

**APPELLANT HALL**

**APPEAL, WITNESS LIST, AND LIST OF EXHIBITS**

Hall

RECEIVED  
FEB 21 2023  
BY: CK# 1968

Village of Taos Ski Valley  
Planning & Community Development Department  
**LAND USE & DEVELOPMENT APPLICATION**



<u>Applicant/Developer:</u>	<u>Property Address:</u>
<u>Current Owner &amp; Address:</u>	<u>Lot/Block:</u> <u>Subdivision:</u>
<u>Architect/Engineer:</u>	<u>Contractor:</u>

**Authorization and Acknowledgment**

I, the undersigned, am the owner of the above described property, or am authorized to represent the owners (proof of such authorization is attached). I recognize the fees paid with the application may not constitute the total cost to process this request and that I will be responsible for the additional costs incurred by the Village of Taos Ski Valley to review and process this request. I agree to pay these costs upon receipt of a statement from the Village.

T. S. Clark 2.2.2023  
Owner or Representative Date

**APPLICATION INFORMATION**

SUBDIVISION	FEE	ZONING	FEE
Sketch Plat:	\$1,000	Conditional Use	\$1,500
Parcel Conceptual Plan (CVZ)	\$500	Zone Change	\$1,500
<u>Preliminary Plat:</u>		Variance	\$800
Category I - less than 3 lots	\$3,000	Variance (minimum)	\$250
Category II - less than 10 lots	\$5,000	Special Use	\$500
Category III- 10 - 20 lots	\$7,500	<b>CERTIFICATE of COMPATIBILITY</b>	\$1,000
Each lot > 20	\$500	<b>PUBLIC NOTICE SIGNS</b>	\$50
Final Plat (½ cost of preliminary plat)		<b>APPEALS</b>	\$250
Summary Subdivision	\$500	<b>PERMITS</b>	
Lot Line Adjustment / Consolidation	\$250	Fence Tree Sign Lighting	\$25
Variance	\$500	Accessory Structure	\$25
<b>COMP PLAN AMENDMENT</b>	\$1,000	Excavation / Grading	\$250
		Food Truck	\$250

Application Received: Date: 2/21/23 Total Fees Paid: \$ 2300  
Received by: [Signature] (VTSV staff)



Village of Taos Ski Valley  
Planning & Community Development Department  
**Appeal Form**

Ordinance 2022-30 Section 29:1-2 Any person aggrieved by an interpretation, decision or action of the Planning Officer in carrying out the provisions of this Ordinance may appeal such interpretation, decision, or action to the Planning and Zoning Commission as set forth herein. Any person aggrieved by a decision or action of the Planning and Zoning Commission in carrying out the provisions of this Ordinance may appeal to the Village Council. Any such appeal must set forth in writing specifically wherein it is claimed there was an error or an abuse of discretion, or where the decision or action was not supported by evidence in the matter. Any appeal not submitted within fifteen days after the decision, which is the subject of the appeal, shall not be considered.

Name and Address of Appellant: Scott and Chris Hall 3 Cliffhanger Loop Taos Ski Valley, NM

Decision Being Appealed: Decision of VTSV Planning and Zoning Commission to Approve Conditional Use Permit at 112 Sutton Place without conditions.

Appeal of interpretation, decision or action of the Planning Officer or Planning Commission (circle).

Date of Decision: 2/6/23

How Is Appellant Affected by the Decision? See attached Statement of Reasons for Appeal.

Grounds for Appeal; please state clearly the error, abuse of discretion or other basis of appeal:  
(Use additional sheets if necessary)

See attached Statement of Reasons for Appeal setting forth the error, abuse of discretion (arbitrary and capricious) and grounds for appeal.

Signature of Appellant: See signatures, attached

Date: 2/21/2023

Received by:

(VTSV staff) Date:

2/21/23

**STATEMENT OF REASONS FOR APPEAL  
FROM  
VILLAGE OF TAOS SKI VALLEY  
PLANNING AND ZONING COMMISSION  
DECISION DATED FEBRUARY 6, 2023**

1. Appellants: J. Scott Hall and Chris Hall, 3 Cliffhanger Loop, VTSV NM 87525 (For mail: 13 Falling Star Circle, Santa Fe, NM 87506.)
2. Standing: Appellants are residents of VTSV, ratepayers and are registered to vote in VTSV elections. Appellants pecuniary interests are adversely affected by the P&Z Commission's actions and Decision of February 6, 2023.
3. Grounds for appeal: Appellants incorporate by reference the following enumerated statements of reasons of appeal set forth in the February 20, 2023 Notice of Appeal filed by Tom and Felicia Weingartner: statements 5 through 15. Those statements explaining the actions of the P&Z the Commission demonstrate that their actions constituted error, an abuse of discretion, were arbitrary and capricious or were not supported by the evidence. One particular action that exemplified the arbitrary and capricious actions of the Commission was the total disregard of the Planning Director's Recommended Condition to require the Applicant, TSVI, to pay an approximate \$1, 800,000 impact fee to offset the expected costs and expenses to be incurred by the Village in its proper administrative oversight of the construction and operational process for the HSB. Indeed, the Commission's blanket action which disregard this condition caused the Village to forego this sum and occurred without any discussion by any of the Commissioners. Hence, such action is not supported by the evidence, as were so many of the others.
4. Relief requested: (1) Vacature of the February 6, 2023 Decision. (2) Approval by the Council of TSVI's Application with the Conditions specified by the Planning Department and other relevant Departments of the Village. By proceeding in this manner, following approval of the Conditional Use Permit, the Applicant's planned April Start Date can be preserved. Nothing, then, prevents TSVI and Village staff from negotiating acceptable terms and conditions or obtaining amendments to the Council's order approving the Conditional Use Permit.
5. Threshold matter: As its first action, the Council should make a determination whether a conflict of interest exists. If the Council is unable or unwilling to do so, the matter can be referred to the State Ethics Commission for resolution.

