

**CITY OF WINTERS PLANNING COMMISSION AGENDA
SPECIAL MEETING**

Thursday, October 9, 2014 @ 6:30 PM

City of Winters Council Chambers
318 First Street
Winters, CA 95694-1923
Community Development Department
Contact Phone Number (530) 794-6713
Email: jenna.moser@cityofwinters.org

Chairman: Bill Biasi
Vice Chairman: Kate Frazier
Commissioners: Dave Adams, Lisa Baker,
Paul Myer, Luis Reyes, Patrick Riley
City Manager: John W. Donlevy, Jr.
Mgmt. Analyst: Jenna Moser

I CALL TO ORDER

II ROLL CALL & PLEDGE OF ALLEGIANCE

III CITIZEN INPUT: Individuals or groups may address the Planning Commission on items which are not on the Agenda and which are within the jurisdiction of the Planning Commission. **NOTICE TO SPEAKERS:** Speaker cards are located on the first table by the main entrance; please complete a speaker's card and give it to the Planning Secretary at the beginning of the meeting. The Commission may impose time limits.

IV CONSENT ITEM

None

V STAFF/COMMISSION REPORTS

VI DISCUSSION ITEMS:

A. Hudson-Ogando Subdivision – Third Amendment to Development Agreement

VII COMMISSION/STAFF COMMENTS

VIII ADJOURNMENT

POSTING OF AGENDA: PURSUANT TO GOVERNMENT CODE § 54954.2, THE COMMUNITY DEVELOPMENT MANAGEMENT ANALYST POSTED THE AGENDA FOR THIS MEETING ON OCTOBER 6, 2014



JENNA MOSER, MANAGEMENT ANALYST, PLANNING – GIS

APPEALS: ANY PERSON DISSATISFIED WITH THE DECISION OF THE PLANNING COMMISSION MAY APPEAL THIS DECISION BY FILING A WRITTEN NOTICE OF APPEAL WITH THE CITY CLERK, NO LATER THAN TEN (10) CALENDAR DAYS AFTER THE DAY ON WHICH THE DECISION IS MADE.

PURSUANT TO SECTION 65009 (B) (2), OF THE STATE GOVERNMENT CODE "IF YOU CHALLENGE ANY OF THE ABOVE PROJECTS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING(S) DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY PLANNING COMMISSION AT, OR PRIOR TO, THIS PUBLIC HEARING".

MINUTES: THE CITY DOES NOT TRANSCRIBE ITS PROCEEDINGS. ANYONE WHO DESIRES A VERBATIM RECORD OF THIS MEETING SHOULD ARRANGE FOR ATTENDANCE BY A COURT REPORTER OR FOR OTHER ACCEPTABLE MEANS OF RECORDATION. SUCH ARRANGEMENTS WILL BE AT THE SOLE EXPENSE OF THE INDIVIDUAL REQUESTING THE RECORDATION.

PUBLIC REVIEW OF AGENDA, AGENDA REPORTS, AND MATERIALS: PRIOR TO THE PLANNING COMMISSION MEETINGS, COPIES OF THE AGENDA, AGENDA REPORTS, AND OTHER MATERIAL ARE AVAILABLE DURING NORMAL WORKING HOURS FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT. IN ADDITION, A LIMITED SUPPLY OF COPIES OF THE AGENDA WILL BE AVAILABLE FOR THE PUBLIC AT THE MEETING. COPIES OF AGENDA, REPORTS AND OTHER MATERIAL WILL BE PROVIDED UPON REQUEST SUBMITTED TO THE COMMUNITY DEVELOPMENT DEPARTMENT. A COPY FEE OF 25 CENTS PER PAGE WILL BE CHARGED.

ANY MEMBER OF THE PUBLIC MAY SUBMIT A WRITTEN REQUEST FOR A COPY OF PLANNING COMMISSION AGENDAS TO BE MAILED TO THEM. REQUESTS MUST BE ACCOMPANIED BY A CHECK IN THE AMOUNT OF \$25.00 FOR A SINGLE PACKET AND \$250.00 FOR A YEARLY SUBSCRIPTION.

