

TOWN OF WINDSOR AGENDA REPORT

Town Council Meeting Date: June 26, 2019

To: Mayor and Town Council
From: Ken MacNab, Town Manager
Subject: Appeal of Planning Commission Adoption of Windsor Mill Development Project Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program

Recommendation to Council:

Adopt a resolution denying an appeal of the Planning Commission's adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Mill Creek Development Project.

Background:

On February 26, 2019, the Planning Commission held a noticed public hearing to consider the Mill Creek development project ("Project"), including an Initial Study and Mitigated Negative Declaration prepared for the Project in compliance with the California Environmental Quality Act (Attachment 4). At the February 26, 2019 hearing, the Planning Commission adopted the Mitigated Negative Declaration on a 4-0-1 vote (Commissioner Fritz recused) and a motion to approve the land use entitlement applications failed on a 1-3-1 vote (Commissioner Huberts in favor and Fritz recused). The Commission Staff Report is found in Attachment 5 and the Commission's actions are memorialized in the meeting minutes found in Attachment 6.

On March 7, 2019, Councilmember Sam Salmon filed an appeal of the Planning Commission's decision to adopt the Mitigated Negative Declaration prepared for the Project (Attachment 4). A separate appeal of the denial of the land use entitlement applications was filed by the Project applicant on March 4, 2019.

Discussion:

The purpose of this agenda item is to consider the appeal of the adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. The Project proponent's appeal of the denial of the land use entitlements (Tentative Subdivision Map, Site Plan and Design Review and Use Permits) will be considered under a separate item on the June 26, 2019 Town Council agenda.

A summary of the Project including its history, proposed improvements and applicable development policies and regulations are provided in this Agenda Report along with an analysis of the applicant's appeal. Extensive details of the Project are provided in the accompanying 42-page February 26, 2019 Planning Commission Staff Report (Attachment 5) as outlined in Table 1 below.

**TABLE 1: FEBRUARY 26, 2019 PLANNING COMMISSION
STAFF REPORT OUTLINE**

Section	Description	Pages
I.	Introduction	2-3
II.	Background	3-7
III.	Site Context	7-9
IV.	Project Description <ul style="list-style-type: none"> • Land Use and Site Plan <ul style="list-style-type: none"> ○ Site Plan Area 1 ○ Site Plan Areas 2, 3, and 4 • Architecture • Leasing Office and Recreation Center • Vehicular Access • Alternative Modes of Access • Utilities • Open Space and Landscaping 	9-11 11-12 12-15 15-16 16 16-17 17 17-18 18
V.	Analysis General Plan Consistency Station Area/Downtown Specific Plan Consistency Zoning Ordinance Consistency Subdivision Ordinance Tree Preservation and Protection Findings <ul style="list-style-type: none"> • Tree Removal Permit • Tentative Subdivision Map • Site Plan and Design Review • Use Permits 	18-20 20-31 31 32 32 32-33 34-35 35-36 36-38 38-42
VI.	Environmental Review	42
VII.	Public Notice and Comment	42
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Project History

Over five years ago, the applicant began the public process to develop the Project site and since May 2014, the applicant has taken the following actions:

May 7, 2014

Obtained a waiver from the Growth Control Ordinance merit process and received allocations for up to 360 dwelling units.

May 29, 2014

Entered into a Priority Development Area Waiver Agreement with the Town which stipulates, in part, that the Project will contain certain features.

August 2014

Submitted a preliminary development application.

December 8, 2014

Submitted revised preliminary development applications.

June 23, 2016

Revised preliminary development applications and resubmitted.

September 13, 2016

Received input on preliminary plans from the Planning Commission.

December 7, 2016

Received Town Council input on specific features of the preliminary plans.

January 28, 2017

Facilitated a community meeting to solicit public input on the preliminary plans.

April 20, 2017

Submitted revised conceptual development plans.

May 10, 2017

Received Staff Review Committee input on the preliminary plans.

June 27, 2017

Obtained Planning Commission input on the revised conceptual development plan.

September 7, 2017

Submitted a formal application and plans incorporating input provided at Town Council, Planning Commission and neighborhood meetings.

August 23, 2018

Application deemed complete.

October 11, 2018

Initial Study and Mitigated Negative Declaration (IS/MND) published for public review and comment.