Respectfully submitted,

*J. Scott Hall*

J. Scott Hall

*Chris Hall*

Chris Hall

February 21, 2023

**BEFORE THE VILLAGE COUNCIL**

**VILLAGE OF TAOS SKI VALLEY**

**IN THE MATTER OF THE APPEAL FROM  
THE PLANNING AND ZONING COMMISSION  
DECISION DATED FEBRUARY 6, 2022  
APPLICATION FOR CONDITIONAL USE PERMIT  
HOTEL ST. BERNARD**

**APPELLANTS' WITNESS LIST**

Appellants J. Scott Hall and Chris Hall may call the following to testify before the Village Council at its March 21, 2023 special meeting in the above referenced matter:

1. J. Scott Hall
2. Patrick Nicholson
3. Any witness identified by other Appellants or the Applicant

J. S. Hall

J. Scott Hall

March 14 2023

**BEFORE THE VILLAGE COUNCIL**

**VILLAGE OF TAOS SKI VALLEY**

**IN THE MATTER OF THE APPEAL FROM  
THE PLANNING AND ZONING COMMISSION  
DECISION DATED FEBRUARY 6, 2022  
APPLICATION FOR CONDITIONAL USE PERMIT  
HOTEL ST. BERNARD**

**APPELLANTS' EXHIBIT LIST**

Appellants J. Scott Hall and Chris Hall designate the following exhibits for introduction into the record before the Village Council at its March 21, 2023 special meeting in the above referenced matter:

Ex. H-1: Staff Report (Revised and Updated) Conditional Use Permit Hotel St. Bernard, February 6, 2023 (without exhibits).

Ex. H-2: VTSV Ordinance No. 22-30

Ex. H-3: VTSV Resolution No. 2022-502

Ex. H-4: Excerpts, New Mexico Development Fees Act

J. S. Hall

J. Scott Hall

March 14 2023

**EXHIBIT H-1**



## Planning & Zoning Commission

Thomas P. Wittman, Chair  
Henry Caldwell  
Richard Duffy  
Yvette Klinkmann  
Susan Nichols  
J. Christopher Stagg  
Jim Woodard

### Staff Report (Revised and Updated)

#### **Conditional Use Permit: Hotel Saint Bernard 112 Sutton Place**

##### **1. Case Summary**

Date of Hearing: December 5, 2022 – postponed per the request of the applicant.  
Rescheduled to: February 6, 2023  
Application Received: August 2, 2022  
Date of Posting: November 17, 2022  
Reposted: January 19, 2023  
Plan Review Fees: \$1,500 - Variance Request  
Development Impact Fees: \$1,865,560.00 (estimated)

**Project Description:** The ski corporation, TSVI, has proposed an extension redevelopment of the Hotel Saint Bernard (HSB) property. The current facilities and buildings and the adjacent Mogul Medical building will be removed, and the entire area reimaged into a high-end multiple structure luxury resort. The proposal consists of three separate hotel buildings, a pedestrian plaza, commercial space for two fine dining restaurants, a spa facility, and underground parking. Access to the site is at the southern terminus of Sutton Place within the Core Village Zone.

The project conception and articulation masterfully adheres to and gives extensive consideration to the Village Comprehensive Plan as it relates to the redevelopment potential, desired land use, recreational focus, and village aesthetic character for this parcel within the Core Village Zone.

Extensive site redevelopment specifications, plans,



renderings, and Code compliance documents are provided by the applicant and are attached as Exhibits – see *Exhibit A: Conditional Use Permit and Certificate of Compatibility Application Narrative, Aug. 1, 2022*; and *Exhibit B: Hotel Saint Bernard CUP Submission, Aug. 1, 2022*.

Prior Actions/Approvals: None

## **2. Zoning Analysis:**

The subject property is located 112 Sutton Place and is zoned Core Village (CVZ).

### **A. Section 9. Design Standards**

The design standards promulgated in Section nine are intended to ensure proper site planning and architectural compatibility to established and desired Village aesthetic norms. The submitted plans comply with the stipulated standards and guidelines.

- B.** The CVZ augments its zoning principles with performance standards expressed through Supplemental Regulations and Development Requirements. *Performance standards are intended to encourage mixed-use development/redevelopment and employ flexible zoning principles that guide density, massing, and setbacks to encourage a combination of residential, hotel, commercial, and/or office use to help the Core Village Zone ensure a socially vibrant and economically sustainable environment. These standards should also encourage pedestrian-level commercial and amenity uses that animate the pedestrian experience within this zone, integrate building massing along pedestrian-friendly streets, plazas, walkways, and the river walk and create places and spaces in which residents and resort guests enjoy spending time.*

The applicant has taken great care to meet and at times exceed these Requirements.

- C.** The Planning and Zoning Ordinance 2022-30 instructs the Commission in Section 26:4 to follow the criteria below when considering and granting a Conditional Use Permit request:

The Commission shall not approve any Conditional Use Permit unless satisfactory provision has been made concerning the following, where applicable:

1. Access to property and proposed structures thereon, with particular reference to automobile and pedestrian safety, traffic control, and emergency access in case of fire, flood, avalanche or catastrophe.

2. The economic, noise, glare, or odor effects of the Conditional Use on adjoining properties.
3. General compatibility with adjacent properties and other properties in the Village with regard to height, landscaping, setbacks, lighting, signs, parking, and design standards when adopted by the Village Council.
4. Compliance with supplementary regulations as delineated in zone in which the property will be located.
5. All improvements required by the Village Planning Department and/or Village Engineer in the Public Works Plan have been completed or completion plans, designs and costs are approved by an agreement approved by the Village Council.