OPPORTUNITY TO SPEAK, AGENDA ITEMS: THE PLANNING COMMISSION WILL PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COMMISSION ON ITEMS OF BUSINESS ON THE AGENDA; HOWEVER, TIME LIMITS MAY BE IMPOSED AS PROVIDED FOR UNDER THE ADOPTED RULES OF CONDUCT OF PLANNING COMMISSION MEETINGS.

REVIEW OF TAPE RECORDING OF MEETING: PLANNING COMMISSION MEETINGS ARE AUDIO TAPE RECORDED. TAPE RECORDINGS ARE AVAILABLE FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT FOR 30 DAYS AFTER THE MEETING.

THE COUNCIL CHAMBER IS WHEELCHAIR ACCESSIBLE



**PLANNING COMMISSION
STAFF REPORT**

TO: Board Chair and Members of the Planning Commission
DATE: October 9, 2014
FROM: John W. Donlevy, Jr., City Manager
SUBJECT: Hudson/Ogando- Third Amendment to Development Agreement

RECOMMENDATION:

That the Planning Commission:

1. Receive a Staff Report on a proposed Third Amendment to the Hudson/Ogando Subdivision;
2. Conduct a Public Hearing;
3. Re-Affirm the previously certified and approved CEQA clearance for the Hudson Ogando Development Agreement in the form of a Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-56) adopted on November 15, 2005. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement; and
4. Make recommendation to the Winters City Council of a third amendment to the previously approved and amended Development Agreement for development of the property commonly known as the Hudson/Ogando Property between the City of Winters and Turning Point Acquisitions V, LLC is being proposed, pursuant to Government Code sections 65864 through 65869.5 in order to revise the requirement for a Cooperative Agreement, change the cost allocation for the Urban Water Management Plan, and remove the item related to improvements at Grant and Morgan.

BACKGROUND:

Since 2006, the City has entered into five (5) development agreements with various developers for the subdivision and development of residential projects. In 2007, the real estate market essentially “crashed” and none of the proposed projects proceeded. Because of this, amendments have been initiated and adopted over the past eight years to keep the agreements current and viable for when the real estate market returns.

In February 2009, the City approved a First Amendment to the Hudson/Ogando Subdivision Development Agreement. This Amendment was the first revision in an attempt to restore the economic viability of the project to provide new housing in the area.

In August 2013, the City Council approved a Second Amendment to the Hudson/Ogando Subdivision Development Agreement. This Amendment was a comprehensive revision to essentially “modernize” the agreement to recognize capital improvements made during the interim, needs of the City and the developer, and also to acknowledge the new fiscal realities of residential development.

Subsequent to this action, Staff has been working with the Developer on additional modifications to bring them current and to create a balance between a project which will bring a quality project to the City and one which is financially viable to build for the developer.

These modifications are discussed below.

DISCUSSION: The proposed amendment would defer the requirement for a Joint Cooperative Development and Reimbursement Agreement with adjacent development projects; change the requirement for payment to cover the cost of the Urban Water Management Plan; and delete the requirement for improvements at Grant Ave. and Morgan St. The modifications are included in the (attached) recommended Third Amendment, but generally include the following:

Cooperative and Reimbursement Agreement: Revise to require the Agreement be prepared and executed among the Owners prior to the City’s approval of the first final map associated with Callahan Estates or Winters Highlands.

Urban Water Management Plan: Revise language to allow pro-rata share of cost, sharing with Callahan, Highlands, and Creekside.

Pedestrian Circulation and Safety Improvements: Delete this DA Item, as any improvements would be throw-away due to future intersection improvements (signal or roundabout).

ATTACHMENTS:

1. Project Map
2. Notice of Public Hearing
3. Third Amendment to Development Agreement
4. Ordinance – Third Amendment to Development Agreement

NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION

Notice is hereby given that a third amendment to the previously approved Development Agreement for development of the property commonly known as the Hudson-Ogando Property between the City of Winters and Turning Point Acquisition V, LLC is being proposed, pursuant to Government Code sections 65864 through 65869.5 in order to make amendments to the timing and manner of funding certain public improvement obligations.

The development consists of residential development on approximately 16 acres, Yolo County APN 030-430-33, located at the northwest side of Main Street and Grant Ave.

