



Agenda Item

DATE: FEBRUARY 17, 2022

TO: PLANNING COMMISSION

FROM: CARMELA CAMPBELL, ECONOMIC AND COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: DEVELOPMENT AGREEMENT (DA-22-001)

APPLICANT: WINDFLOWER PROPERTIES, LLC

LEGAL OWNER: CITY OF UNION CITY

REQUEST: Recommendation to the City Council of approval of a Development Agreement (DA-22-001) for the Windflower – Block 2 project, for the purpose of extending project approvals that were previously approved by the City Council on November 14, 2017. The project includes the development of four hundred and forty-three (443) multi-family residential rental units.

LOCATION: 34302 11th Street between Galliano Way and Berger Way (APN: 087-340-002)

SIZE OF PARCEL: 3.5 acres

GENERAL PLAN

LAND USE: Station Mixed Use Commercial

ZONING: CSMU (Station Mixed Use Commercial)

SURROUNDING LAND USES:

LOCATION	GENERAL PLAN DESIGNATION	ZONING DISTRICT	LAND USE
North	Station Mixed Use Commercial	CSMU Station Mixed Use Commercial	Vacant land
South	Station Mixed Use Commercial	CSMU Station Mixed Use Commercial	Multifamily residential/mixed use
East	Research and Development Campus	RDC Research and Development Campus	Southern Pacific Railroad right-of-way, Vacant land

West	Station Mixed Use Commercial	CSMU Station Mixed Use Commercial	East Plaza, parking lot, BART station
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ENVIRONMENTAL ASSESSMENT:

The project is within the scope of the Station District Mixed-Use Development Project EIR (certified in November 2010 by City Council Resolution No. 4072-10) and the 2040 Union City General Plan Update EIR (certified on December 10, 2019, by City Council Resolution No. 5548-19). No new information of substantial importance has been discovered requiring revisions to the impacts, mitigation measures or alternatives that were provided in either EIR. Additionally, there have not been any substantial changes with respect to City policies or requirements that would require additional environmental analysis, which determined that the project would not result in any significant environmental impacts with the incorporation of mitigation measures. All adopted mitigation measures continue to apply to the Project. Thus, pursuant to Sections 15162 and 15168 of the CEQA Guidelines, the City has determined that no further analysis is required.

LOCATION MAPS:

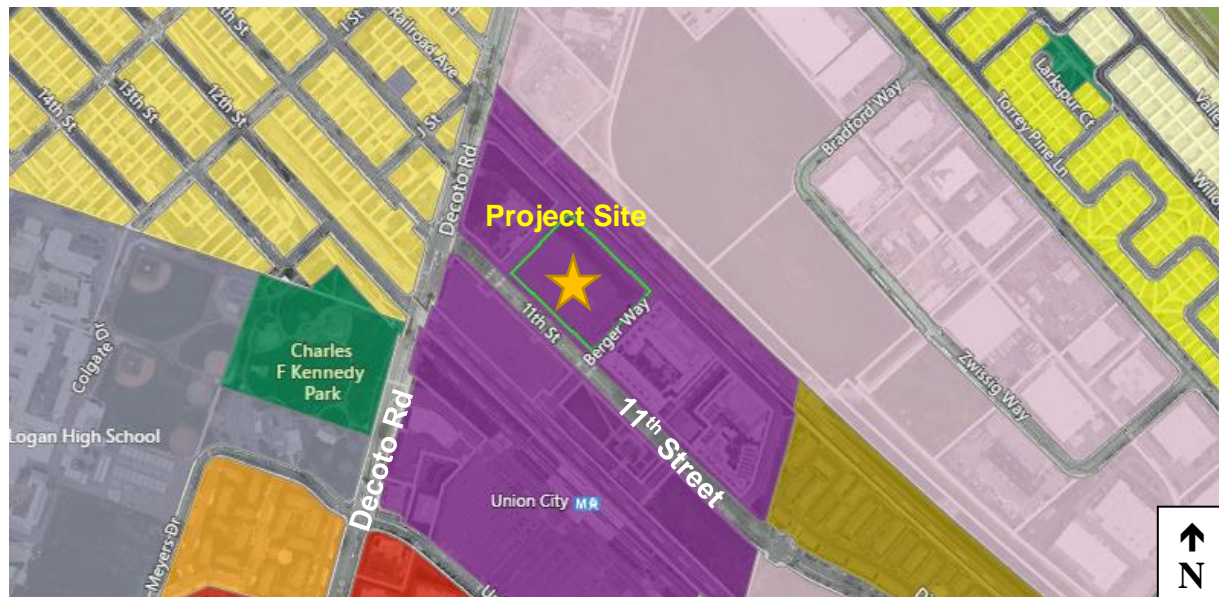


Figure 1 – Zoning Map of 34302 11th Street (APN: 087-340-002)