At present, the applicant complies with most, but not all, of the CUP Guidelines. For the project proposal to be fully compliant with the Village Zoning Code and Development Regulations, the Conditions of Approval stipulated below are necessary and are highly recommended for adoption by the Commission.

### **3. Project Findings & Issues:**

#### **A. Water Supply**

Currently, there is insufficient water supply, caused by on-going extreme system leakage, to serve the proposed redeveloped Hotel Saint Bernard property – see *Exhibit C: Redline response to TSVI by Village Public Works Director, Nov. 2, 2022; and Exhibit D: DRT Review Nov. 2, 2022 Summary of the TSVI Letter, dated Oct. 17, 2022.* It is anticipated that within the next one to three years, repairs will be successfully completed on the water distribution system to allow the Village to provide water in adequate quantity to meet the increased demand at the project site. However, at this time, the date is uncertain, and water utility service cannot be guaranteed.

No Will Serve Letter will be issued at this time nor until the Village Public Works Director can assure the Village Council that all current fire suppression and existing water utility customers needs are met. The Director will base his determination upon quantitative data generated by the Village water utility system, which regularly tracks and measures supply, storage, and demand levels.

#### **B. Development Impact Fees**

Development Impact fees are estimated at \$1,865,560.00. The Project Assessment Sheet was provided to TSVI on August 30, 2022. The exact figure will be determined upon submission of detailed square footage plans with the building

permit application. The assessed amount could also be significantly lower given the prevailing Master Development Agreement (MDA) with the developer. The MDA states that a 25% discount is provided upon formal request and a further credit is allowed for direct financial contributions to Capital Improvement Projects.

At present, no discounts nor credits have been requested nor are expected. From a thorough record review by the Village Clerk and Attorney, any previous credits, including system development fees, which may have applied to the property, have been extinguished and are no longer valid.

#### C. Off-Site Parking Requirements

From Village Ordinance 2022-30:22:2 and per the revised Parking Diagrams and tables – (see Exhibit E: HSB CUP Parking Diagrams, Aug. 30, 2022) provided by the applicant, 109 total parking spaces are required for the proposed facilities. This total includes calculations for hotel and commercial use designations as well as for projected staff at the required 1:5 ratio. On-site underground parking is shown to accommodate a maximum of 65 spaces – 62 spaces by mechanical stacker, and three (3) handicap spaces. The two (2) service loading spaces indicated are not eligible to be added per Ordinance 22-30:22:1.

~~Parking for uses located within the Village core area may be located in a dedicated and approved off-site location as long as adequate provisions are made for on-site loading and unloading.~~

The remaining 44 spaces are newly proposed to be located on-site within a proposed expanded HSB property parcel. See Exhibit I – Sketch of Proposed Lot Line Adjustment & HSB Remote Parking diagram.

~~to be divided between the off-site skier day lot (19) and the employee Deer Lot (25). No dedicated and approved off-site parking agreement has been provided to Village staff. It is unclear, if the off-site parking lots can accommodate the increased volume necessitated by the project proposal. No comprehensive parking plan has been provided, which acknowledges all the existing parking obligations from various commercial and hotel establishments located within the Village Core. A saturation point may soon be reached given the present geographic limitations and the no parking restrictions in place on municipal roads and NM State Highway 150.~~

#### D. Sutton Place Pedestrian Safety

Pedestrian safety at the southern terminus of Sutton Place is negatively impacted by the Hotel Saint Bernard redevelopment proposal – See Exhibit E: Upper Sutton Streetscape Improvements, Dec. 2022. Increased deliveries and patron vehicle traffic on Sutton Place, directly resulting from the greater density and intensity of

use of the property, will conflict with children and other users accessing the nearby Gondolita. The Gondolita primarily carries young skiers and their families to the Rio Hondo Learning Center (formerly the Children's Center) and back to the main Village Plaza and commercial center. Streetscape improvements are necessary to address this situation and are requested by the Village Public Safety Director – see *Exhibit F: Traffic Safety Concerns, Oct. 2, 2022*. Lacking a detailed traffic study, which the applicant has not provided, the proportional project traffic impact will be estimated by Village staff and assigned to the ski corporation.

**E. Avalanche Safety Measures**

TSVI has provided a report by Rachel Moscarella, TSVI's Director of Snow Safety, analyzing the potential avalanche hazards at the HSB redevelopment site – see *Exhibit G: TSVI Letter Nov. 14, 2022*. What remains to be submitted, per Village Ordinance 2022-30:7:1-2, is a report indicating -

*potential physical forces created upon the proposed improvements and structures and a structural analysis of the proposed building or structure prepared and sealed by a New Mexico licensed engineer reflecting an engineering analysis and design which states that the design of the building or structure can withstand the potential force from an avalanche as set forth in the avalanche report referred above. This analysis shall be required only if the referenced report indicates that an avalanche hazard exists.*

**F. Drainage Plan**

A stamped project drainage study and stormwater prevention plan will be provided by TSVI upon submission for a Certificate of Compatibility – see *Exhibit H: Vertex, Sept. 21, 2022*. All costs bore by the Village for outside consultants necessary for a thorough review, by Ordinance, shall be assigned to the applicant.

**G. Wastewater Treatment Capacity**

According to the Village Public Works Director, at the present moment, there is sufficient capacity to service and treat all project generated waste upon full build-out at the off-site expanded Village Waste Water Treatment Plant.

**H. New Buildings Roof Height**

In the CUP Submission packet pgs. 50-59, the applicant has provided preliminary roof height calculations and diagrams. These will be re-evaluated upon building plan set submission. The plans, as presented, are in compliance with the roof height requirements, stipulations, and design guidelines.