The Third Amendment to the Development Agreement will be reviewed by the Planning Commission at the City Council Chambers, at 318 First Street, on October 9, 2014, at or after the hour of 6:30 p.m. Comments from the Planning Commission on the Third Amendment to the Development Agreement will be presented to the Winters City Council on October 21, 2014, at a meeting to be separately noticed.

Prior to the scheduled Planning Commission hearing, copies of the staff report and the Third Amendment to the Development Agreement will be available for review at City Hall. Any person having an interest in any property affected by the proposed Third Amendment to the Development Agreement may appear at the above hearing either in person or by counsel or both and may be heard in support of his/her position. If you challenge the decision of this project in court, pursuant to Government Code section 65009, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Winters at or prior to the public hearing.

The purpose of the public hearing will be to give citizens an opportunity to make their comments known. If you are unable to attend the public hearing, you may direct written comments to the City of Winters, City Clerk, 318 First Street, Winters, CA 95694 or you may telephone (530) 795-4910, extension 101, before the meeting on October 9, 2014. In addition, a public information file is available for review at the above address between the hours of 8:00 a.m. and 5:00 p.m. on weekdays.

If you plan on attending the public hearing and need a special accommodation because of a sensory or mobility impairment/disability, please contact Nanci Mills, City Clerk, (530) 795-4910, extension 101 to arrange for those accommodations to be made.

**PROOF OF PUBLICATION
(2015.5 C.C.P.)**

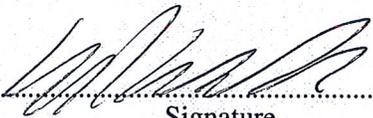
This space is for the County Clerk's Filing Stamp

STATE OF CALIFORNIA
COUNTY OF YOLO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of THE WINTERS EXPRESS, a newspaper of general circulation, printed and published in the City of Winters, County of Yolo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Yolo, State of California, under the date of December 24, 1951, Case Number 12461; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit: September 25, 2014.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Winters, California, this 25th day of September, 2014



Signature

Charles R. Wallace
Publisher

Notice of Public Hearing

Notice of Public Hearing

**NOTICE OF PUBLIC HEARING
BEFORE THE PLANNING COMMISSION**

Notice is hereby given that a third amendment to the previously approved Development Agreement for development of the property, commonly known as the Hudson-Ogando Property between the City of Winters and Turning Point Acquisition V, LLC is being proposed, pursuant to Government Code sections 65864 through 65869.5 in order to make amendments to the timing and manner of funding certain public improvement obligations.

The development consists of residential development on approximately 16 acres, Yolo County APN 030-430-33, located at the northwest side of Main Street and Grant Ave.

The Third Amendment to the Development Agreement will be reviewed by the Planning Commission at the City Council Chambers, at 318 First Street, on October 9, 2014, at or after the hour of 6:30 p.m. Comments from the Planning Commission on the Third Amendment to the Development Agreement will be presented to the Winters City Council on October 21, 2014, at a meeting to be separately noticed.

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Published September 25, 2014

RECORDED AT REQUEST OF AND
WHEN RECORDED MAIL TO:

CITY OF WINTERS
318 First Street
Winters, CA 95695
Attention: City Clerk

(Space Above this Line for Recorder's Use Only)

**THIRD AMENDMENT TO
DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF WINTERS AND
TURNING POINT ACQUISITIONS V LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY
[HUDSON OGANDO SUBDIVISION]**

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "Third Amendment") is entered into as of _____, by and between the CITY OF WINTERS, a municipal corporation (the "**City**") and TURNING POINT ACQUISITIONS V LLC, a California limited liability company (the "**Developer**").

Recitals

A. The City and the Developer's predecessor in interest have heretofore entered into a Development Agreement, executed as of June 3, 2005 (the "**Development Agreement**"), providing for the residential development of certain real property, Yolo County APN 030-430-33, located at the northwest side of Main Street and Grant Ave. and commonly known as the Hudson Ogando Property (the "**Project**"), located within the boundaries of the City of Winters. Capitalized terms used but not defined in this Third Amendment shall have the meanings given in the Development Agreement.