November 15, 2018

Public comment period on IS/MND closed.

December 17, 2018

Final IS/MND (Response to Comments) published for public review.

February 26, 2019

Planning Commission hearing on the Project

Details of the Project history are provided in the February 26, 2019 Planning Commission Staff Report at pages 3-7.

Project Description

Mill Creek is a 360-unit condominium project proposed on a 20.3-acre site located at its closest point approximately 260 feet south of Windsor River Road and downtown Windsor. The site consists of two roughly triangular areas with the SMART railroad tracks along the westerly boundary, Windsor Creek along the easterly boundary and existing residential neighborhoods along the northerly boundary.

There are three General Plan Land Use designations on the site and the site is in the Station Area/Downtown Specific Plan (herein “Specific Plan”). Table 2 and Figure 1 identify the land use designations and corresponding Specific Plan districts on the site.

TABLE 2: GENERAL PLAN LAND USE DESIGNATIONS AND STATION AREA/DOWNTOWN SPECIFIC PLAN DISTRICTS

General Plan Land Use Designation	Specific Plan Districts	Acres	Allowed Density (du/ac)		Max. Units Allowed		Proposed Project	
			GP	SP	GP	SP	du/ac	Units
Low Density Residential	Village Residential	4.9	5-8		39		6.9	34
Medium Density Residential	Medium Density Residential	4.3	8-16		69		16.0	69
High Density Residential	Compact Residential	11.6	16-32	16-24	371	278	22.2	257
Total		20.8	23	18.5	479	386	17.8	360

**FIGURE 1: STATION AREA/DOWNTOWN SPECIFIC PLAN
DISTRICTS ON PROJECT SITE**



To facilitate review of the plans, the Project Site is divided into four areas – Site Plan Areas 1, 2, 3 and 4 (see Figures 2 through 5 below). Enlarged architectural site plans are provided for each Site Plan Area (Attachment 7 Sheets 6 – 9). Site Plan Area 1 makes up the smaller northerly triangle of the site and Site Plan Areas 2, 3 and 4 are in the larger southerly triangle of the site.

Site Plan Areas 1 and 2 are in the Compact Residential zone, Area 3 is in the Medium Density Residential zone and Area 4 is in the Village Residential zone. Through the Tentative Subdivision Map, two lots would be created with 96 condominiums on Lot 1 and 264 condominiums on Lot 2. Lot 1 has a net area of 3.38 acres and Lot 2 has a net area of 12.99 acres. Site Plan Area 1 is on Lot 1 and Site Plan Areas 2, 3 and 4 are on Lot 2.

**TABLE 3: SITE PLAN AREA 1
COMPACT RESIDENTIAL ZONE (ATTACHMENT 7 SHEET 6)**

Building Number(s)	Building Type	Number Units	Architectural Style	Number of Garage Stalls
1-3	3-story condominium (T 23)	23	Spanish	10 each bldg.
4	3-story condominium (T 27)	27		10
22	1-story garage (G 12)	0		12

FIGURE 2: SITE PLAN AREA 1



**TABLE 4: SITE PLAN AREA 2
COMPACT RESIDENTIAL ZONE (ATTACHMENT 7 SHEET 7)**

Building Number(s)	Building Type	Number Units	Architectural Style	Number of Garage Stalls
5-7 & 11-14	3-story condominium (T 23)	23	Spanish	10 each bldg.
20	1-story garage (G 8)	0		8
21	1-story garage (G 5)	0		5

FIGURE 3: SITE PLAN AREA 2



**TABLE 5: SITE PLAN AREA 3
MEDIUM DENSITY RESIDENTIAL (ATTACHMENT 7 SHEET 8)**

Building Number(s)	Building Type	Number Units	Architectural Style	Number of Garage Stalls
8-10	3-story condominium (T 23)	23	Monterey	10 each bldg.
n/a	2-story leasing office and recreation center	0		0