**I. Environmental Considerations**

There is a delineated wetland adjacent to the newly proposed on-site parking lot, located directly to the west of the Edelweiss and south of Rio Hondo. The U.S. Corps of Engineers (US COE) identifies this wetland as SPA-2018-00105 - Taos Ski Valley Strawberry Hill Wetland Adjacent to the Rio Hondo.

If the wetland (or the Rio Hondo, or other water of the US) is impacted due to a discharge of fill or dredged material, a permit from the Corps of Engineers would likely be required under Section 404 of the Clean Water Act. If a permit is required, the Corps would require mitigation for impacts resulting in the loss of greater than 0.1 acres of wetland or the loss of 0.03 acres of streambed (temporary impacts generally do not require mitigation beyond restoration to pre-existing conditions). If the project is not going to impact a water of the US, the Corps of Engineers is also able to review a project to confirm that no permit would be required.

4. **Recommendation:** Staff recommends a motion to **Approve** the Conditional Use Permit with the following **Conditions**:

1. The applicant shall submit revised Streetscape and Roadway Improvements to the satisfaction and approval of the Village Directors of Public Safety and Public Works, which addresses the pedestrian safety issue on Sutton Place. ~~These planned improvements will be forwarded to the Village Public Safety Committee for review and a recommendation made to the Planning Commission for final acceptance no later than six (6) months from issuance of a Conditional Use Permit.~~

Project costs, including design and construction, associated with realizing the Village approved Improvement Plans, shall be funded by TSVI, proportional to its increased traffic impact attributable to the Hotel St. Bernard redevelopment project. No deduction shall be granted for activities at the former HSB site. *All improvements shall be completed prior to issuance of a Certificate of Occupancy.*

2. Due to the current lack of water supply capacity, *attributable to deficiencies in the delivery system*, to serve the proposed project, the developer, TSVI, proceeds at their own risk. After considering fire suppression requirements and existing water demand needs among other factors, the Village Public Works Director, upon review ~~of quantitative data generated by the Village water utility system and in consultation with Village staff~~, shall determine when to issue a Will-Serve Letter.
3. All Development Impact Fees must be received by the Village of Taos Ski Valley prior to issuance of any project related Building Permit, *which includes a Foundation Permit*. ~~If any discount is requested subsequently, such as through the prevailing Master Development Agreement, then all negotiations shall be concluded with six (6) months from issuance of a Conditional Use Permit, or the permit is cancelled.~~

4. Submit lot line adjustment request or similar deed instrument prior to Certificate of Compatibility approval.
5. Provide a written report which indicates the potential physical forces created upon the proposed improvements and structures. If the reports indicates that an avalanche hazard exists, then prepare a structural analysis of the proposed building or structure, sealed by a New Mexico licensed engineer, reflecting an engineering analysis and design which states that the design of the building or structure can withstand the potential force from an avalanche.
6. ~~Provide a dedicated and approved off-site parking agreement prior to submission of a Certificate of Compatibility.~~

Given the close proximity of the proposed on-site parking lot to a delineated wetland, provide a letter from the US Corps of Engineers affirming that either no Section 404 permit is required or a permit is required.

7. The design and installation of the roof snow retention system shall be independently reviewed by a Village authorized professional, experienced and credentialed in such matters. The Village Building Official and other Staff members will participate in any recommendation to change the current roof configuration in consultation with TSVI. As permitted under Ord. 22-30, the developer shall pay all fees and associated expenses related to this matter.
8. Any substantial changes to the application must be approved by the Planning and Zoning Commission; all other changes may be approved administratively by the Planning Officer.
9. If no Building Permit is issued, the Conditional Use Permit will expire three (3) years from issuance.

#### **5. Public Notice & Public Comments**

The notice of public hearing was mailed to all abutting property owners within 100 feet on November 17, 2022. A public notice sign was placed on the property on November 17, 2022.

*A second notice of public hearing was mailed to all abutting property owners within 100 feet on January 18, 2023. A public notice sign was placed on the property on January 19, 2023.*

The application materials and Staff Report were made available at the Villages Office for public review. The following written comments were received by the public:

A. None

**6. Staff Endorsements**

Submitted by:



Patrick Nicholson  
Director, Planning & Community Development Department

**7. Exhibits**

- A. Conditional Use Permit and Certificate of Compatibility Application Narrative, Aug. 1, 2022.
- B. Hotel Saint Bernard CUP Submission, Aug. 1, 2022.
- C. Redline response to TSVI by Village Public Works Director, Nov. 2, 2022.
- D. DRT Review Nov. 2, 2022 Summary of the TSVI Letter, dated Oct. 17, 2022.
- E. ~~HSB-CUP Parking Diagrams, Aug. 30, 2022.~~  
*Upper Sutton - Streetscape Improvements, Dec. 2022*
- F. Traffic Safety Concerns, Oct. 2, 2022.
- G. TSVI Letter Nov. 14, 2022.
- H. Vertex, Sept. 21, 2022.
- I. *Exhibit I - Sketch of Proposed Lot Line Adjustment & HSB Remote Parking diagram.*

**EXHIBIT H-2**



**VILLAGE OF TAOS SKI VALLEY  
ORDINANCE NO. 2022-30**

**AN ORDINANCE OF THE VILLAGE OF TAOS SKI VALLEY,  
AMENDING ORDINANCE NO. 22-30, AS AMENDED, SECTIONS 6.22 and  
6.37,**

