



# STAFF REPORT

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December 13, 2023  
File Number 0800-30

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## SUBJECT

**A REQUEST TO REMOVE A CONDITION OF APPROVAL APPLIED TO A MAJOR PLOT PLAN REQUIRING FUNDING OF ONGOING MUNICIPAL SERVICES REQUIRED BY THE PROJECT**

## DEPARTMENT

Development Services Department, Planning Division

## RECOMMENDATION

Request that the City Council uphold the Planning Commission recommendation of denial (4-2-1) to modify a Major Plot Plan in order to eliminate a condition of approval requiring funding of ongoing municipal services. The request is for a project condition of approval required for a 44-unit apartment project located at 1860, 1866, 1870 & 1896 S. Escondido Blvd. and the City Council may a) adopt Resolution No. 2023-152, denying a modification and upholding a condition of approval; or b) adopt Resolution No. 2023-153, granting the modification and waiving the condition of approval.

Staff Recommendation: Recommend City Council deny the modification request and uphold the Planning Commission's denial (Development Services Department: Veronica Morones)

Planning Commission Recommendation: Denial to modify a Major Plot Plan to eliminate a condition of approval of ongoing municipal services. (Vote: 4-2-1)

Presenter: Veronica Morones, City Planner

## BACKGROUND

The Planning Division issued an administrative approval for a Major Plot Plan, inclusive of a density bonus, on April 5, 2022, for a 44-unit apartment complex located at northeastern corner of S. Escondido Blvd. and Vermont Avenue (addressed as 1860, 1866, 1870 & 1896 S. Escondido Blvd.) The Project approval includes four units that will be deed-restricted for very-low-income households as detailed in Attachment 1 (Major Plot Plan Conditional Letter of Approval). The Applicant/Owner signed an "Acknowledgement and Acceptance of Conditions of Approval," dated April 14, 2022, which included Condition of Approval No. 15 to fund operational costs of providing municipal services for Community Facilities District No. 2020-01.

The applicant requests to modify the Major Plot Plan to eliminate the condition of approval that requires the developer to fund ongoing operational costs of providing municipal services required for the approved project. The applicant contends the modification request is necessary in order to make the project



# CITY of ESCONDIDO

## STAFF REPORT

financially feasible as detailed in the request letter submitted by the applicant in April 2023, provided under Attachment 2 (Applicant Request Letter). All other aspects of the approved project are not subject to this request.

This request was originally noticed and scheduled for the August 22, 2023 Planning Commission meeting; however, the item was continued to the September 12, 2023 meeting. At the September 12th meeting, the Planning Commission voted 4-2-1 to recommend denial of the request to City Council.

### FISCAL ANALYSIS

Based on the adopted Director Decision approving the Major Plot Plan, the subject property falls under the “Urban V” rate at \$778.01 (Fiscal Year 22-23) per unit per year through June 30, 2023. This rate reflects the overall project density of 40 units/acre. Based on the proposed 44-unit development, the 2022/2023 estimated annual amount for ongoing services is \$34,232 (44 units x \$778.01 rate), subject to a 2% annual adjustment.

As a part of the City of Escondido’s ongoing effort to address projected budget shortfalls, the city conducted a Fiscal Impact Analysis (“FIA”) for new residential development in 2019. The FIA determined the per capita cost of providing municipal services for new residential development involving Police, Fire, Public Works, Community Services, and General Services (support departments) exceeds the anticipated revenue received, including property taxes, property tax in lieu of vehicle license fees, intergovernmental, property transfer tax, fines, forfeitures, permits, licenses, and sales tax generated by new residents. Based on these findings, the current structural budget deficit is anticipated to increase with each new residential development project approved. Below is a summary of the FIA findings by development type for a typical 5-acre site at the time the analysis was conducted:

	Single Family	Small Lot Single Family	Townhomes	Apartment/Condos
Project Size (5-acre site)	25 units	75 units	125 units	200 units
Avg. Density	5 units/acre	15 units/acre	25 units/acre	40 units/acre
Revenue Generate	\$52,900	\$128,800	\$157,900	\$204,700
Cost to Provide Municipal Services	\$66,300	\$184,500	\$248,500	\$361,200
Annual Unfunded Cost	\$13,400	\$55,700	\$90,600	\$156,500



# CITY of ESCONDIDO

## STAFF REPORT

Unfunded Cost/Unit	\$536	\$743	\$725	\$783
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City policy currently requires all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project. The following is a brief history of the creation, purpose, and implementation of that policy:

- On June 12, 2019, the City Council directed staff to investigate all options to address the structural budget deficit to ensure the budget deficit does not grow as the City develops, including evaluating the feasibility of a Citywide Services Community Facilities District (“CFD”) as a streamlined means for projects to offset their ongoing impact to the general fund.
- On April 8, 2020, the City Council indicated its intent to require new residential development to offset the ongoing costs of providing public services.
- On May 13, 2020, the City Council held a duly noticed public hearing and adopted Resolution No. 2020-44 (Resolution of Formation) establishing CFD 2020-1, the Citywide Services CFD.
- On September 16, 2020, the City Council adopted Resolution No. 2020-115 annexing five projects with 66 units into CFD 2020-1 creating the second (2) zone of the Services CFD (Zone 2020-2).
- On September 23, 2020, the City Council restated its intent to require new residential development to offset the ongoing costs of providing public services, specifically noting that the requirement be applied to any project approved after May 13, 2020.
- On October 21, 2020, the City Council adopted Resolution No. 2020-147 annexing a 42-unit project located at 2608 S. Escondido Blvd. into CFD 2020-1 and creating the third (3) zone of the Services CFD (Zone 2020-03).
- On November 18, 2020, the City Council adopted Resolution No. 2020-160 annexing two (2) projects containing 21 units into CFD 2020-1 creating the fourth zone of the Services CFD (Zone 2020-04).
- On July 21, 2021, the City Council adopted Resolution No. 2021-77 approving the special tax rate for CFD 2020-1 (Public Services) for fiscal year 2021/22.
- On September 15, 2021, the City Council adopted Resolution No. 2021-130 annexing three (3) projects containing 65 units into CFD 2020-1 creating the fifth (5) zone of the Services CFD (Zone 2020-5).
- On March 2, 2022, the City Council adopted Resolution No. 2022-14 annexing two (2) projects containing 44 units into CFD 2020-1 creating the sixth (6) zone of the Services CFD (Zone 2020-6).
- On July 20, 2022, the City Council adopted Resolution No. 2022-87 approving the special tax rate for CFD 2020-1 (Public Services) for fiscal year 2022/23.

Council policy requires that all new residential developments off-set their impacts to ongoing municipal services. This requirement is identified as Condition of Approval II.15 in the Letter of Conditional Approval dated April 5, 2022(See Attachment “1”). Specifically, the condition states:



# CITY of ESCONDIDO

## STAFF REPORT

***“Community Facility District or Funding Mechanism.*** *The Applicant shall fund all on-going operational costs of providing municipal services required for the Project, the amount of such funding to be determined by the City Council at the time of Project approval. Such funding shall occur through either an agreement to form or annex into a Community Facilities District (“CFD”) or the establishment of another lawful funding mechanism reasonably acceptable to the City (“Public Services Funding Agreement”). The provisions of the Public Services Funding Agreement shall specify any terms and limitations necessary to implement the CFD or other funding mechanism to offset the impacts to public services associated with the project. The City Manager, or City Manager’s designee, shall be authorized to approve and execute the Public Services Funding Agreement, and the Public Services Funding Agreement shall be finalized prior to the City’s issuance of any permit for the Project.”*

The condition cited above is consistent with existing City Council policy requiring all residential development to offset its impact on the general fund by providing an ongoing funding source to pay for public services demanded by the project.

The condition provides an option for the applicant to either form or annex into the CFD or the establishment of another lawful funding mechanism reasonably acceptable to the City (“Public Services Funding Agreement”). Should the applicant choose to form or annex into a CFD, the estimated fee based on the density of the project (Fiscal 2022/2023), which is adjusted annually, is identified in the table below:

<b>CFD (2022/2023) levy per unit 40+ du/ac (year)</b>	<b>Total # of Units</b>	<b>Total annual levy</b>	<b>Cost per unit monthly</b>
\$778.01	44	\$34,232	\$64.83

Modification to a Major Plot Plan in order to eliminate a condition of approval requiring funding of ongoing municipal services requires review by the Planning Commission. However, because the Planning Commission does not have the authority to waive City Council policies and fees, they serve in an advisory role to the City Council on this matter. For context, the City Council considered two project appeals (fall of 2022) of the same condition of approval that requires new residential development to offset its fiscal impacts to ongoing municipal services. In both instances, the City Council granted the appeal of the standard condition of approval and waived the requirement for payment for ongoing municipal services for those two projects. However, it should be noted that both of those requests involved an appeal of the condition within the allotted 10-day appeal period whereas this request is a modification to the Major Plot Plan previously approved in April 2022.



# CITY *of* ESCONDIDO

## STAFF REPORT

### **DENSITY BONUS ANALYSIS**

Density bonus law (Government Code section 65915 et. seq.) and Article 67 of the Escondido Zoning Code (Density Bonus and Residential Incentives) are intended to encourage the development of affordable housing. This is accomplished through the allowance for an increase in residential density above what would typically be allowed for a property, and through the provision of incentives and waivers from development standards that make construction of the project infeasible.

Allowable increases in density are based on a sliding scale that involves the percentage of affordable units being provided, and the level of affordability of those units. Current zoning for the subject property would allow a total of 32 base units; however, by deed restricting 13% of those units (amounting to four-units) for very-low-income households, the project is eligible for a 42.5% increase in allowable density (12 units), resulting in a total allowance of 44 units.

The percentage of affordable units and level of affordability also entitles the applicant to three incentives and concessions. The applicant requested no incentives for this project; however, the applicant did request a concession for the reduction in required open space (from 300 square feet per unit to 205 square feet per unit). Under the requested modification to the Major Plot Plan, the applicant now requests the elimination of the requirement to fund ongoing operational costs of providing municipal services required for the project as an incentive to facilitate the construction of the project.

Government Code section 65915(l) states that density bonus law "...does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements." Similarly, section 33-1414(a)(2)(E) of the City of Escondido Municipal Code states that "the city council may, but is not required to, provide direct financial incentives, including direct financial aid in the form of a loan or grant, the provision of publicly owned land, or the waiver of fees or dedication requirements." Staff has applied the condition of approval in question based on existing City Council Policy. Neither City policy nor the Government Code give staff the authority to waive or modify the condition; however, the City Council does have the authority to do so.

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission considered the modification request at its September 12, 2023 meeting and denied the applicant's request to modify a Major Plot Plan by a vote of 4-2-1; Commissioners Barber and Mecaro voted no; Commissioner Barba was absent. A copy of the Planning Commission staff report is included with this report as Attachment 3.

The Commissioners discussed the difference between the two prior appeals of the specific condition of approval and this modification to a Major Plot Plan to eliminate the specific condition of approval requiring funding of ongoing municipal services. During deliberation, Commissioner Barber moved to



# CITY *of* ESCONDIDO

## STAFF REPORT

grant the modification for the four-units that would be deed-restricted as affordable units, motion was seconded by Commissioner Mecaro, but failed to gain a majority (2-4-1 voting), and as a result, failed. After subsequent deliberation and questions on processing and timing, Commissioner Speer offered a motion to approve staff's recommendation to deny the modification and was seconded by Commissioner Weiler. The Planning Commissioners voted for the denial by a 4-2-1 vote, as noted above.

### **ENVIRONMENTAL REVIEW**

The California Environmental Quality Act ("CEQA") Guideline's list classes of projects that have been determined to not have a significant effect on the environment and as a result are exempt from review under CEQA. The Project site is located within a developed urban area of the city and previously developed with residential structures. The proposed project qualifies for a categorical exemption from CEQA pursuant to CEQA Guidelines section 15332, "Infill Development Project." A CEQA Notice of Exemption was issued for the Project and posted with the County Clerk's Office in accordance with CEQA.

### **CONCLUSION**

The Director of Development Services, in his capacity to approve Major Plot Plan permits, applied a standard condition of approval requiring the approved project to fund all on-going operational costs of providing municipal services based on existing City Council policy. Staff acknowledges that both the Government Code and Escondido Zoning Code allow the City to modify the condition at the discretion of the City Council, and the Planning Commission recommended that the City Council deny the request. As such, and because the Planning Commission is serving in an advisory role to City Council on this modification request, staff recommends the City Council deny the modification request and uphold the Director's decision to approve the Project subject to all Conditions of Approval contained in the Conditional Letter of Approval (Attachment 1).

### **RESOLUTIONS**

- a. Resolution No. 2023-152, Denial of Modification (Exhibits A and B)
- b. Resolution No. 2023-153, Granting Modification (Exhibits A and B)

### **ATTACHMENTS**

- a. Plot Plan Conditional Letter of Approval (excerpted) - dated April 5, 2022
- b. Applicant Request Letter
- c. Planning Commission Staff Report (excerpted) - dated September 12, 2023