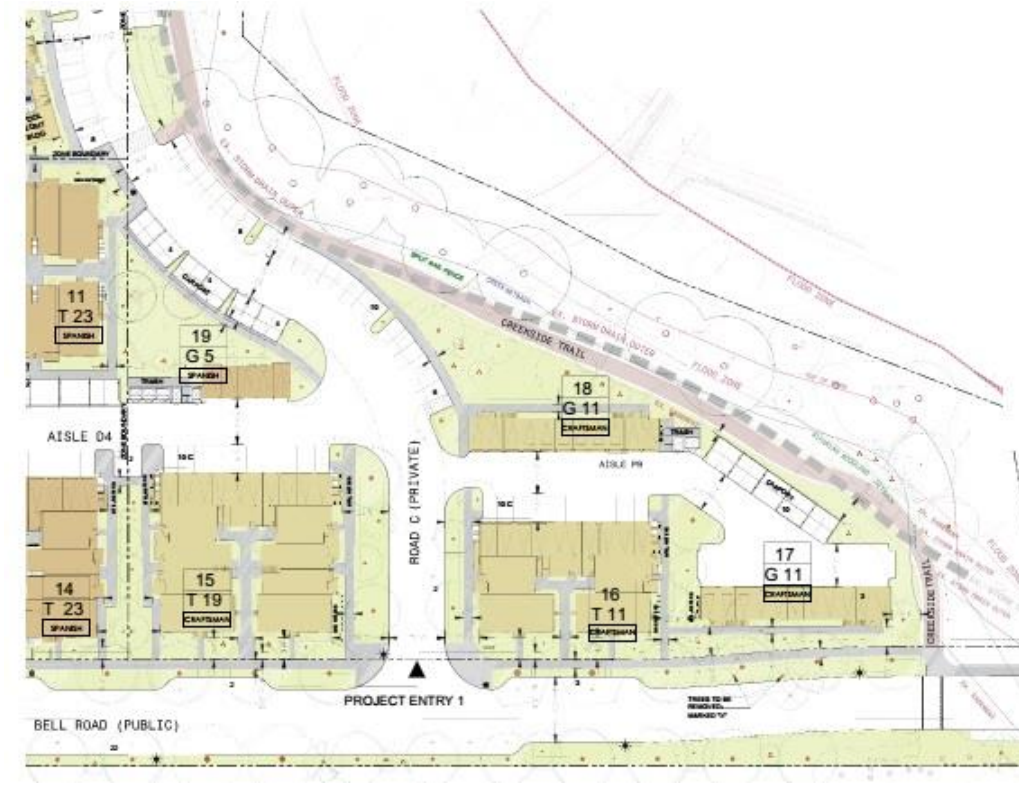
FIGURE 4: SITE PLAN AREA 3



**TABLE 6: SITE PLAN AREA 4
VILLAGE RESIDENTIAL (ATTACHMENT 7 SHEET 9)**

Building Number(s)	Building Type	Number Units	Architectural Style	Number of Garage Stalls
15	3-story condominium (T 19)	19	Craftsman	10
16	3-story condominium (T 11)	11		10
17	2-story. Garage with carriage house above (G 11)	2		11
18	2-story. Garage with carriage house above (G 11)	2		11
19	1-story garage (G 5)	0	Spanish	5

FIGURE 5: SITE PLAN AREA 4



Building Architecture.

As noted above in Tables 3 – 6, the buildings would be constructed in Spanish, Monterey, and Craftsman styles, with features including tile roofs, stucco exterior and wrought iron railing, bay windows, balconies and ground-floor porches/patios. The tallest condominium building would stand 38’-11” above finished grade. One-, two- and three-bedroom units are proposed and arranged in the building plan types and architectural style shown in Table 7.

TABLE 7: BUILDING TYPES

Building No.	Building Type	Site Plan Area, Building Style & Plan Sheet No.	Unit Count by # of Bedrooms			Garage Stalls
			1 bedroom	2 bedroom	3 bedroom	
1	1A (23-plex)	Area 1 Spanish (Sheet 6 in Attachment 7)	6	14	3	10
2			6	14	3	10
3			6	14	3	10
4	2A (27-plex)		8	16	3	10
5	1A (23-plex)	Area 2 Spanish (Sheet 7 in Attachment 7)	6	14	3	10
6			6	14	3	10
7			6	14	3	10
8	1B (23-plex)	Area 3 Monterey (Sheet 8 in Attachment 7)	6	14	3	10
9			6	14	3	10
10			6	14	3	10