**TITLED "DEFINITIONS;" REPEALING SECTION 13.4, TITLED  
"IMPACT FEES;" AND REPEALING AND REPLACING SECTION 23,  
TITLED "DEVELOPMENT IMPACT FEES;" AND ESTABLISHING  
PROCEDURES FOR THE ADOPTION AND IMPLEMENTATION OF  
REVISED DEVELOPMENT IMPACT FEES, ALL IN ACCORDANCE  
WITH THE NEW MEXICO DEVELOPMENT FEES ACT, NMSA  
SECTION 5-8-1, *et. seq.***

**WHEREAS**, the imposition of development impact fees by municipal governments is authorized under, and governed by, the New Mexico Development Fees Act ("the Act"), NMSA Section 5-8-1, *et. seq.*, as amended, and ensures that new development pays its proportionate share of the capital costs related to the additional demand for public facilities; and

**WHEREAS**, the Village Council recognizes that new development causes and imposes increased demands on public facilities, so that development impact fees should be adopted, implemented, assessed, and collected for new development in relation to the following capital improvements of the Village of Taos Ski Valley ("Village") and in compliance with the Act:

(a) Water supply, treatment and distribution facilities, and wastewater collection and treatment facilities, and storm water, drainage, and flood control facilities;

(b) Roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights-of-way, traffic signals, landscaping, and any local components of state and federal highways;

(c) Buildings for fire, police and search and rescue, as well as essential equipment related thereto;

(d) Parks, recreational areas, open space, trails and related areas and facilities; and

(e) Any other facilities and capital projects authorized by the Act; and

**WHEREAS**, the Village Council appointed a Capital Improvements Advisory Committee (CIAC), pursuant to the Act, in order to review Land Use Assumptions (LUA), and a Capital Improvements Plan (CIP). The CIAC reviewed and made recommendations to the Village Council regarding the LUA and CIP, and the Council accepted the LUA on September 28, 2021, and the CIP on December 14, 2021. Both the LUA and CIP were also reviewed by the Village Planning and Zoning Commission, with recommendations to the Village Council; and

**WHEREAS**, the Village Council believes that establishing and assessing development impact fees is necessary to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable directly to new development, and in compliance with the Act and §5-8-4 and §5-8-5 therein; and

**WHEREAS**, through adoption of this Ordinance, the Village Council seeks to protect the public welfare through the implementation of fair and accurate development impact fees in full compliance with the Act and finds that there exists a rational relationship and proportionality between the capital costs of providing public facilities as set forth herein, and the development impact fees imposed on new development under this Ordinance to provide for such public facilities of the Village.

**THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF TAOS SKI VALLEY AS FOLLOWS:**

**Section I. Definitions**

Village Ordinance No. 2022-30, as amended, Section 6.22, titled "Definitions," is hereby amended to add the following new or amended terms:

*Capital improvement* means land or facilities for purposes of construction or improving public facilities; for transportation and transit, including without limitation, streets, street lighting and traffic control devices and supporting improvements, roads, overpasses, bridges, and related facilities; storm drainage facilities; for water and wastewater facilities; for parks and recreation improvements; for acquisition of open space; for public safety, including police and jail facilities; for public buildings of all kinds; and for any other capital project identified in the Village's Capital Improvement Plan (CIP). Capital improvement also includes the design, engineering, inspection and testing, planning, legal, land acquisition, and all other costs associated with construction of a public facility.

*Capital improvements plan* means a plan required by the New Mexico Development Fees Act and that identifies capital improvements or facility expansion for which impact fees may be assessed.

*Development impact fee* means a charge or assessment imposed by the Village on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of

construction, development fees, and any other fee that functions as described by this definition. The term does not include utility connection or hook-up fees.

*Facility expansion* means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development, including schools and related facilities.

*Land use assumptions* includes a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a five-year period.

*New development* means the subdivision of land; reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

## **Section II. Repeal**

Village Ordinance No. 2012-30, as amended, Section 13.4, titled "Impact Fees," is hereby revoked and repealed in its entirety.

## **Section III. Repeal and Replacement**

Village Ordinance No. 2017-30, as amended, Section 23, titled "Development Impact Fees," is repealed in its entirety and replaced with the following Section 23:

### **1. Intent and Purpose.**

A. This Section is adopted for the purpose of promoting the health, safety, and welfare of the residents of the Village of Taos Ski Valley by:

(a) Implementing the Village of Taos Ski Valley Land Use Assumptions (LUA) and Capital Improvements Plan (CIP).

(b) Implementing the Village's plans for public facilities by requiring new development to pay its fair and proportionate share of the costs of necessary capital improvements and public facilities through the imposition of Development Impact Fees (DIFs) that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the Village for public facilities and capital improvements that serve and are attributable to new development.

(c) Setting forth standards and procedures for assessing, refunding, crediting, reducing and/or amending DIFs, adopting and implementing DIFs, and administering the Village's DIF program in compliance with the New Mexico Development Fees Act, NMSA Section 5-8-1, *et. seq.*, as amended (the Act).

## **2. Applicability**

A. This Section shall apply to all new development, as defined in the New Mexico Development Fees Act (the Act), and to all fees and charges imposed by the Village to finance different types of capital improvements and public facilities, as set forth herein, the need for which is created by new development. These fees are in addition to, and separate from, the necessary water and sewer connection or hook-up fees, and any other administrative fees to be assigned for planning review or upon the issuance of a building permit.

B. These fees do not apply to, nor can such fees be assessed by the Village for the maintenance, improvement, or repair of existing facilities that cannot be directly attributable to the impacts of new development, or for other prohibited activities set forth in §5-8-5 of the Act.

### **3. DIFs Established and Assessed**

A. Development Impact Fees (DIFs), including water and sewer system development fees, are hereby adopted and incorporated into this Ordinance, as adopted by the Village Council in a separate Resolution. ✓

B. DIFs may be amended from time to time by Resolution, adopted by a majority of the Village Council, in compliance with this Ordinance and the Act.