B. The severe and adverse change in economic conditions that has occurred subsequent to the execution of the Development Agreement by the City and Developer's predecessor in interest resulted in a First Amendment to Development Agreement ("**First Amendment**"), approved and adopted by Ordinance in January of 2009.

C. In August 2013, the City Council approved a Second Amendment to the Development Agreement ("**Second Amendment**") to update the terms of the agreement, to

recognize capital improvements made prior to the adoption of the Second Amendment, and to extend the life of the Development Agreement.

D. Subsequent to this action, Staff has been working with the developer on additional modifications to the Development Agreement to make certain clarifications and modifications to the obligations of the Developer (“**Third Amendment**”).

E. City has given the required notice of its intention to adopt this Third Amendment and has conducted public hearings thereon pursuant to Government Code section 65857. As required by Government Code section 65867.5, City has found that the provisions of this Third Amendment and its purposes are consistent with the goals, policies, standards, and land use designations specified in the City’s General Plan.

E. On _____, the City of Winters City Council adopted Ordinance No. 2014-_____ approving this Third Amendment and authorizing its execution.

Agreement

Section 1. Cooperative and Reimbursement Agreement. Section 4.6 of the Development Agreement is amended in its entirety to read as follows:

The developers of Hudson-Ogando, Callahan Estates, and Winters Highlands, herein referred to as “Owners,” intend to subdivide their respective properties into residential lots, which will be served by public streets and improvements, easements, and rights-of-way. Each Owner will require access to portions of the Other’s property for purposes of installation of streets, utilities conduit, storm drains, sewer, and other improvements for future use and/or dedication for the benefit of their respective residential project, as well as for the benefit of all the Owners.

Public streets and improvements, easements, and rights-of-way that are reasonably expected to benefit all Owners are defined herein as “Joint Improvements.” “Joint Improvements” may include, but are not limited to, streets, curbs, gutters, street lighting, sidewalks, joint trench, storm drains, storm water pumping station, sewer and water collection systems, sewer pump station, utilities, and other public improvements.

For the purpose of constructing the “Joint Improvements” as may be necessary and appropriate to serve the Owners and as may be required by Development Conditions affecting each Owner’s Property, the Owners shall make reasonable efforts to enter into a “Joint Cooperative Development and Reimbursement Agreement”. The “Joint Cooperative Development and Reimbursement Agreement” shall be prepared and executed among the Owners prior to the City’s approval of the first final map associated with ~~any of the Owner’s~~ the Callahan Estates or Winters Highlands properties. The City shall not approve a final map for any of Owner’s respective projects (as described above) until the Developer either (a) submits to City the Joint Cooperative Development and Reimbursement Agreement executed by all Owners or (b) provides evidence to the satisfaction of the City Manager that the Developer used

reasonable good faith efforts to obtain a Joint Cooperative Development and Reimbursement Agreement. In the event that the Developer is unable to obtain such an Agreement, the City shall, at the request and the sole expense of the Developer, exercise reasonable efforts as authorized by law to obtain necessary right of way and easements as reasonably necessary to install public improvements.

The City Manager shall have the discretion to waive this requirement for the Hudson-Ogando project only if Developer agrees to pay for the cost of all sewer infrastructure for future connections required for Hudson-Ogando.

Revised Section 4.6 of the Development Agreement shall be revised to require the “Joint Cooperative Development and Reimbursement Agreement” be prepared and executed among the Owners prior to the City’s approval of the first final map associated with Callahan Estates or Winters Highlands.

Section 2. Urban Water Management Plan.

Section 4.9, paragraph a., of the Development Agreement is hereby amended to read as follows:

a. The Developer shall pay their pro-rata share, based on number of units in relation to Callahan, Winters Highlands, and Creekside, of the cost for preparation of a City Urban Water Management Plan. Payment shall be due and payable no later than the issuance of the 50th market-rate building permit.

Section 3. Pedestrian Circulation and Safety Improvements.

Section 4.11 (relating to Grant and Morgan Intersection) shall be deleted in its entirety.

Section 4. Modifications to Conditions of Approval.