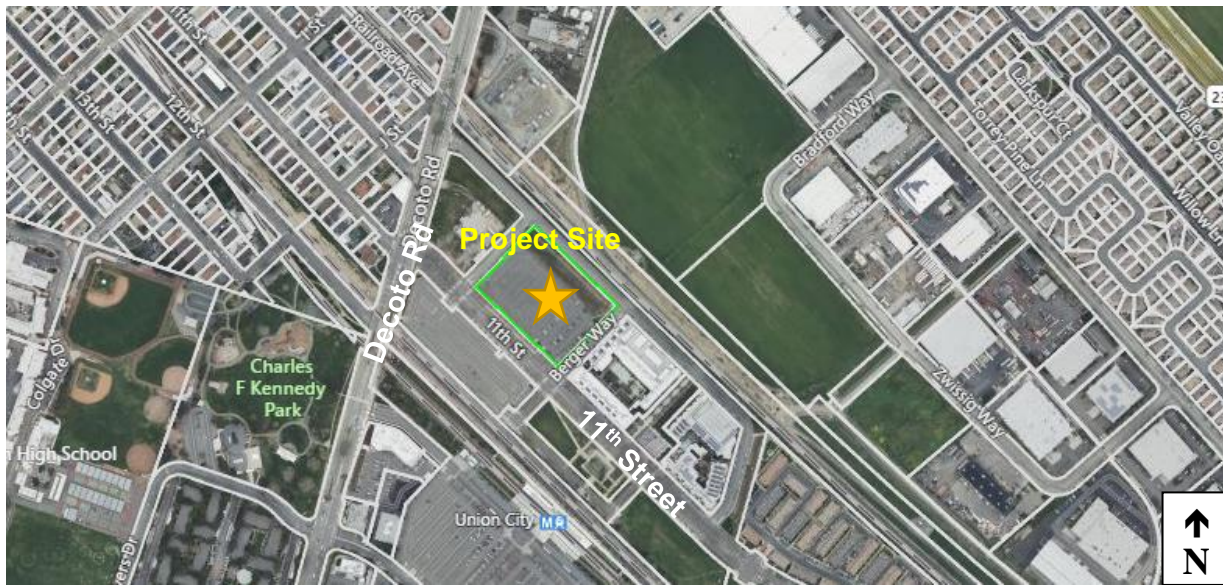


Figure 2 – Location Map of 34302 11th Street (APN: 087-340-002)

I. BACKGROUND & PROPOSAL

The applicant, Windflower Properties, LLC has submitted a request to enter into a Development Agreement with the City to extend the project approvals for the Windflower 2 project to be coterminous with the deadline for commencement of construction provided in the Disposition and Development. The project consists of development on Block 2 of the Station District area for a high-density, multi-family development. Exhibit A to Attachment 1 includes the draft Development Agreement language.

The Windflower 2 project was approved by Planning Commission on October 19, 2017, and subsequently by City Council on November 14, 2017. The 3.5-acre project site referred to as “Block 2” is located along 11th Street. See Figure 2 for a map showing the project site. The City Council Resolution approving the project is attached (Attachment 2). See below for a detailed overview of the project approvals and Figure 3 for an overview of the approved site layout. The City previously approved disposition of Block 2 to the applicant pursuant to a Disposition and Development Agreement approved in 2017 (the “DDA”). In addition, the following were approved:

1. SD-14-003 (Site Development Review) to allow the development of 443 new, market-rate, multi-family dwelling units (studios, one bedroom and two bedrooms, including 11 residential lofts and 13 live/work units) within two buildings, a six-level parking structure with 460 parking spaces, 5,088 square feet of ground floor retail space, public and private courtyards, and related site improvements and amenities.

2. UP-14-006 (Conditional Use Permit) to allow: (a) a mixed-use development within the CSMU zoning district; (b) building height greater than 65 feet; (c) high-density residential uses and live/work units within the CSMU zoning district; and (d) reduction to storage requirements.

The original projects approvals were granted for one-year and were set to expire on November 14, 2018. The applicant obtained two, one-year extension extending the approvals to November 14, 2020. Per AB1561, which extended the life of housing entitlements in effect before March 4, 2020, the project approvals were extended an additional 18 months and are now set to expire on May 14, 2022 unless building permits have been issued, all fees paid, and construction commences.

Since the approvals were granted, the applicant has been diligently working on moving the project forward onto the construction phase. The applicant has provided feedback that due to decreasing rents and rising construction and labor costs, attributed in part, to the COVID pandemic, there have been challenges securing financing.

Development Agreements

Development Agreements (DA) are voluntary agreements commonly used for major projects that will be phased over multiple years to provide some degree of certainty to the applicant regarding the policies, regulations, and fees that will be applied to the project in return for the provision of public benefits to the City. Most significantly, a DA vests land use approval for a specific period. Per Union City Municipal Code (UCMC) Chapter 18.104, the DA is subject to review and recommendation by the Planning Commission and a final decision by the City Council. DAs are adopted by ordinance and require a second reading.

The complexity, size and long-range nature of the project would be difficult for the developer to undertake if City had not determined, through this DA, to insert a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the project. As a result of the execution of this DA, both parties can be certain that the project can proceed without disruption caused by a change in planning and development policies and requirements, and such assurance will reduce the actual or perceived risk of planning, financing and proceeding with construction of the project.

II. PROJECT ANALYSIS

A. Development Agreement Contents

Extension of Approvals

The City and project developer previously entered into a Disposition and Development Agreement (DDA) dated, June 13, 2017, that provides for disposition of the Block 2 property to the applicant for the development of the project, subject to the terms and conditions contained in the DDA. The City and developer desire to ensure that the project approvals do not expire before the December 31, 2024 deadline for the commencement of construction included in the DDA to ensure that the Project can proceed as approved by the City Council.

DA term

The term of the DA is five years. This is separate from the date of December 31, 2024 which is when construction must commence. The reason for this is that there are certain provisions of the DA, such as those related to the Community Art Space, which could extend beyond the commencement of construction. This language is not meant to extend the project approvals beyond that of the DDA.

Public Art

This project is required to comply with the Art in Public Places Program (UCMC Chapter 12.40), which requires a contribution of one percent of the project cost toward public art, with one-third of the one percent required as a contribution to the Union City Public Art Fund. The current approvals from 2017 reference the applicant providing an art installation that would also serve as screening for the Cheeves Way garage.

The DA includes wording that allows the City and the developer to approve an arrangement similar to the City's use of Studio 11 located in Union Flats, which is an apartment building located adjacent to the project site constructed by the applicant. The arrangement allows for the applicant to satisfy the project's public art requirements by providing the City with the right to use an approximate 2,000 sq. ft. portion of the building's ground floor space located on 11th Street as a Community Art Space for display of artworks, classes and workshops, and public events. If this alternative is agreed upon by the City and the Developer, the DA requires the City and applicant to enter into a Community Art Agreement to address the obligations of each party with respect to the installation of interior improvements, utility charges, maintenance, repairs, and other expenses relating to the space. The value of any below-market rate rent for the Community Art Space, as mutually agreed, and the cost of any Developer obligations regarding installation of improvements, maintenance, utilities, and other expenses for the space shall be equivalent in value to the Art Fee that Developer would otherwise be obligated to pay pursuant to Union City Municipal Code Chapter 12.40. Prior to issuance

of the first building permit for the project, if the City and Developer are unable to mutually agree upon the terms of the Community Art Agreement, consistent with the provisions listed in Chapter 12.40 of the Union City Municipal Code, Developer will be required to either (i) pay the applicable Art Fee to City, or (ii) submit a proposal for public art to the City, receive approval by the City's Art and Culture Commission. If the City and Developer are unable to mutually agree upon the terms of the Community Art Agreement, the building area that was to be used as Community Art Space shall revert to use identified in the project approvals.



Figure 3 – Aerial View of Site Layout

Project Amendments /Subsequent Approvals.