C. The Village's LUA and CIP may also be amended by Resolution of the Village Council, as otherwise set forth in the Act.

D. The development projects occurring in areas not served by the Village's water or wastewater systems are exempt from the water and wastewater system development fees, including in the Amizette area of the Village.

### **4. Items Payable by DIFs**

A. DIFs assessed to new development shall not exceed the cost to pay for the new development's proportionate share of the cost of capital improvements or facility expansions, based upon service units, needed to serve that new development.

B. Projected debt service charges may be included in determining the amount of DIFs where they are used for the payment of principal and interest on

bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the CIP.

C. Development Impact Fees shall be used to pay for the costs associated with designing and constructing capital improvements and facility expansions and may also be imposed to pay the following:

(a) The cost of formulating a Capital Improvements Plan (CIP), including fees actually paid or contracted to be paid by the Village to an independent qualified professional, who is not a Village employee, for the preparation or updating of a CIP.

(b) Planning, surveying, and engineering fees paid to an independent qualified professional who is not a Village employee for services provided for, and directly related to, the construction of capital improvements or facility expansions.

(c) Up to three percent of total DIFs may be used for the administrative costs of Village employees who are qualified professionals, as these services are related to capital improvements or facility expansions.

## **5. Items Not Payable by DIFs**

A. Development Impact Fees shall not be imposed or used to pay for:

(a) Construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the CIP.

(b) Repair, operation, or maintenance of existing or new capital improvements or facility expansions.

(c) Upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.

(d) Upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development.

(e) General administrative and operating costs of the public facilities, except as specifically provided herein.

(f) Principal payments or debt service charges on bonds or other indebtedness.,

(g) Other prohibited activities and related costs under §5-8-5 of the Act.

**6. Manner for Assessment and Collection of DIFs and Timing**

A. Assessment of a DIF shall be made at the earliest possible time.

B. Collection of a DIF shall be made at the latest possible time.

C. For land that has been platted in accordance with the Village's subdivision or platting procedures before the effective date of this Ordinance, or for land on which new development occurs or is proposed without platting, the Village may assess the DIFs at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four (4) years from the date of development approval or issuance of a building permit, whichever date is earlier.

D. For land that is platted after the effective date of this Ordinance, the Village shall assess the DIFs at the time of recording of the subdivision plat, and this assessment shall be valid for a period of not less than four (4) years from the date of recording of the plat.



B. DIFs shall be collected and paid for capital improvements or facility expansions only where construction is commenced within seven (7) years, and service available to new development within a reasonable period of time after completion of construction, considering the type of capital improvement or facility expansion to be constructed, but in no event longer than seven (7) years. This period of time may be extended, provided the Village obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions.

C. In lieu of paying DIFs directly to the Village, a developer party of new development may itself construct or finance the capital improvements or facility expansions, subject to approval by the Village, and in accordance with any applicable master development agreements with the developer party.

D. The Village shall maintain DIFs in separate interest-bearing accounts clearly identifying the payor and the category of capital improvements or facility expansions within the service area for which the fee was adopted. Interest earned on DIFs shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of fees under this Ordinance and the New Mexico Development Fees Act, as amended (the Act).

E. As part of its annual audit process, the Village shall prepare a report describing the amount of DIFs collected, encumbered, and used during the preceding year by category of capital improvement, facility expansion, and service area.

## **8. Refund, Credit, and Reduction of DIFs**

A. New development may apply for a refund, credit, or reduction of DIFs in compliance with this Ordinance and the New Mexico Development Fees Act, as amended.

B. Any developer party seeking the refund, credit, or reduction of a DIF shall submit a formal application or request to the Village, explaining the rationale for the refund, credit, or reduction, which application or request may be based on §5A of the Ordinance and §5-8-4 and §5-8-5 of the Act. All refunds, credits, and reductions of DIFs shall be given in compliance with the New Mexico Development Fees Act, as amended.

C. The Village Council shall have the final authority to determine the amount of any refund, credit, or reduction of DIFs. In considering the request, the Village Council may factor in other sources of benefits, credits, or public monies that are related to the new development or that are being contributed by the developer.

D. Appropriate reasons for refund, credit, or reductions of DIFs may include the following:

(a) If existing facilities are available and service is not provided or the Village has, after collecting the DIF, failed to complete construction, or provide service, within the time limits set forth in this Ordinance and in accordance with the Act.

(b) If after completion of the capital improvements project or new facility, the DIF collected and paid is more than the actual cost of the project. But only where the difference exceeds the fee paid by more than ten (10) percent.

(c) Where DIFS are not spent as authorized by this Ordinance and the CIP within seven (7) years after the date of payment.

(d) Any refunds shall bear interest calculated from the date of collection to the date of refund and shall be made to the record owner of the property at the time the refund is paid.

E. Any construction of, contributions to, or dedication of on-site or off-site facilities, improvements, or real or personal property shall be credited against DIFs otherwise due from new development. The credit shall include, but not be limited to, the value of dedication of the following:

(a) Land for parks and recreational areas, open space, trails and related areas and facilities or payments in lieu of that dedication; and

(b) Rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

F. Water and wastewater system development fees may not generally be waived by the Village Council due to bond obligations but may be paid from other non-utility funding sources, other than any cost-of-service or rate-based funding.

G. In its discretion, the Village Council may do any of the following in relation to the waiver, refund, or credit of DIFs as it affects new development:

(a) Establish the payment of DIFs from other sources, primarily for the payment of water and wastewater system development fees, or other future DIFs from other non-utility sources, including for qualifying economic development

projects in accordance with any Village economic development plan or ordinance.