Exhibit A-1 of this Amendment includes amendments to certain Conditions of Approval for the Project to clarify the manner in which Developer is being required to comply with such Conditions of Approval. Except as modified in Exhibit A-1, all Conditions of Approvals as previously approved in the Development Agreement, as amended, shall remain in full force and effect.

Section 5. The effective date of this Third Amendment shall be the date as written above in the introductory paragraph. Except as modified and amended by this Third Amendment, all other provisions of the Development Agreement, as Amended, shall remain unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Second Amendment as of the date first above written (Attach LLC Resolution following signatures_.

CITY:	DEVELOPER:
CITY OF WINTERS _____ Mayor	TURNING POINT ACQUISITIONS V LLC, A CALIFORNIA LIMITED LIABILITY COMPANY By: _____ Its: _____
ATTEST: _____ City Clerk	ATTEST: By _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTERS APPROVING A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WINTERS AND TURNING POINT ACQUISITIONS V LLC FOR THE HUDSON OGANDO SUBDIVISION

WHEREAS, the City of Winters (“City”) and the predecessor in interest to Turning Point Acquisitions V LLC (“Developer”) entered into that certain Development Agreement executed as of June 3, 2005 (“Development Agreement”); and

WHEREAS, the Development Agreement provides for the residential development of certain real property, Yolo County APN 030-430-33, located at the northwest side of Main Street and Grant Avenue and commonly known as the Hudson Ogando Property (the “Project”); and

WHEREAS, the severe and adverse change in economic conditions that occurred subsequent to the execution of the Development Agreement by the City and Developer’s predecessor in interest resulted in a First Amendment to the Development Agreement; and

WHEREAS, in August 2013, the City Council approved a Second Amendment of the Development Agreement to update the terms of the Development Agreement, to recognize capital improvements made prior to the adoption of the Second Amendment, and to extend the life of the Development Agreement; and

WHEREAS, Developer and City desire to make certain clarifications and modifications to the obligations of Developer in connection with the Project, which clarifications and modifications are incorporated into a Third Amendment to the Development Agreement (the “Third Amendment”); and

WHEREAS, on _____ 2014, the Winters Planning Commission conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Third Amendment to the Development Agreement were heard and at which the Third Amendment to the Development Agreement was comprehensively reviewed; and

WHEREAS, on _____, 2014, the Winters City Council conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Third Amendment to the Development Agreement were heard and at which the Third Amendment to the Development Agreement was comprehensively reviewed; and

WHEREAS, the City Council reviewed and studied the amended Development Agreement and found it complies with the California Environmental Quality Act (“CEQA”).

NOW THEREFORE BE IT RESOLVED:

SECTION 1. ADOPTION OF AMENDMENT. Pursuant to California Government section 65868, the City Council hereby approves the Third Amendment to the Development Agreement, in the form attached hereto as **Exhibit A**.

SECTION 2. FINDINGS. Pursuant to Government Code section 65867.5 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council makes and adopts the following findings:

A. That the Third Amendment promotes the public health, safety, and welfare of the community because the Third Amendment will allow the Developer to complete the residential development that will benefit the entire community by providing additional residential units.

B. That the Amendment is consistent with the City's General Plan, as it will allow the Developer to complete the Project, which the City Council previously found to be consistent with the City's General Plan.

SECTION 3. CEQA. The City Council finds and determines that it can be seen with certainty that adoption of this Ordinance will not have a significant effect on the environment. Thus, the adoption of this Ordinance is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines. Staff is directed to file a Notice of Exemption with the Yolo County Recorder's Office within five (5) working days of adoption of this Ordinance.

SECTION 4. RECORDATION. Pursuant to Government Code section 65868.5, within ten (10) days following the execution of the Third Amendment, the City Clerk shall record with the County of Yolo Recorder a copy of the Third Amendment.

SECTION 5. SEVERABILITY. If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more of such be declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

The foregoing ordinance was introduced on _____, 2014, and passed and adopted during a regular meeting of the City Council of the City of Winters on _____, 2014, by the following vote to wit:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):
ABSTAIN: Council Member(s):

Cecilia Aguilar-Curry, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK

EXHIBIT "A"

THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT