



**CITY COUNCIL AGENDA ITEM NO. F.1
07/25/2023**

SUBJECT: Appeal of the Planning Commission's decision to approve Costco
DEPARTMENT: Community Development Department
STAFF: Alexis Morris, Director of Community Development
Jennifer Hagen, Senior Planner

TITLE/RECOMMENDATION

Staff is recommending that the City Council adopt resolutions denying the appeal filed by WCHB, LLC, and affirming the Planning Commission approvals of the project for Costco, which includes two vacant parcels totaling approximately 19.04 acres located south of Lone Tree Plaza Drive and east of Heidorn Ranch Road (APNs 019-020-073 and 019-020-073), as conditioned. The project includes the following requested entitlements:

- (1) Tentative Parcel Map (MS 351-22) for the reconfiguration and subdivision of two vacant parcels into a total of four smaller parcels;
- (2) Conditional Use Permit (CUP 22-001) application to operate the proposed fuel facility;
- (3) Design Review (DR 22-002) application for the development of a 154,852-square-foot Costco Warehouse with a 5,368-square-foot entrance canopy, and a gas station fueling area with an 11,500 square foot canopy over 16 fueling dispensers, which allows for 32 fueling positions. Associated parking lot, landscaping, and access and circulation improvements will also be included on the two lots; and
- (4) Master Sign Program (MSP 22-001) consisting of building mounted signage for the Costco warehouse and Costco fueling station.

Pursuant to CEQA Section 15183, the project is consistent with the development density established by a Community Plan, General Plan, or Zoning for which an environmental impact report (EIR) has been certified. Therefore, no further environmental analysis is required as the proposed Tentative Parcel Map and Design Review applications are consistent with the Priority Area 1 (PA-1) Specific Plan.

FISCAL IMPACT

The project proponent, Arcadia Development Co., has paid a total of \$107,661.67 for application fees and CEQA consultation for this project. The appellant, has paid \$411 in application fees for the appeal.



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BACKGROUND

The item before the Council is an appeal by WCHB, LLC, of the Planning Commission's decision to approve the subject application.

The proposed project includes a Tentative Parcel Map (MS 351-22), Conditional Use Permit (CUP 22-001), Design Review (DR 22-002), and Master Sign Program (MSP 22-001) to construct a Costco Wholesale warehouse and fuel facility located south of Lone Tree Plaza Drive and east of Heidorn Ranch Road.

The proposed Tentative Parcel Map (MS 351-22) includes the reconfiguration and subdivision of two vacant parcels (19.04-acre Parcel A and 4.02-acre Parcel D) into a total of four smaller parcels. The final configuration is summarized as follows:

Parcel A: 17.79 acres (Costco retail warehouse)

Parcel B: 1.66 acres (Costco fuel station)

Parcel C: 1.38 acres (to presently remain unimproved and zoned TV/MU)

Parcel D: 2.23 acres (to presently remain unimproved and zoned TV/MU)

The proposed Conditional Use Permit (CUP 22-001) application is to operate the fuel facility. The proposed Design Review (DR 22-002) application is for the development of a 154,852-square-foot Costco retail warehouse with a 5,368-square-foot entrance canopy on Parcel A, and a fueling facility with an 11,500 square foot canopy over 16 fueling dispensers, which allows for 32 fueling positions situated on Parcel B. Associated parking lot, landscaping, and access and circulation improvements will also be included on the two parcels. Finally, a Master Sign Program (MSP 22-001) is proposed for Parcel A and Parcel B, consisting of building-mounted signage for the Costco retail warehouse and Costco fueling station.

A detailed analysis of the project is included as part of the June 20, 2023, Planning Commission staff report, which is attached for the City Council's review and reference (see Attachment 12).

Planning Commission Meeting of June 20, 2023

On June 20, 2023, the Planning Commission considered the Tentative Parcel Map, Conditional Use Permit, Design Review, and Master Sign Program for the Costco retail warehouse and fuel facility. Prior to the meeting, staff received a total of 37 public comments that were distributed to the Planning Commission for consideration. After presentation of the staff report and comments from the applicant, the Planning Commission opened public comment and took testimony from eight members of the public. After the close of the public hearing, the Planning Commission discussed whether the project would include installation of EV charging stations or solar panels with the original construction of the site or whether it would only be constructed ready for future potential installation. The applicant stated that at this time, they plan to provide the general infrastructure for both chargers and solar panels and as part of their site development would look into installation but could not confirm whether



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installation would happen. The applicant has since provided further clarification to these questions, which is included in the public comments attached for reference (see Attachment 15).