(b) Spend funds from any lawful source or pay for all or a part of the capital improvements or facility expansions out of Village funds, in order to reduce the amount of the DIFs to be assessed to new development.

(c) Agree to offset or reduce part or all of the DIFs assessed on new development, provided that the public policy which supports the reduction is contained in the Village's appropriate planning documents, ordinances, resolutions or other contractual agreements to which the Village is lawfully bound, and provided that the development's new proportionate share of the system improvement is funded with revenues other than the DIFs from other new developments.

(d) In exercising the discretion set forth herein, the Village Council shall apply principles of equity, fairness, and proportionality, in accordance with law, in relation to, and among developers and new developments.

## **9. Public Notice and Hearing Required for Amending DIFS**

A. Any amendment of DIFs shall be in compliance with the New Mexico Development Fees Act, as amended, and shall require notice to the public and formal approval of a resolution enacted by a majority of the Village Council following a public hearing.

B. Information concerning the LUA, CIP, and DIFs shall be made available to the public prior to any public hearings regarding amendment.

C. The Capital Improvements Advisory Committee (CIAC), as established by the Village Council, shall meet and review any proposed amendments to the LUA, CIP, and DIFs and shall submit written findings and conclusions at least five (5) days prior to a public hearing of the Village Council.

#### **10. Mandatory Update of DIFs**

A. The Village shall update the Land Use Assumptions (LUA) and Capital Improvements Plan (CIP) at least every five (5) years. The initial five-year period begins on the day the CIP is formally adopted by the Village Council.

B. The Village shall review and evaluate its current LUA and shall update the CIP in accordance with this Ordinance and the Act, including recommendations by the CIAC.

C. If the Village Council determines that no changes to the LUA, CIP, or DIFs is needed, it may, as an alternative to the updating requirements, publish notice of its determination.

D. The resolution or ordinance determining the need for updating the LUA, CIP, or DIFs shall not be adopted as an emergency measure, and if adopted, must comply with the procedural requirements of the Act.

#### **SECTION IV. REPEAL AND CONFLICT OF CODES**

The adoption of this Ordinance supersedes and replaces any previously adopted resolutions, ordinances, policies, and any inconsistent provisions therein.

#### **SECTION V. PUBLICATION AND EFFECTIVE DATE**

This Ordinance shall be in full force and effect after its adoption, approval, and publication as provided by law and in compliance with the New Mexico Development Fees Act.

**ADOPTED UPON SECOND READING ON THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2022.**

\_\_\_\_\_  
**Christof Brownell, Mayor**

\_\_\_\_\_  
**Attest: Ann Marie Wooldridge, Village Clerk**

## **EXHIBIT H-3**

**VILLAGE OF TAOS SKI VALLEY  
RESOLUTION NO. 2022-502**

**A RESOLUTION OF THE VILLAGE OF TAOS SKI VALLEY  
ADOPTING REVISED DEVELOPMENT IMPACT FEES PURSUANT  
TO NMSA, SECTION 5-8-1, *et. seq.*, THE NEW MEXICO DEVELOPMENT  
FEES ACT, AND VILLAGE ORDINANCE NO. 22-30, AS AMENDED,  
SECTION 23**

**WHEREAS**, the Village Council appointed a Capital Improvements Advisory Committee (CIAC), pursuant to the Act, in order to review Land Use Assumptions (LUA), and a Capital Improvements Plan (CIP). The CIAC reviewed and made recommendations to the Village Council regarding the LUA and CIP, and the Council accepted the LUA on September 28, 2021, and the CIP on December 14, 2021. Both the LUA and CIP were also reviewed by the Village Planning and Zoning Commission, with recommendations to the Village Council; and

**WHEREAS**, the imposition of development impact fees by municipal governments is authorized under, and governed by, the New Mexico Development Fees Act ("the Act"), NMSA Section 5-8-1, *et. seq.*, as amended, and Village Zoning Ordinance No. 22-30, Section 23, as amended; and

**WHEREAS**, the Village Council adopts the following Development Impact Fees by Resolution in order to update existing fees, understanding that establishing and assessing revised development impact fees is necessary to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable directly to new development.



**WHEREFORE BE IT RESOLVED BY THE COUNCIL OF THE  
VILLAGE OF TAOS SKI VALLEY AS FOLLOWS:**

**Section I.**

The Development Impact Fees, attached hereto as Exhibit A, are hereby adopted in compliance with the Village's LUA, CIP, Ordinance 22-30, as amended, and the New Mexico Development Fees Act.

**ADOPTED UPON ON THIS 22nd DAY OF February, 2022.**

  
\_\_\_\_\_

**Christof Brownell, Mayor**

  
\_\_\_\_\_

**Attest: Ann Marie Wooldridge, Village Clerk**

**Appendix A: Development Impact Fees - per Square Foot**

Land Use	Public Safety Facilities	Transportation Facilities	Parks and Public Spaces	Wastewater System Development	Water System Development	Total - per Square Foot
<u>Residential</u>						
Single Family	\$ 1.65	\$ 2.09	\$ 1.46	\$ 2.79	\$ 1.51	\$ 9.50
Multifamily	\$ 3.38	\$ 3.02	\$ 3.00	\$ 5.67	\$ 3.07	\$ 18.14
<u>Nonresidential</u>						
Commercial	\$ 4.12	\$ 5.95	\$ -	\$ 7.87	\$ 4.26	\$ 22.20
<u>Accommodations</u>						
Hotel	\$ 4.64	\$ 4.17	\$ 4.12	\$ 7.90	\$ 4.27	\$ 25.10

