

TOWN OF WINDSOR AGENDA REPORT

Joint Windsor Town Council, Windsor Redevelopment Successor Agency and Windsor Water District Meeting Date: August 6, 2025

To: Mayor and Town Council
From: Kim Voge, Planner III
Subject: Hembree Lane Oaks Development Agreement Annual Review and Amendment No. 2 to the Development Agreement to Modify Fee Deferral Terms

Recommendation to Council:

1. Adopt a resolution finding the Developer of the Hembree Lane Oaks Project in compliance with the material terms of the Development Agreement.
2. Hold first reading, by title only, an ordinance approving the second amendment of the Hembree Lane Oaks Development Agreement.

Strategic Plan Element:

The recommended action supports the goals of Fiscal Health, Infrastructure and Livability. Goal Statement: Ensure the economic health and long-term financial viability of the Town. Goal Statement: Through a lens of sustainability and innovation, invest in the Town's infrastructure and public facilities to meet the needs of future generations. Goal Statement: Preserve community character by maximizing the use of existing amenities and creating future opportunities that enhance quality of life for all.

Background:

On May 15, 2023, the Town Council approved planning entitlements for the Hembree Lane Oaks project, a 24-unit single-family planned development with two deed-restricted moderate-income units and 5-8 junior accessory dwelling units. Most of the units are clustered at the western end of the subdivision, as shown on the Site Plan (Attachment 7). All units have two stories, with three bedrooms and two bathrooms. Approximately 2.1 acres of open space will be dedicated to the Town for the long-term preservation of biological resources, including oak trees, a vernal pool, and a linear drainage feature. The entitlements include a Development Agreement, pursuant to Ordinance No. 2023-377 (available online: <https://www.townofwindsor.ca.gov/682/Ordinances>).

On July 3, 2023, the Town and Falcon Point Bolten Hembree LLC entered into a Development Agreement for the Project. Hummingbird Lane Investors LLC is the successor and current party to the Development Agreement ("Developer"). The original Development Agreement is provided in Attachment 8. The terms of the Development Agreement include the following:

1. The Developer shall dedicate a minimum of two acres of open space to the Town.
2. The Town shall not require payment of tree mitigation in-lieu fees.
3. The Developer shall make a cash payment to the Town for community benefit prior to recordation of the Final Subdivision Map.
4. The Development Agreement term is 8 years.
5. Development rights for the approved plans are vested for the 8-year term of the agreement.
6. The Developer shall design, construct improvements, and provide for the maintenance of the open space area, including landscaping and an illuminated pathway.

7. The deferred development impact fees shall be paid in full upon issuance of the first Certificate of Occupancy or by December 31, 2025, whichever is first.

On February 21, 2024, the Town Council authorized a Fee Deferral Agreement to extend the payment deadline for some of the required development impact fees to the issuance of the first Certificate of Occupancy (instead of upon issuance of the first building permit), pursuant to Town Council Resolution 3914-24 (available online: <https://www.townofwindsor.ca.gov/685/Resolutions>). This change aligned with recent State law regarding payment of impact fees. The deferred fees include drainage, traffic, parks & recreation, and police facilities impact fees. The fee deferral was authorized to support a well-designed infill residential development project that includes two affordable units and a significant habitat conservation component, in recognition that the Project is subject to time-consuming and costly environmental permitting requirements.

On April 15, 2024, a Fee Deferral Agreement was executed, pursuant to Town Council Resolution 3914-24 (available online: <https://www.townofwindsor.ca.gov/685/Resolutions>).

On October 2, 2024, the Town Council authorized the First Amendment to the Development Agreement and authorized the Town Manager to execute an amendment to the Fee Deferral Agreement, pursuant to Ordinance 2024-392 (available online: <https://www.townofwindsor.ca.gov/682/Ordinances>). The First Amendment to the Development Agreement is provided in Attachment 9. The amended terms of the Development Agreement include the following (revisions are highlighted with **bold** text):

1. The Developer shall dedicate a minimum of two acres of open space to the Town.
2. The Town shall not require the payment of tree mitigation in-lieu fees.
3. The Developer shall make a cash payment to the Town for community benefit prior to **the issuance of a Certificate of Occupancy**.
4. The Development Agreement term is 8 years.
5. Development rights for the approved plans are vested for the 8-year term of the agreement.
6. The Developer shall design, construct improvements, and provide for the maintenance of the open space area, including landscaping and an illuminated pathway.
7. The deferred development impact fees shall be based upon **the FY23-24 Master Fee Schedule for all units that receive a Certificate of Occupancy by October 31, 2025. Thereafter, impact fees shall be assessed based on a one-year roll back. Fees shall be paid per unit prior to the issuance of a Certificate of Occupancy. For any units that receive a Certificate of Occupancy after October 31, 2025, but still within the term of the Development Agreement, fees shall be assessed pursuant to the prior year's master fee schedule. For example, a project that receives a Certificate of Occupancy on November 30, 2025, normally would have fees assessed pursuant to the FY25-26 master fee schedule, which covers the period between July 1, 2025, and June 30, 2026. However, due to the one-year rollback that would be applied through the Development Agreement, the project with a Certificate of Occupancy issued on November 30, 2025, would instead be assessed pursuant to the FY24-25 master fee schedule.**
8. **The Town Manager shall be authorized to amend the Hembree Lane Oaks fee deferral agreement to defer water and wastewater capacity fees for 24 units, in addition to the previously authorized deferral of drainage, traffic, parks and recreation, and police facilities impact fees, in accordance with the same payment schedule described in paragraph (d) of this section.**

On July 22, 2025, the Town of Windsor Planning Commission considered the request from the Developer for additional amendments to the Development Agreement. The Planning Commission

adopted Resolution No. 780-25 (Attachment 4), recommending that the Town Council approve the Second Amendment to the Development Agreement to incorporate the following changes:

- Term #3: The Developer shall make a cash payment to the Town for community benefit **prior to December 31, 2026.**
- Term #7: The deferred development impact fees shall be based upon the FY23-24 Master Fee Schedule for all units that receive a Certificate of Occupancy by **December 31, 2026.**

Discussion:

No revisions to the project description or project design are requested. The Town Council is requested to: (1) determine that the Developer and the Town are in compliance with the material terms of the Development Agreement; and (2) authorize Amendment 2 of the Development Agreement to modify the fee deferral terms.

Development Agreement Annual Review

The terms of the Development Agreement require an annual review by the Town Council at a public hearing to determine the Developer's and Town's compliance with the obligations included in the Development Agreement. The annual review does not include a review of compliance with other Project approvals (e.g., mitigation monitoring and reporting program, tentative subdivision map, site plan and design review, other agreements, etc.). As required by the Development Agreement, the Developer provided a letter demonstrating good faith compliance with the terms of the Development Agreement (Attachment 5).

The Developer identified the following actions that have been completed to comply with terms of the Development Agreement:

- Submitted plans and received approvals for public infrastructure improvements, grading, architecture, and site improvements
- Coordinated with Town staff at all stages to facilitate the development of the Project
- Prepared, received approvals, and recorded the Final Subdivision Map
- Completed all state and federal environmental permitting requirements, including purchasing mitigation credits, that were necessary to allow for construction of the project.

In addition, Town staff has identified the following steps that have been taken in good faith to move the project forward:

- February 2024 – Tree security deposit bond provided
- March 2024 – Community benefit payment amount confirmed at \$40,203
- March 2024 – Draft Affordable Housing Regulatory Agreement submitted
- June 2024 – Declaration of Restrictions fully executed and recorded
- June 2024 – Maintenance Agreement fully executed and recorded
- June 2024 – Tree Removal Permit issued
- June 2024 – Agreement and Covenant for Windsor Landscaping and Lighting Assessment District(s) and Windsor 1982 Act Benefit Assessment District was recorded
- January 25, 2025 – Final Map and Subdivision Improvement Agreement approved by Town Council
- March 13, 2025 – Final Subdivision Map and Subdivision Improvement Agreement recorded
- June 26, 2025 - Building permits issued for Lots 3-11

The Community Development Director has reviewed the compliance letter provided by the Developer, as well as the other actions identified by staff, and has determined that the Developer has made a good faith effort to comply with the material terms of the Development Agreement. A draft resolution

determining the Developer and the Town to be in compliance with the Development Agreement is provided in Attachment 1.

Second Amendment to the Development Agreement

Citing numerous hurdles and delays that were beyond the Developer's control, the following modifications to the fee deferral terms are requested:

1. Modify term #3 (identified above) to require the community benefit payment by December 31, 2026 (instead of requiring payment prior to issuance of the first Certificate of Occupancy).
2. Modify term #7 (identified above) to assess development impact fees based upon the FY23-24 Master Fee Schedule for all units for which a Certificate of Issuance is issued prior to December 31, 2026.

A development agreement is a voluntary, negotiated agreement between the Town and a person that owns or controls the property which details the obligations of both parties and specifies the standards and conditions that will govern development of the property. A development agreement amendment requires written recommendations from the Planning Commission (by resolution), followed by Town Council adoption by ordinance. The Developer requests a second amendment to the Development Agreement with two revisions to the fee deferral terms, as follows:

1. Cash Benefit payment due and payable by December 31, 2026.

Staff comments: The amount of the cash benefit payment has been confirmed at \$40,203. This payment is intended to provide for pathway extensions through open space area and/or to provide for other common outdoor amenities. Changing the timing of the payment to December 31, 2026, (instead of payment upon issuance of the first Certificate of Issuance) is not anticipated to make a discernable difference regarding when these improvements would be designed and installed. Therefore, staff supports this request.

2. FY23-24 Master Fee Schedule vested through December 2026.

Staff comments: Because construction activities have only recently begun, no unit will receive a Certificate of Occupancy by October 31, 2026. If it is assumed that all units will be constructed within the next year, thus receiving Certificates of Occupancy before the end of 2026, this request would result in allowing all 24 units a two-year rollback of the master fee schedule for the applicable development impact fees. The difference is approximately \$38,000. Due to the extraordinary complexity of this project, its contribution of needed single-family housing units in an infill setting with sensitive environmental features, staff supports this request.

Other Potential Revisions

The Council may consider extending the one-year roll back after December 31, 2026. In this case, any units that receive a Certificate of Occupancy after December 31, 2026, but still within the term of the Development Agreement, fees would be assessed pursuant to the prior year's master fee schedule. For example, a project that receives a Certificate of Occupancy on November 30, 2027, normally would have fees assessed pursuant to the FY27-28 master fee schedule, which covers the period between July 1, 2027, and June 30, 2028. A one-year rollback would allow this unit to be assessed development impact fees pursuant to the FY26-27 master fee schedule. The Planning Commission discussed this option, but made recommendations without including it, with the goal of incentivizing the project to be completed by the end of 2026, and in recognition that future amendments could be considered.

An ordinance is provided in Attachment 2. A Second Amendment to the Development Agreement is provided in Attachment 3.

Fiscal Impact:

The proposed rollback of the master fee schedule would essentially waive approximately \$38,000 in development impact fees for the project, assuming that all 24 units are completed and receive a Certificate of Occupancy by December 31, 2026. Units receiving a Certificate of Occupancy after December 31, 2026, would reduce the overall amount of fees waived for the project. The waived fees would need to be offset by the General Fund or other sources, or else the infrastructure improvements that are intended to accommodate new development would be diminished.

Environmental Review:

An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the project in accordance with the California Environmental Quality Act (CEQA) and adopted by the Town Council pursuant to Town Council Resolution No. 3855-23. A Mitigation Monitoring and Reporting Plan also was adopted, which requires mitigation measures to reduce all potentially significant impacts to a level that is less than significant. Mitigation measures are required for potential construction-related air quality impacts; biological impacts, including nesting birds, bat species, western pond turtle, special-status bee species and habitat, riparian woodland habitat and valley oak woodland, seasonal wetlands; accidental discovery of cultural, tribal or paleontological resources; geologic impacts related soils and seismic activity; construction-related noise and vibration impacts, and operational noise impacts associated with HVAC units. A Notice of Determination was filed with the County Clerk's office (Doc. No. PST-202300011) on May 24, 2023, and with the State Office of Planning and Research Clearinghouse (SCH #2023020001) on May 18, 2023. No appeal of the CEQA determination was received during the appeal period. The annual review and the proposed revisions to the Development Agreement to change the fee deferral terms would not change any physical aspects of the project, and therefore no further environmental review is required.

Attachment(s):

1. Resolution - 1st DA Annual Review
2. Ordinance Approving 2nd DA Amendment
3. Draft 2nd DA Amendment & Exhibit A to Ordinance
4. PC Reso 780-25 (Unsigned)
5. Applicant Letter
6. Neighborhood Context Map
7. Hembree Lane Oaks Site Plan
8. Development Agreement - Original
9. Development Agreement - 1st Amendment
- 12.1 Hembree PowerPoint (Distributed 2025-08-06)

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Reviewed by:

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Approved by:

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