

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 Denial of Windsor Mill Development Project

Recommendation to Council:

1. Adopt a resolution adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Mill Creek Development Project.

2. Adopt a resolution granting an appeal filed by the applicant of the Planning Commission's Denial of the Mill Creek Development Project and approving a Use Permit, Tentative Map and Site Plan and Design Review for the Mill Creek Development project located at 8703 Bell Road.

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 5). 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 6 and the Commission's actions are memorialized in the meeting minutes found in Attachment 7.

An appeal of the denial of the land use entitlement applications was duly filed by the Project applicant on March 4, 2019 and supplemental information was provided by the appellant on March 12, 2019 and on June 7, 2019 (Attachment 4). On March 7, 2019, Councilmember Sam Salmon filed a separate appeal of the Planning Commission's decision to adopt the Mitigated Negative Declaration prepared for the Project.

Discussion:

The purpose of this agenda item is to consider the Project proponent's appeal of the denial of the land use entitlements (Tentative Subdivision Map, Site Plan and Design Review and Use Permits). Councilmember Salmon's appeal of the Mitigated Negative Declaration 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 6) 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 <ul style="list-style-type: none"> 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
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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 8 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 8 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 8 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 8 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 8 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 16)	16		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 8)	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 8)	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 8)	6	14	3	10
9			6	14	3	10
10			6	14	3	10
n/a	Leasing office & recreation		0	0	0	0
11	1A (23-plex)	Area 2 Spanish (Sheet 7 in Attachment 8)	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 8)	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 8)	0	0	0	5
21	Garage		0	0	0	8
22	Garage	Area 1 Spanish (Sheet 6 in Attachment 8)	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.

Members of the Planning Commission in opposition to the Project expressed the following concerns:

1. The Project is not consistent with the Town of Windsor 2040 General Plan and the Windsor Station Area/ Downtown Specific Plan -specifically that the density is too high

and the multi-family structures are too large in the southern portion of the development in the Village Residential district.

2. The location of the garage Building 16 block views of the pathway along the creek preventing “eyes on the creek” at the southern end of the site.
3. Garage Building No. 22 located at the northerly end of the Project backs up to Bell Road at the entry to the Project.
4. Inadequate privacy at front porches due to the lack of a grade separation between the sidewalk and the porches.
5. Additional conduits need to be provided for wiring electrical vehicle charging stations.
6. Additional trees can be preserved.

Appeal

On March 4, 2019, the applicant filed an appeal of the Planning Commission’s action to deny the Project entitlements. The applicant contends that the Planning Commission acted in violation of the California Housing Accountability Act (Gov. Code Section 65589.5) (“HAA”).

The HAA applies to both affordable and market-rate housing development projects.¹ The Legislature’s intent in enacting the HAA and expanding its provisions was to “meaningfully and effectively curb[] the capability of local governments to deny, reduce the density for, or render infeasible housing development projects....”² The Legislature mandated that the HAA be “interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.”³ Under the HAA, a local government should not reject or make infeasible projects “without a thorough analysis of the economic, social, and environmental effects.”⁴

The HAA imposes statutory deadlines on agencies to make determinations that a project is inconsistent with objective land use requirements. If an agency considers a proposed project to be inconsistent, noncompliant, or nonconforming to an applicable plan, program, policy, ordinance, standard, requirements, or other similar provision, it must notify the applicant of the fault in writing, identifying the specific provisions, and explaining the inconsistencies, within 30 days (for projects containing 150 or fewer units) or within 60 days (for projects over 150 units) of the date that the application for the project is determined to be complete.⁵ If such a written determination is not issued within the applicable time period, the project is deemed consistent,

¹ *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1070-78 (HAA includes residential units and “nothing in that definition limits the reach of the phrase ‘housing development project’ to projects involving affordable housing”).

² Govt. Code, § 65589.5, subd. (a)(2)(K).

³ Govt. Code, § 65589.5, subd. (a)(2)(L).

⁴ Govt. Code, § 65589.5, subd. (b).

⁵ Govt. Code, § 65589.5, subd. (j)(2)(A).

compliant, and in conformity with all applicable provisions, including plans, ordinances, and standards.⁶

For market-rate projects, those that comply with the “applicable, **objective** general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time the housing development project’s application” are determined to be complete, and thus may only be disapproved or conditioned for a lower density if the reviewing agency makes **written findings** supported by a **preponderance of the evidence on the record** that (1) the project would have “a specific, adverse impact upon the public health or safety” and (2) there is no feasible method to satisfactorily mitigate or avoid the adverse impact(s).⁷ A “specific, adverse impact” means a “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

Here, the Town deemed the application for the Project complete on August 23, 2018, in which case the 60-day limit would have expired on October 22, 2018. Because the Town did not notify Applicant of any inconsistency with the Project prior to October 22, it is likely that the Project was deemed consistent, compliant, and in conformity with all applicable objective land use requirements by application of the law. Thus, the Town Council’s discretion is limited here. The Town Council is likely precluded from finding that the Project is inconsistent with the General Plan or the Windsor Station Area Downtown Specific Plan. The Town Council, therefore, can only deny the project if it finds, based on a preponderance of the evidence in the record, that the Project would have a specific adverse impact on public health or safety and that there is no feasible means to mitigate or avoid the adverse impact(s).