After the Planning Commission's deliberation, the Planning Commission discussed adding a condition to the Design Review application requiring the applicant to construct a fence along the eastern property line of Parcel A of MS 351-22, adjacent to Highway 4. With that condition formally added, motions were made to adopt Resolution Nos. 23-020, 23-021, 23-022, and 23-023 to approve the requested Tentative Parcel Map, Conditional Use Permit, Design Review, and Master Sign Program, respectively. All motions passed by a 5-0 vote. These actions started the 10-day appeal period.

On June 28, 2023, Hanson Bridgett LLP on behalf of WCHB, LLC (the appellant), filed a timely appeal of the Planning Commission's decision to approve the Tentative Parcel Map, Conditional Use Permit, Design Review, and Master Sign Program for Costco (see Attachment 3). The applicant has also provided a detailed response to the appeal included in Attachment 4.

On June 30, 2023, Tal C. Finney, Esq., of Finney Arnold, LLP on behalf of Contra Costa Climate Action Coalition also attempted to file an appeal of the subject applications. Since the subject application had already been appealed, per City policy this request was denied and was submitted as a public comment that has been attached for reference (see Attachment 15).

Per BMC Section 17.880.030, an appeal is required to be heard before the appellate body within 45 days of being filed, unless both the applicant and appellant consent in writing to a later date. In this case, the appeal is being considered 27 days from when it was received, within the required timeframe.

ANALYSIS

The June 20, 2023, Planning Commission staff report, draft meeting minutes, and public comments received via email before and after the publication of the Planning Commission packet are attached for the City Council's review and reference (see Attachments 12, 13, and 14). The attached staff report explains in detail how the project is consistent and complies with the City's General Plan, PA-1 Specific Plan, and zoning requirements. Additionally, the adopted Planning Commission resolutions approving the Tentative Parcel Map, Conditional Use Permit, Design Review, and Master Sign Program are also attached. Each resolution details the manner in which the project meets all findings required for approval.

On June 28, 2023, the City received the attached appeal letter from Hanson Bridgett LLP on behalf of WCHB, LLC, the owner and developer of the Bridle Gate residential development project located immediately south of the PA-1 Specific Plan area. Their



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appeal letter, included as Attachment 3, was the same June 20, 2023 letter sent to the Planning Commission as public comment on the night of the Planning Commission hearing. In sum, the appellant's contention is that the project does not qualify for an exemption from the California Environmental Quality Act (CEQA) under Section 15183 and that the project findings cannot be supported.

In response to the appeal letter, the City has provided a thorough and comprehensive response to each of the appellant's claims which is attached (Attachment 1) for reference. The applicant has also provided a detailed response to the appeal included in Attachment 4. A summary of the appellant's assertions as well as the City's responses are as follows:

1. **CEQA.** The appellant asserts that the project does not qualify for an exemption from further review under CEQA. Based on the assertion, the applicant believes that further environmental review is required when projects will have environmental effects that were not studied in a Program EIR. Among other things, the appellant states that additional environmental review is required to evaluate aesthetics, air quality, biological resources, geology and soils, GHG emissions, hazards and hazardous materials, hydrology and water quality, noise, population and housing, public services, transportation and traffic, and wildfire hazards. The appellant also asserts that the project is not Consistent with the PA-1 Specific Plan and would result in project-specific significant effects that are peculiar to the project site and which require further environmental review.

Staff response: [CEQA Guidelines Section 15183](#) allows a streamlined environmental review process for projects that are consistent with the densities established by existing zoning, community plan or general plan policies for which an EIR was certified. As noted above, the proposed project is consistent with the land use designation and intensities established by the PA-1 Specific Plan, for which an EIR was certified. The provisions contained in Section 15183 of the CEQA Guidelines are linked above and included in the attached Environmental Analysis.