**Exhibit Appendix A: Development Impact Fees - per Square Foot (Redlined version)**

Land Use	Public Safety Facilities	Transportation Facilities	Parks and Public Spaces	Wastewater System Development	Water System Development	Total - per Square Foot
<u>Residential</u>						
Single Family	\$ 1.65	\$ 2.09	\$ 1.46	\$ 2.79	\$ 1.51	\$ 9.50
Multifamily	\$ 3.38	\$ 3.02	\$ 3.00	\$ 5.67	\$ 3.07	\$ 18.14
<u>Nonresidential</u>						
Commercial	\$ 4.12	\$ 5.95	\$ -	\$ 7.97	\$ 4.26	\$ 22.25
	5.15	7.44		2.24	5.02	27.75
<u>Accommodations</u>						
Hotel	\$ 4.64	\$ 4.17	\$ 4.12	\$ 7.90	\$ 4.27	\$ 25.10
	5.40	5.21	5.15	9.86	5.34	31.36

**EXHIBIT H-4**

### 5-8-2. Definitions

As used in the Development Fees Act:

- A. "affordable housing" means any housing development built to benefit those whose income is at or below eighty percent of the area median income; and who will pay no more than thirty percent of their gross monthly income towards such housing;
- B. "approved land use assumptions" means land use assumptions adopted originally or as amended under the Development Fees Act;
- C. "assessment" means a determination of the amount of an impact fee;
- D. "capital improvement" means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality or county:
  - (1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities;
  - (2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways;
  - (3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars (\$10,000) or more and having a life expectancy of ten years or more; and
  - (4) parks, recreational areas, open space trails and related areas and facilities;

E. "capital improvements plan" means a plan required by the Development Fees Act that identifies capital improvements or facility expansion for which impact fees may be assessed;

F. "county" means a county of any classification;

G. "facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development, including schools and related facilities;

H. "hook-up fee" means a reasonable fee for connection of a service line to an existing gas, water, sewer or municipal or county utility;

I. "impact fee" means a charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hook-up fees, dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction is required by a previously adopted valid ordinance or regulation and is necessitated by and attributable to the new development;

J. "land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period;

K. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H class counties, including any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico;

L. "new development" means the subdivision of land; reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units;

M. "qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of his license, education or experience;

N. "roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the municipality or county, including bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state or federal highways;

O. "service area" means the area within the corporate boundaries or extraterritorial jurisdiction of a municipality or the boundaries of a county to be served by the capital improvements or facility expansions specified in the capital improvements plan designated on the basis of sound planning and engineering standards; and

P. "service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.

**Source:**

Laws 1993, ch. 122, § 2.



**5-8-3. Authorization of fee**

- A. Unless otherwise specifically authorized by the Development Fees Act, no municipality or county may enact or impose an impact fee.
- B. If it complies with the Development Fees Act, a municipality or county may enact or impose impact fees on land within its respective corporate boundaries.
- C. A municipality and county may enter into a joint powers agreement to provide capital improvements within an area subject to both county and municipal platting and subdivision jurisdiction or extraterritorial jurisdiction and may charge an impact fee under the agreement, but if an impact fee is charged in that area, the municipality and county shall comply with the Development Fees Act.
- D. A municipality or county may waive impact fee requirements for affordable housing projects.

**Source:**

Laws 1993, ch. 122, § 3; 2001, ch. 176, §1.

### **5-8-6. Capital improvements plan**

A. A municipality or county shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan shall follow the infrastructure capital improvement planning guidelines established by the department of finance and administration and shall address the following:

- (1) a description, as needed to reasonably support the proposed impact fee, which shall be prepared by a qualified professional, of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand or replace the described capital improvements to adequately meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards;
- (2) an analysis, which shall be prepared by a qualified professional, of the total capacity, the level of current usage and commitments for usage of capacity of the existing capital improvements;
- (3) a description, which shall be prepared by a qualified professional, of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions;
- (4) a definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial;
- (5) the total number of projected service units necessitated by and attributable to new development within the service

area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units accepted over a reasonable period of time, not to exceed ten years; and

(7) anticipated sources of funding independent of impact fees.

B. The analysis required by Paragraph (2) of Subsection A of this section may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

C. The governing body of a municipality or county is responsible for supervising the implementation of the capital improvements plan in a timely manner.

**Source:**

Laws 1993, ch. 122, § 6.

**5-8-8. Time for assessment and collection of fee**

- A. Assessments of an impact fee shall be made at the earliest possible time. Collection of the impact fee shall occur at the latest possible time.
- B. For land that has been platted in accordance with the subdivision or platting procedures of a municipality or county before the effective date of the Development Fees Act or for land on which new development occurs or is proposed without platting, the municipality or county may assess the impact fees at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four years from the date of development approval or issuance of a building permit, whichever date is earlier.
- C. For land that is platted after the effective date of the Development Fees Act, the municipality or county shall assess the fees at the time of recording of the subdivision plat and this assessment shall be valid for a period of not less than four years from the date of recording of the plat.
- D. Collection of impact fees shall occur no earlier than the date of issuance of a building permit.
- E. For new development that is platted in accordance with the subdivision or platting procedures of a municipality or county before the adoption of an impact fee, an impact fee shall not be collected on any service unit for which a valid building permit has been issued.
- F. After the expiration of the four-year period described in Subsections B and C of this section, a municipality or county may adjust the assessed impact fee to the level of current impact fees as provided in the Development Fees Act.

**5-8-12. Entitlement to services**

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive prompt service from any existing facilities with actual capacity to serve the new service units.

**Source:**

Laws 1993, ch. 122, § 12.

**5-8-18. Compliance with procedures required**

Except as otherwise provided by the Development Fees Act, a municipality or county shall comply with that act to levy an impact fee.

**Source:**

Laws 1993, ch. 122, § 18.