Therefore, staff recommends the Town Council uphold the appeal and approve the Project. To do so, the Council will need to approve the following land use entitlements:

1. Tentative Subdivision Map
2. Site Plan and Design Review
3. Minor Use Permit to allow a reduction in parking (Windsor Zoning Code Section 27.30.050(A)); and
4. Use Permit to allow multi-family in the Village Residential zone (Windsor Zoning Code Table 2-2, Section 27.08.030);

The findings required for approval of each of the above-listed entitlements are summarized below and staff analysis of the Project as it relates to each finding is presented in the Planning Commission Staff Report.

Tentative Subdivision Map.

1. The tentative map and improvement plans, as conditioned, are consistent with the provisions of the Town of Windsor General Plan and any applicable specific plans or area plans.
2. The tentative map and improvement plans, as conditioned, are consistent with Town’s Design Standards.
3. The tentative map and improvement plans, as conditioned, are consistent with the Zoning Ordinance.

⁶ Govt. Code, § 65589.5, subd. (j)(2)(B).

⁷ Govt. Code, § 65589.5, subd. (j)(1).

4. The tentative map and improvement plans, as conditioned, are consistent with the Town of Windsor Municipal Code, including but not limited to, the Growth Control Ordinance.

Site Plan and Design Review.

1. The design and layout of the proposed development are consistent with the General Plan, the development standards of the applicable zoning district, design standards/guidelines, and architectural criteria for special areas.
2. The design and layout of the proposed development will not interfere with the use and enjoyment of neighboring existing or future developments and will not create traffic or pedestrian hazards.
3. The architectural design of the proposed development is compatible with the character of the surrounding neighborhood.
4. The design of the proposed development will provide a desirable environment for its occupants, visiting public, and its neighbors through the appropriate use of materials, texture, and color, and will remain aesthetically appealing and be appropriately maintained.
5. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.

Use Permits.

1. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Ordinance and the Town Code;
2. The proposed use is consistent with the General Plan and any applicable specific plan;
3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
4. The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
5. Granting the permit would not be detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located.

Staff Recommendation

As stated in the February 26, 2019 Planning Commission Staff Report, Staff believes the required findings for approval are met or can be met with certain conditions of Project approval. Recommended conditions for Project approval are provided in Attachment 2. The Town Council may consider adding additional conditions for Project approval if determined to be necessary to bring the Project into conformance with adopted goals, policies, regulations or guidelines.

Alternative Action

Should the Town Council conclude that the Project cannot be approved an alternative resolution (without findings) denying the appeal has been drafted (Attachment 3). Findings of denial articulated by Town Council at the public hearing will be added to the draft resolution, should the Council deny the Project. As set forth above, to deny the Project, the Town Council will need to make findings based on a preponderance of the evidence in the record, that the Project would have a specific adverse impact on public health or safety and that there is no feasible means to mitigate or avoid the adverse

impact(s).

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 1, 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 1).

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 denies the appeal of the Planning Commission's adoption of the Initial Study and Mitigated Negative Declaration, then staff recommends the Town Council adopt the attached resolution (Attachment 1) adopting the IS/MND. Consideration of the appeal of the Commission's 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 Adopting the Final Initial Study and Mitigated Negative Declaration
2. Draft Resolution Granting the Appeal and Approving Project Entitlements
3. Alternative Draft Resolution Denying the Appeal and Upholding the Planning Commission's Denial of Project Entitlements

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

4. Appeal and supplemental information:
 - a. [Appeal Form](#)
 - b. [Supplemental Narrative](#)
 - c. [Revenue Analysis](#)
 - d. Information on Housing Accountability Act ([video](#))([correspondence](#))
5. [Mitigated Negative Declaration dated December 17, 2018](#) (referenced appendices can be accessed from this [web page](#))
6. [Planning Commission Staff Report dated February 26, 2019](#) (attachments can be accessed from this [web page](#))

7. [Planning Commission meeting minutes from the February 26, 2019 regular meeting](#)
8. [Project Plans](#)

Prepared and Recommended by:

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