Section 1.5.4 of the DA clarifies that the DA provisions would extend to any subsequent project approvals, which is typical language. Section 1.5.5 was added at the request of the applicant and provides some background on a future request for modifications to the project that the applicant is currently exploring.

The applicant has indicated that she intends to apply for modifications to the existing Site Development Review and the existing Use Permit approvals to ensure project feasibility. These include the relocation of certain amenities within the site, the reconfiguration of parking facilities, a reduction in height of certain buildings, a modification to the scope

of on-site parking and storage, and changes to unit types and the total number of residential units, provided that the total number of residential units will not exceed 504 units (which is the maximum unit count allowed by the DDA). The applicant has presented staff with some concept drawings but, has not yet submitted a project application. Please note that the future project amendments are not the focus of the current agenda item to consider adoption of the DA. When the applicant is ready to move forward on the proposed amendments, the proposed modification to the existing approvals will be brought back to the Planning Commission and City Council for consideration. The DA is being presented for approval prior to presentation of a request for consideration of project approval modifications so that the existing approvals will not expire in advance of such modification request.

The applicant requested information regarding anticipated requests for modifications to be included in the DA in order to alert the Planning Commission and City Council of the applicant's intent to apply for modifications to the existing approvals as they will be the decision makers reviewing the modifications. The DA wording clarifies that nothing in the document is interpreted as a promise or representation regarding the City's review of the anticipated modifications or as otherwise limiting the City's discretion to approve, deny, or modify an application to modify the existing Site Development Review and the existing Use Permit for the Project.

Section 4.4 also addresses future amendments to project approvals and outlines the process. The DA categorizes future amendments as "major" (i.e., requires review by the City Council and Planning Commission), and "minor (i.e., can be approved by Economic and Community Development Director). This is also typical language but the specifics of what constitutes a major versus a minor amendment was informed by applicable Zoning Ordinance provisions as well as discussions between staff and the applicant. Major amendments are defined as modifications that affects (a) the Term of the DA, (b) permitted uses of the property, (c) provisions for reservation or dedication of land, (d) the density or intensity of use of the property, (e) the maximum height or size of proposed buildings, (f) the location and maintenance of on-site or off-site public improvements, (g) any exceptions to applicable development standards as allowed by Section 18.38.250 of the Union City Municipal Code, or (h) such other modification Economic & Community Development Director reasonably determines to constitute a significant change in the Project. Minor amendments address a variety of items including minor alterations in vehicle circulation patterns or vehicle access points, variations in the location of structures that do not substantially alter the design concepts of the project approvals, minor changes to architectural features required to comply with applicable Building Code provisions or to address supply issues, substitution of comparable landscaping for

any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the project approvals, and minor adjustments to approved building façade colors and/or exterior materials, courtyard dimensions, and location and square footage of common area.

C. Noticing & Communication

As required by state law, public notices for the February 17, 2022, Planning Commission hearing were published in the Tri City Voice on February 1. No correspondence from the public has been received by staff.

D. Conclusion

Staff recommends that the Planning Commission recommend that the City Council introduce an Ordinance adopting the Development Agreement (DDA-22-001) and making the following specific findings in support of this recommendation.

III. REQUIRED FINDINGS

Development Agreement

Section 18.104.050 of the Zoning Ordinance requires that the following findings be made related to approval of a Development Agreement. Below each finding is a discussion of how the project meets the required finding.

1. That the proposed Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the City's General Plan, the CSMU (Station Mixed Use Commercial) Zoning District, and the DIPSA Specific Plan in which the development project is located.

The proposed Development Agreement is consistent with the CSMU (Station Mixed Use Commercial) General Plan land use designation and related policies that apply to development in the Station District. The Development Agreement would foster a high-density, mixed use residential development, which helps support transit ridership. Additionally, the uses and design of the project encourage transit use and minimize automobile dependence; the project helps create a vibrant, transit-oriented mixed-use area, and is pedestrian-friendly and minimizes parking impacts on the streetscape and the neighborhood; and the project will be harmonious with existing and potential uses within the Station District and surrounding areas. The project is also consistent with the DIPSA Specific Plan, which identified high-density residential and commercial development for the Station District area.

2. Will not be detrimental to the health, safety and general welfare of persons residing in the immediate area, not be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole.