Building No.	Building Type	Site Plan Area, Building Style & Plan Sheet No.	Unit Count by # of Bedrooms			Garage Stalls
			1 bedroom	2 bedroom	3 bedroom	
n/a	Leasing office & recreation		0	0	0	0
11	1A (23-plex)	Area 2 Spanish (Sheet 7 in Attachment 7)	6	14	3	10
12			6	14	3	10
13			6	14	3	10
14			6	14	3	10
15	4 (19-plex)	Area 4 Craftsman (Sheet 9 in Attachment 7)	2	14	3	10
16	3 (11-plex)		2	6	3	10
17	Carriage House		0	2	0	11
18	Carriage House		0	2	0	11
19	Garage		0	0	0	5
20	Garage	Area 2 Spanish (Sheet 7 in Attachment 7)	0	0	0	5
21	Garage		0	0	0	8
22	Garage	Area 1 Spanish (Sheet 6 in Attachment 7)	0	0	0	12
Total			90	222	48	212

Planning Commission Decision

The Planning Commission considered the Project at a noticed public hearing held on February 26, 2019. At the meeting, the Planning Commission received presentations from staff and the applicant and testimony from members of the public. After deliberating the merits of the Project, the Planning Commission adopted a resolution adopting the environmental document for the Project (a Mitigated Negative Declaration), but failed to adopt the resolution approving the Project entitlements on a 1-3-1 vote with Commissioner Huberts voting in favor and Commissioner Fritz recusing from the item due to a conflict of interest.

Concerns expressed by members of the Planning Commission about the land use entitlements are summarized in the Agenda Report prepared for Town Council consideration of the land use entitlements.

Appeal

On March 7, 2019, Councilmember Sam Salmon filed an appeal of the Planning Commission’s action to adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project.

The appellant contends that the Initial Study incorrectly concludes that “*the Project would not conflict with any applicable land use plan, policy or regulation... that was adopted for the purpose of avoiding or mitigation of an environmental effect.*” According to the appeal, the density and type of housing proposed in Site Plan Area 4 is inconsistent with the General Plan, Station Area/Downtown Specific Plan and the Zoning Ordinance in that “[a] reasonable person

would contemplate development in a Village Residential zone to be something much different from two 19 unit apartment complexes, two duplex cottage units and two 11 vehicle parking garages...”

The General Plan Land Use designation for Site Plan Area 4 is Low Density Residential with a density range of 5.0 to 8.0 dwelling units per acre. The Town of Windsor 2040 General Plan at page 2-6 states that “[t]his designation provides for a mix of housing types on smaller lots or as attached units. Single family homes, duplexes, triplexes, and townhomes are allowable within this classification.”

The Station Area/Downtown Specific Plan and Zoning for the site is Village Residential with a permitted density of 5 to 8 dwelling units per acre and the Specific Plan description of the Village Residential land use designation states the following:

“Windsor Station Area/Downtown Specific Plan - Village Residential - This designation is intended to accommodate a mix of housing types on smaller lots or as attached units, with density ranging from five to eight units per gross acre. Housing types at the lower density range may include detached units near low density residential neighborhoods. Housing types at the higher density range may include detached or attached units near the Town Center, parks and transit stops. Substantial new development within this classification is not expected.” (Section 2.2, Land Use Designations and Density/Intensity Standards, Pg. 2-7)

Staff Response

Site Plan Area 4 consists of 4.9 acres and has an allowed density range of 5 to 8 dwelling units per acre which would yield between 24 to 39 dwelling units in the Village Residential zone. The applicant proposes 34 dwelling units resulting in a density of 6.9 du/ac (approximately 2/3rds of the maximum allowed). Five structures are proposed in the area zoned Village Residential as shown in Table 8.