The attached Environmental Analysis includes a discussion and analysis of any peculiar or site-specific environmental impacts associated with construction and operation of the proposed project. The Environmental Analysis identifies whether or not each CEQA Appendix G environmental checklist question, and its corresponding impacts, were adequately addressed in the PA-1 Specific Plan EIR, if there is a significant impact due to new information, or if the project would result in a significant impact peculiar to the project site that was not adequately addressed in the PA-1 Specific Plan EIR. The Environmental Analysis also identifies the applicable City of Brentwood development standards and policies that would apply to the proposed project during both the construction and operational phases, identifies applicable mitigation



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measures from the PA-1 Specific Plan EIR that must be implemented, identifies applicable state-level standards and requirements, and explains how the application of these uniformly applied standards and policies would ensure that no peculiar or site-specific environmental impacts would occur. Examples of uniformly applied standards and requirements include, but are not limited to, compliance with the California Building Code (to reduce impacts associated with seismic hazards) and preparation of a Stormwater Pollution Prevention Plan (to reduce impacts associated with surface water pollution during construction activities).

As described in the Environmental Analysis, the proposed project is consistent with the land uses and development intensities assigned to the project site by the PA-1 Specific Plan. Impacts from buildout of the PA-1 Specific Plan including cumulative impacts associated with development and buildout of the project site, as proposed, were fully addressed in the PA-1 Specific Plan EIR, inclusive of all Specific Plan updates and Addendum to the Environmental Impact Report (EIR) prepared for the Priority Area 1 Specific Plan (State Clearinghouse No. 2018042064), and implementation of the proposed project would not result in any new or altered impacts beyond those addressed in the Specific Plan EIR. As the Addendum was not challenged, and the statute of limitations for challenge has run, the analysis in the Addendum is presumed valid and further reexamination of the redesignation of the project site is time barred. Therefore, any challenges made by the appellant related to the previous EIR or Addendum cannot be challenged as part of this project since the statute of limitations to challenge the analysis has expired.

The analysis in the attached Environmental Analysis and CEQA Environmental Checklist demonstrates that there are no site-specific or peculiar impacts associated with the project, and identifies uniformly applied standards and policies that would be applied to the project. The project requirements identified in the attached environmental analysis include requirements that must be implemented by the proposed project in order to ensure that any site-specific impacts or construction-related impacts are not significant. All project requirements identified in the attached Environmental Checklist have been included as conditions of project approval and shall be implemented within the timeframes identified. In addition, the project would also be subject to all applicable requirements identified under the PA-1 Specific Plan and EIR.

2. **Findings.** The appellant asserts that the proposed findings under all four applications are not supported by substantial evidence.

Staff response: As demonstrated in the attached response to the appeal, the Environmental Analysis and supporting technical studies that were prepared for the project analyzed any project-specific impacts and affirmed that the project findings were supported by substantial evidence. In addition, the



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Appellant provided broad assertions that the findings were not supported without specifying any particular fault with the findings in all cases and therefore no response can be provided.

In addition, the City has also prepared a response to the June 30, 2023 letter prepared by Tal C. Finney, Esq., of Finney Arnold, LLP on behalf of Contra Costa Climate Action Coalition (see Attachment 17). As noted in the response, the contentions in the letter are not supported by substantial evidence, and the City's CEQA analysis evaluates each of the areas identified by the letter writer.

CONCLUSION

According to the Municipal Code, an appeal results in a 'de novo' or new hearing. The City Council, sitting as the appellate body, is thus required to make specific findings supporting its decision, be it upholding the lower body's decision, modifying it, or reversing it.

The following outlines the options for Council when considering the appeal:

- 1) If the appeal is denied, it would result in a project approval. The existing entitlements would be affirmed, as they were originally approved by the Planning Commission on June 20, 2023. The Council would formally approve the project by adopting the Council resolution as attached.
- 2) If the appeal is denied, it would result in a project approval. However, additional or revised conditions may be imposed by the Council. The Council could formally approve the project by adopting the Council resolution with additional or revised conditions.
- 3) If the appeal is upheld, it would result in a project denial. The Council would provide findings for the denial and the item would return to the Council at a subsequent meeting to adopt resolutions formally denying the project.

Staff has evaluated the requested approval for Costco and has prepared findings determining that the proposal meets all of the requirements of Brentwood Municipal Code and has been adequately analyzed consistent with the California Environmental Quality Act (CEQA). These findings are included in the attached draft resolutions for the Council's consideration reaffirming staff's recommendation that the City Council adopt resolutions denying the appeal filed by WCHB, LLC and affirming the Planning Commission approvals and approve Tentative Parcel Map (MS 351-22), Conditional Use Permit (CUP 22-001), Design Review (DR 22-002), and Master Sign Program (MSP 22-001) to allow for the Costco retail warehouse and fuel facility, as conditioned.



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CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

Previous Action by the City Council is included in Attachment 2.

DATE OF NOTICE

The City of Brentwood published a public hearing notice in the Brentwood Press and mailed it to all property owners within 300 feet of the site on July 14, 2023. The applicant also posted the project site with the required signage. On June 30, 2023, Tal C. Finney, Esq., of Finney Arnold, LLP on behalf of Contra Costa Climate Action Coalition attempted to file an appeal of the subject applications. Since the subject application had already been appealed, this request was denied and was submitted as a public comment that has been attached for reference. In addition, prior to publication of the agenda report, staff received the attached emails within Attachment 15, both in favor and in opposition of the project, which are attached for reference. In addition to the new comments received after the Planning Commission hearing, staff has attached all previous public comments received for this project within Attachment 14.

ENVIRONMENTAL DETERMINATION

CEQA Guidelines Section 15183 provides that projects that are consistent with the development density established by a Community Plan, General Plan, or Zoning for which an environmental impact report (EIR) has been certified "shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site." On November 13, 2018, the City of Brentwood adopted the PA-1 Specific Plan and certified the associated PA-1 Specific Plan EIR (State Clearinghouse (SCH) #2018042064). Cumulative impacts associated with full development and buildout of the Specific Plan Area, including the proposed project site, were fully addressed in the PA-1 Specific Plan EIR. In October 2022, the City approved an update to the PA-1 Specific Plan and completed additional environmental review of the update. An Addendum to the PA-1 Specific Plan EIR was adopted by the City Council in October 2022.

In this context, the "development density" of the site is understood to be the floor area ratio. Insomuch as the maximum FAR allowed at the site is 0.6, and the project proposes to build 0.2, it is consistent with the development density established by the General Plan, Specific Plan, and Zoning applicable to the site.



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As is more fully analyzed in the CEQA document that is included as Attachment 16 for reference, as well as the associated appendices that are [linked here](#), the proposed project would be consistent with the PA-1 Specific Plan's designation of Regional Commercial (RC) for the Costco site. Additionally, the PA-1 Specific Plan EIR assumed full development and buildout of the Specific Plan Area with the types of uses and development standards proposed by the project.

As such the cumulative impacts associated with buildout of the PA-1 Specific Plan, including the project site, were fully addressed in the PA-1 Specific Plan EIR. Compliance with these PA-1 Specific Plan EIR has been included in the conditions of approval for the Project. No additional impacts to on-site resources have been identified beyond what was envisioned in the EIR. Therefore, no further environmental analysis beyond the Modified Initial Study is required as the proposed Tentative Parcel Map, Design Review, Conditional Use Permit, and Master Sign Program are consistent with the PA-1 Specific Plan and the General Plan.

ATTACHMENT(S)

1. Response to Appellant's Contentions
2. Previous Action
3. Appeal Letter
4. Applicants Response to Appeal
5. Draft Resolution - MS 351-22
6. Draft Resolution - CUP 22-001
7. Draft Resolution - DR 22-002
8. Draft Resolution - MSP 22-001
9. Costco Project Description
10. Costco Plans
11. Costco Master Sign Program
12. Planning Commission Staff Report w/o attachments
13. June 20, 2023 Planning Commission Draft Minutes
14. Public Comments received prior to Planning Commission
15. Public Comments received after Planning Commission
16. Costco CEQA Analysis
17. Response to Climate Action Coalition Comments