The proposed Development Agreement will not be detrimental to the health, safety and general welfare of persons residing in the immediate area, general neighborhood, or of the City as a whole because, as documented in the previously certified EIR for the project, mitigation measures have been included to mitigate all potential significant environmental impacts to less than significant levels. In addition, the project has been designed and conditioned consistent with applicable requirements to protect health and safety including the provision of adequate water supply including water used for fire suppression systems, and adequate access for emergency vehicles. The project will also be constructed consistent with current Building Code requirements.

3. Will not adversely affect the orderly development of property or the preservation of property values.

The proposed Development Agreement includes provisions to facilitate the orderly development of the project. The complexity, enormity and long-range nature of the project would be difficult for the developer to undertake if City had not determined, through this Development Agreement, to insert a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the project. As a result of the execution of this Development Agreement, both parties can be certain that the project can proceed without disruption caused by a change in planning and development policies and requirements, and such assurance will reduce the actual or perceived risk of planning, financing and proceeding with construction of the project.

4. Is consistent with the provisions of Government Code Section 65864 through 65869.5.

The proposed Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5 because it provides some assurances to the applicant to proceed with the multi-year project in accordance with existing policies, rules and regulations in return for the provision of public benefits. A noticed public hearing on the Development Agreement was held by the Planning Commission.

IV. ALTERNATIVES

1. Recommend approval of the Development Agreement as proposed;
2. Recommend approval of the Development Agreement with modifications;

3. Recommend denial of the Development Agreement with stated findings; or
4. Continue the matter for further consideration

V. RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council introduce an Ordinance adopting the Development Agreement (DDA-22-001) and making the following specific findings in support of this recommendation:

1. That the project is within the scope of the Station District Mixed-Use Development Project EIR (certified in November 2010 by City Council Resolution No. 4072-10) and the 2040 Union City General Plan Update EIR (certified on December 10, 2019 by City Council Resolution No. 5548-19). No new information of substantial importance has been discovered requiring revisions to the impacts, mitigation measures or alternatives that were provided in either EIR. Additionally, there have not been any substantial changes with respect to City policies or requirements that would require additional environmental analysis, which determined that the project would not result in any significant environmental impacts with the incorporation of mitigation measures. All adopted mitigation measures continue to apply to the project. Thus, pursuant to Sections 15162 and 15168 of the CEQA Guidelines, the City has determined that no further analysis is required; and
2. That the proposed Development Agreement is consistent with the CSMU (Station Mixed Use Commercial) General Plan land use designation and related policies that apply to development in the Station District. The Development Agreement would foster a high-density, mixed use residential development with ground floor retail space, which helps support transit ridership. Additionally, the uses and design of the project encourage transit use and minimize automobile dependence; the project helps create a vibrant, transit-oriented mixed-use area, and is pedestrian-friendly and minimizes parking impacts on the streetscape and the neighborhood; and the project will be harmonious with existing and potential uses within the Station District and surrounding areas. The project is also consistent with the DIPSA Specific Plan, which identified high-density residential and commercial development for the Station District area; and
3. That the proposed Development Agreement will not be detrimental to the health, safety and general welfare of persons residing in the immediate area, not be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole because mitigation measures have been included to mitigate all potential significant environmental

impacts to less than significant levels, and in addition, the project has been designed and conditioned consistent with applicable requirements to protect health and safety including the provision of adequate water supply including water used for fire suppression systems, adequate access for emergency vehicles, and that the project will also be constructed consistent with current Building Code requirements; and

4. That the proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values because it includes provisions to facilitate the orderly development of the project. The complexity, enormity and long-range nature of the project would be difficult for the developer to undertake if City had not determined, through this Development Agreement, to insert a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the project. As a result of the execution of this Development Agreement, both parties can be certain that the project can proceed without disruption caused by a change in planning and development policies and requirements, and such assurance will reduce the actual or perceived risk of planning, financing and proceeding with construction of the project; and
5. That the proposed Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5 because it provides some assurances to the applicant to proceed with the multi-year project in accordance with existing policies, rules and regulations in return for the provision of public benefits. A noticed public hearing on the Development Agreement was held by the Planning Commission.

Prepared by

Farhad Mortazavi, Contract Planner

Submitted by

Derek Farmer, Planning Manager

Attachments

Exhibit A:	Draft Development Agreement
Attachment 1:	Draft Resolution
Attachment 2:	Approved City Council Resolution #5143-17