TABLE 8: STRUCTURES PROPOSED IN VILLAGE RESIDENTIAL ZONE

Building Number(s)	Building Type	Number Units	Number of Garage Stalls
15	3-story condominium	19	10
16	3-story condominium	11	10
17	2-story. Garage with carriage house above	2	11
18	2-story. Garage with carriage house above	2	11
19	1-story garage	0	5
5 buildings		34	47

With the first review of the formal project submittal, staff noted a concern similar to that raised in the appeal. In the Completeness Review Letter, dated October 6, 2017 staff wrote that:

“There are three land use designations and zoning districts on the project site with the lowest densities in the southerly-most portion of the site and increased densities on portions of the site closer to the transit, commercial and recreational opportunities provided in the center of Town. The density ranges and type of housing envisioned in the Town’s policy documents for the three districts vary widely from a low of 5 to 8 units per acre in the Village Residential District to a high of 12 to 24 units per acre in the Compact Residential District. However, the same housing product is proposed across the entire site and housing densities are only lower in the VR and MDR Districts as the land area of the unbuildable portions of the site within the riparian corridor of Windsor Creek increase the land area attributed to the density calculation in those districts. A meaningful mix of housing types is missing from the development proposal.

Please provide a narrative explanation of how the lack of housing product differentiation within the three zones results in a project that meets the intent of the applicable policies of providing “a mix of housing types on smaller lots¹” and a variety of densities appropriate for the transition from the lower and medium densities designated for the southern and eastern portions of the site to the higher densities designated for the northerly portions of the site.”

The Project applicants revised the plans and provided the following response to the staff concern noted above with the February 8, 2018 resubmittal:

“This comment particularly emphasizes that the density calculations for the differing zoning districts includes creek and riparian areas. It is worth noting that these areas are indeed within the property line boundaries for this project. A creek setback is just one of a variety “no build zones” designated by local ordinances, such as frontage setbacks, side yard setbacks, utility easements and the like. As part of the gross property area, the square footage all types of similar boundaries are all allowable in the calculation of density, lot coverage, open space, etc. (Town of Windsor Zoning Ordinance Section 27.60.020.S “Site Coverage.”) Though it seems a relatively minor item, this distinction is key to understanding the density calculation and this project’s compliance with Town ordinances. See also Open Space Exhibit response below.

Regarding the noted lack of “a meaningful mix of housing types,” the architectural design cleverly disguises three housing types in a single building style. Upon close observation of the building plans, the project is actually composed of single story stacked flats at the ground level, two-story carriage house units and three-story townhome units within one building. The overall cohesive look of the entire site— north and south portions--as one community was chosen to create a sense of home and belonging to a neighborhood to future residents. The Town of Windsor Station Area Plan/Downtown Specific Plan and its Zoning Ordinance both allow for attached products and relative density based on the project’s context within the community:

“Housing types at the lower density range may include detached or attached units near the Town Center, parks and transit stops. (Town of Windsor Station Area Plan/Downtown Specific Plan Section 2-2 Page 2-7, Paragraph Village Residential”)

Although the previous submittals were compliant in this respect, the site has been modified and

1 See Section 2.2 – Land Use Classifications and Density/Intensity Standards of the Windsor Area/Downtown Specific Plan (p. 2-7)

building types have been added to help create a more visual distinction of housing types in the southern portion of the site. Stylistically different architecture has been applied to each zoning district. Additionally, the street fronting elevations of buildings 13, 14, 15 have been scaled down by reducing a portion of the building to single story, further creating differing appearances among buildings. See site plan and additional pages in submittal set which describe the new building types.”

With the revisions to the plans provided after the first completeness review, staff found that attached housing at the higher end of the density range in Site Plan Area 4 can be found to be consistent with the criteria for the housing type and for allowing higher density development in the Village Residential designation based on the following:

- The townhome and condominium units being proposed in the Village Residential area of the project site are a form of attached housing. Attached housing is an allowable housing type in the Village Residential designation. Therefore, the proposed type of housing is consistent with the housing types allowed under the applicable General Plan and Specific Plan land use designations.
- The description of the Village Residential land use designation in the Specific Plan does not specify that housing must be “single-family.” Instead, the designation describes allowed housing types in terms “attached” and “detached” as opposed to “single-family” and “multi-family.”
- The subject area is not part of a lower density residential neighborhood. It is part of a larger undeveloped area that includes higher density land use designations. A lower density neighborhood does exist to the east of the subject area, but it is physically and visually separated from the subject area by Windsor Creek.
- Although located at the outer edge of the Specific Plan area, the subject area is located adjacent to a planned multi-use pathway that will provide a direct connection to the Transit Center and future SMART commuter rail station site. The proximate location of the multi-use pathway and the opportunity to provide such a convenient connection to bus and rail transit stops for future residents is unique to most other properties in the Specific Plan area. In this context, staff considers the subject area to be “near” a transit stop.
- Policy LU-10 on Page 2-16 of the Specific Plan identifies the subject site as a site where densities higher than what is being currently being proposed (more than 360 units) could be considered subject to certain criteria. Staff interpreted this policy as conveying an interest in allowing development of the subject area to occur at the higher end of the density range for the Village Residential land use designation as opposed to the lower end of the range.
- The Specific Plan allows for “density averaging.” Page 2-9 of the Specific Plan (Density and Intensity Standards) states that:

“On all sites throughout the Planning Area, intensities can be averaged over

multiple contiguous parcels for an individual project to accommodate areas of high-intensity development, open space, and other amenities.”

Although the developer is not requesting density averaging across the project site, staff believes that the project would meet the stated criteria for allowing it. Specifically, the project includes high-density development, is accommodating preservation and access to Windsor Creek, is accommodating the extension of two major streets through the project site (Bell Road and Bill Beedie Way) and includes other amenities for future residents. The existence of this provision in the Specific Plan could be viewed as rendering the question of consistency with density ranges allowed by individual land use designations within the Specific Plan as moot, instead making the analysis one of consistency with the cumulative density range allowed for the project site. As shown in Table 2 above, the total number of units being proposed by the project is within the cumulative density range allowed by the General Plan and Windsor Station Area/Downtown Specific Plan.

Staff Recommendation

For the reasons stated above, staff recommends the Town Council adopt the draft resolution in Attachment 1 denying the appeal and upholding the Planning Commission’s adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project.

Alternative Action

Should the Town Council conclude that the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program cannot be approved an alternative resolution (without findings) approving the appeal has been drafted (Attachment 2). Findings for granting the appeal articulated by Town Council at the public hearing will be added to the draft resolution, should the Council grant the appeal.

Fiscal Impact:

No fiscal impacts have been identified.

Environmental Review:

An Initial Study and Mitigated Negative Declaration was prepared by First Carbon Solutions (FCS) in accordance with the California Environmental Quality Act (CEQA) and the Town’s CEQA Guidelines (Attachment 4, Exhibit A). The initial study identified the potential for the Project to result in potentially significant impacts to air quality, biological resources, cultural/tribal cultural resources, geology/soils, hydrology/water quality, land use/planning, and noise. The initial study identified mitigation measures that would reduce the potentially significant impacts to a less than significant level.

A Notice of Intent to Adopt a Mitigated Negative Declaration was posted locally and at the State Clearinghouse (Clearinghouse Number 2018102030) for 35 days from October 11, 2018 to November 15, 2018. The Notice of Intent informs the public and interested agencies of the availability of the draft Initial Study and Mitigated Negative Declaration and provided an opportunity for review and comment. Five comment letters were received in response to the Notice of Intent. As required by the Town’s CEQA Guidelines, responses to the comments received were prepared and are included in the Final Initial Study/Mitigated Negative

Declaration, (Attachment 4).

At its hearing on the Project on February 26, 2019, the Planning Commission adopted the Initial Study/Mitigated Negative Declaration and on March 7, 2019, Councilmember Sam Salmon appealed the Planning Commission's decision to adopt the IS/MND. If the Town Council wishes to uphold the adoption of the Initial Study and Mitigated Negative Declaration, then staff recommends the Town Council adopt a resolution denying the appeal (Attachment 1). Consideration of the appeal of the Commission's denial of the land use entitlements along with adoption of the IS/MND is under a separate agenda item on the June 26, 2019 Town Council meeting agenda.

Report Attachments:

1. Draft Resolution Denying the Appeal and Upholding the Planning Commission's Adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
2. Alternative Draft Resolution Granting the Appeal and Overturning the Planning Commission's Adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

Attachments Linked to Town Web Site (Click link to access/view document):

3. [Appeal dated March 7, 2019](#)
4. [Mitigated Negative Declaration dated December 17, 2018](#) (referenced appendices can be accessed from this [web page](#))
5. [Planning Commission Staff Report dated February 26, 2019](#) (attachments can be accessed from this [web page](#))
6. [Planning Commission meeting minutes from the February 26, 2019 regular meeting](#)
7. [Project Plans](#)

Prepared and Recommended by:

Ken MacNab
Town Manager