall review and if approved, said amended plans shall be recorded with the St. Louis County Recorder of Deeds within sixty (60) days of Commission approval, with a copy to be filed with the City of Chesterfield.

- (c) If the Department of Planning determines that the proposed amendment to the site development concept plan is not consistent in purpose and content with the nature of the proposal as originally advertised for public hearing, or with the preliminary development plan approved by the City Council; the Department shall so report to the applicant and the Planning Commission. The Planning Commission shall then review the proposed site plan amendment and make a final determination.

The Planning Commission may, if deemed necessary, forward a resolution of intent to the City Council for the purpose of a new public hearing on the matter in accord with proceedings specified in Section 1003.300, "Procedure for Amending the Zoning Ordinance."

- (d) If the Department of Planning determines that the proposed amendment to the site development section plan is not in conflict with the approved site development concept plan and meets all conditions of the planned environment unit ordinance, the Department may approve said amended plan. Said plan shall be retained on file by the Department of Planning.

9. *Appeal to Commission of a decision by the Department in reviewing development plans.* The petitioner/developer may appeal to the Planning Commission from a decision by the Department of Planning, in cases where the Department of Planning is authorized to review development plans. The petitioner shall have a fifteen-day period in which to file a written appeal and plan with the Commission. The written appeal, stating the reasons for the appeal, shall be submitted to the Department. The Commission will make the final determination of the

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matter. No exceptions will be granted that are in violation of the particular ordinance governing the development plan.

10. *Time periods for submission of plans and commencement of construction and extensions of time.*

- (1) *Site development concept plan.* The site development concept plan shall be submitted to the Planning Commission for review within eighteen (18) months after approval of the application by the City Council unless such time is extended by the Planning Commission. One such extension shall be allowed for a maximum of eighteen (18) months.
- (2) *Commencement of construction.* Substantial construction shall commence within two (2) years of approval of the site development concept plan, unless otherwise authorized by ordinance. Where due cause is shown by the petitioner, the Commission may extend the period to commence construction for not more than one additional year. As used in this section, substantial construction shall mean final grading for roadways necessary for first approved plat or phase of construction and commencement of installation of sanitary and storm sewers.
- (3) *Appeal of a denial of an extension of time.* Upon the denial by the Planning Commission of a request to extend the time for the filing or recording of a site development concept plan; or to commence construction, the applicant may file an appeal with the City Council requesting a determination from that body, except in such instances where the maximum time extensions have been granted.

A notice of appeal shall be filed within fifteen (15) days of action by the Commission. Notice of appeal to the City Council shall be in writing and shall be filed in duplicate with the City Clerk of the City Council. The applicant shall have an additional thirty (30) days to file the appeal. The appeal shall set forth the specific causes why the previously approved time for the filing or recording of a site development concept plan, or beginning construction could not be met, and within what period of time such requirement can be met.

Upon receipt of an appeal for a time extension, the City Council shall refer same to the Planning Commission for report therein as to whether or not the facts offered in the appeal have or have not justified the requested time extension. The City Council on receipt of the Commission's report may affirm, reverse, or modify, in whole or in part, any determination of the Planning Commission or may grant or deny any request for an extension of time upon which the Planning Commission has taken action. An affirmative vote of five members of the whole City Council shall be required to reverse, modify, or amend any determination of the Planning Commission. A majority vote of the whole City Council shall be sufficient to affirm any determination of the Planning Commission.

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- (4) *Termination of planned environment unit.* In the event the site development concept plan is not submitted or substantial construction has not commenced within the prescribed time limits, the planned environment unit shall terminate, and the Planning Commission shall within forty-five (45) days initiate a resolution of intent for the purpose of a new public hearing to revert the property to its prior classification in accord with the proceedings specified in Section 1003.300, "Procedure for Amending the Zoning Ordinance." Where rezoning has been granted in conjunction with a planned environment unit and said planned environment unit has terminated, no building permit shall be issued on that property until completion of action by the City Council on a resolution of intent to rezone said property in accord with the provisions of the above noted section.

11. *Dedications for public schools and public parks.* A planned environment unit may include land designated for dedication for public school or public park use, which land may be considered part of the gross acreage of the development in computing the maximum number of lots that may be created or dwelling units that may be authorized, provided that:

- (1) The area of the proposed planned environment unit is at least thirty (30) acres in the case of a public school dedication and sixty (60) acres in the case of a public park dedication, unless otherwise authorized or required by the City of Chesterfield.
- (2) No tract of less than five (5) acres is designated for dedication for public school use, or ten (10) acres for public park use. However, a tract of land less than this minimum may be accepted for dedication for public school or public park use if it is an addition to an existing or proposed park or school site respectively, or is recommended by the Department of Public Works as a part of a system of hiking and riding trails.
- (3) The proposed school site is compatible with a generalized plan for school locations published by the school district.
- (4) Prior to approval by the Planning Commission of a site development concept plan indicating a public park or public school site, a written statement shall be received from the Department of Public Works recommending approval of the proposed park dedication; or a written notification shall be received from the school district that the school district has agreed to accept the public school site dedication.

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- (5) Prior to approval of a site development concept plan, a written agreement between the petitioner and the school district shall be submitted to the Planning Commission for review. This agreement shall indicate who is responsible for the installation of required improvements adjacent to or affecting the school site, and when the improvements will be installed.
- (6) The proposed site is dedicated to public school or public park use in a manner approved by the City Attorney as to legal form prior to recording of the site development concept plan.
- (7) The site development concept plan identifies the boundaries of the dedicated tract within the planned environment unit.
- (8) The deed of dedication for public park or public school use shall provide that in the event the property shall no longer be used for that purpose, it will revert to the trustees of the subdivision in which it is located as common land. The trust indenture required in subsection (12) shall provide for the manner in which the common land shall be treated, so that the provisions of subsection (12) are complied with.

12. *Trust indentures and warranty deeds.* In developments where common areas, which may include open spaces, recreational areas, or other common grounds, are provided and the acreage of which is included in the gross acreage for density calculation purposes, a trust indenture shall be recorded simultaneously with the record plat. The indenture shall provide for the proper and continuous maintenance and supervision of said common land by trustees to be selected and to act in accordance with the terms of such indenture and the common land shall be deeded to the trustees under said indenture by general warranty deed. The trust indenture and warranty deed shall comply with the requirements established in Section 1003.173, "Trust Indentures and Warranty Deeds." In addition, the trust indenture shall contain the following provisions:

- (1) That the common areas, including open spaces, recreational areas; or other common grounds, shall be for the sole benefit, use, and enjoyment of the lot or unit owners, present and future, of the entire planned environment unit or that the common areas may also be used by residents outside the planned environment unit. If residents outside the planned environment unit are permitted to use the common areas, the indenture shall contain provisions which shall provide, in essence, the following:
  - (a) No resident of the planned environment unit shall be denied the use of the open space, recreational facilities, or other common ground for any reason related to the extension of such privilege to nonresidents of the planned environment unit;

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- (b) All rules and regulations promulgated pursuant to the indenture with respect to residents of the planned environment unit shall be applied equally to the residents;
  - (c) All rules and regulations promulgated pursuant to the indenture with respect to nonresidents of the planned environment unit shall be applied equally to the nonresidents;
  - (d) At any time after the recording of the indenture, a majority of the residents of the planned environment unit, by election duly called, may elect to allow or disallow usage of the open space, recreational facilities or other common grounds by nonresidents of the planned environment unit.
- (2) The indenture shall contain provisions for the maintenance of all common areas and facilities and the means of collecting assessments necessary for the maintenance thereof.
  - (3) In planned environment unit developments containing attached units, the indenture shall contain provisions for maintenance of common walls.