

PLANNING COMMISSION RESOLUTION

RESOLUTION NO. 2024-004

RESOLUTION OF THE NOVATO PLANNING COMMISSION APPROVING A CEQA EXEMPTION FOR A USE PERMIT AND DESIGN REVIEW FOR A 3,370-SQUARE-FOOT COMMERCIAL BUILDING AND RESTAURANT DRIVE-THROUGH LOCATED ON A 0.6-ACRE LOT AT DOWNTOWN NOVATO CENTER ON THE WEST SIDE OF SEVENTH STREET AND NORTH OF LEE GERNER PARK; APN 141-201-56

WHEREAS, the City of Novato received an application from United Growth (“Applicant”) requesting approval of a use permit and design review (“Entitlements”) for the development of a 3,370-square-foot commercial building for up to two restaurant tenant spaces, including a drive-through for one of the tenant spaces (“Project”), on a lot identified as APN 141-201-56 (“Project Site”);

WHEREAS, the Applicant is requesting a use permit pursuant to Novato Municipal Code Section 19.42.050, which establishes the procedures for the review and approval of use permits;

WHEREAS, the Applicant is requesting design review approval pursuant to Novato Municipal Code Section 19.42.030, which establishes the procedures for the review and approval of design aspects of a proposed development;

WHEREAS, the Entitlements and Project are exempt from the requirements of the California Environmental Quality Act (CEQA) and the City of Novato Environmental Review Guidelines pursuant to CEQA Guidelines section 15061(b)(3) – *Common Sense Exemption*; and 15332 – *In-fill Development Projects*;

WHEREAS, notices describing the Planning Commission’s public hearing on the proposed Project were sent to all affected property owners within 600 feet of the boundaries of the Parcel, all public agencies potentially serving the Project or having some oversight of the Project's construction, all responsible and trustee agencies, and all persons requesting notice pursuant to Section 19.58.020 of the Novato Municipal Code, and published in the Marin Independent Journal, a newspaper of local circulation, on May 3, 2024; and

WHEREAS, the Planning Commission held a duly noticed public hearing on May 13, 2024, to consider and receive public testimony on the proposed CEQA determination, Entitlements, and Project;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby finds and resolves as follows:

Section 1. Recitals

The foregoing recitals are true and correct and are incorporated into the findings herein.

Section 2. Record

The Record of Proceedings ("Record") upon which the Planning Commission bases its decision includes, but is not limited to: (1) the staff reports, City files and records and other documents prepared for and/or submitted to the City relating to the Entitlements and Project, (2) the evidence, facts, findings and other determinations set forth in this resolution, (3) the City of Novato General Plan 2035 and its certified final EIR and the Novato Municipal Code, (4) all designs, plans, studies, data and correspondence submitted to the City in connection with the Entitlements and Project (5) all documentary and oral evidence received at public workshops, meetings, and hearings or submitted to the City (6) all other matters of common knowledge to the Planning Commission including, but not limited to, City, state, and federal laws, policies, rules, regulations, reports, records and projections related to development within the city of Novato and its surrounding areas.

The location and custodian of the records is the Novato Community Development Department, 922 Machin Avenue, Novato, California, 94945.

Section 3. CEQA Findings

The Planning Commission hereby finds the Entitlements and Project are exempt from the requirements of the California Quality Act (CEQA) and the City of Novato Environmental Review Guidelines pursuant to CEQA Guidelines sections 15061(b)(3) – *Common Sense Exemption* and 15332 – *In-fill Development Projects*. Section 15061(b)(3) states that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect of the environment, the activity is not subject to CEQA. Section 15332 (In-fill Development Projects) exempts in-fill development projects that are (a) consistent with the applicable general plan designation and all applicable general plan polices as well as with applicable zoning designations and regulations, (b) are within City limits on sites of no more than 5 acres substantially surrounded by urban uses, (c) when the project site has no value as habitat for endangered, rare or threatened species, (d) would not result in any significant effects relating to traffic, noise, air quality, or water quality, and (e) where sites can be adequately served by all required utilities, and public services.

The Project Site is currently developed with a parking lot serving Downtown Novato Center. The shopping center includes approximately 99,200 square feet of building area, 411 parking stalls, landscaping, drive aisles, and ancillary facilities on approximately 8 acres. The Project includes construction of a 3,370-square-foot building for two restaurant tenants, 17 reconfigured parking stalls, an outdoor dining area, drive-through facility for one of the tenant spaces, landscaping, a trash enclosure, and ancillary facilities. The proposed improvements would be within an area developed with a parking lot. The Project does not include development of undisturbed land.

The proposed 3,370-square-foot building would be used for retail sales and restaurants, one of which is proposed to be served by a drive-through facility. These uses are consistent with the Novato General Plan and Novato Zoning Code based on the land use designation and zoning applicable to the Project Site. The area proposed for development at the Project Site is less than 1-acre in size and is substantially surrounded by urban uses. The Project Site is adjacent to Lee Gerner Park and Novato Creek, but both the park and creek are within a developed area of the city, surrounded by roads, commercial, and residential uses, and ancillary infrastructure associated with urban development. The area subject to development within the Project Site is currently a paved parking lot for Downtown Novato Center. This area has no value as habitat for endangered, rare, or threatened species.

Approval of the Entitlements and Project would not result in any significant effects relating to traffic, noise, air quality, or water quality. The City hired an air quality consultant to model anticipated greenhouse gas emissions and associated air quality impacts for the proposed building construction and subsequent use, including the potential for idling cars in the drive-through facility. The air quality analysis concluded that resultant emissions would be below the applicable threshold of significance, as determined by the Bay Area Air Quality Management District (BAAQMD). Potentially significant traffic, noise, or water quality impacts are not anticipated. The proposed restaurant use would not result in any significant noise impacts; the anticipated noise levels will be consistent with maximum allowable noise levels detailed in the Novato General Plan and Zoning Code. While the Project Site is adjacent to Novato Creek, standard erosion control regulations will ensure that construction and use of the Project will not result in water quality impacts to Novato Creek or downstream water bodies.

The Project has been reviewed by the North Marin Water District, Novato Sanitary District, Novato Public Works, and Novato Fire District. These agencies have reviewed the Project for consistency with their requirements, and provided recommended conditions of approval, as applicable, for the Project. Said conditions of approval will be applied to the Project by separate resolution.

Section 4. Decision

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Planning Commission hereby approves a CEQA exemption pursuant to CEQA Guidelines Sections 15061(b)(3) and 15332 for the Entitlements and Project, based on the Record, the findings set forth herein, and subject to the indemnity and time limitations specified below.

Section 5. Indemnity and Time Limitations

1. The developer and any successor in interest, whether in whole or in part, shall defend, indemnify, and hold harmless the City and its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees to attack, set aside, void, or annul the Planning Commission's decision at issue herein. This indemnification shall include damages or fees awarded against the City, if any, costs of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the developer, the City, and/or parties initiating or bringing such action.

2. The developer and any successor in interest, whether in whole or in part, shall defend, indemnify, and hold harmless the City, its agents, employees, and attorneys for all costs incurred in additional investigation of or study of, or for supplementing, preparing, redrafting, revising, or amending any document, if made necessary by said legal action and the developer desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents in a form and under conditions approved by the City Attorney.
3. In the event that a claim, action, or proceeding described in no. 2 or 3 above is brought, the City shall promptly notify the developer of the existence of the claim, action, or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action, or proceeding; the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the developer in the defense of said claim, action, or proceeding. If the City chooses to have counsel of its own to defend any claim, action, or proceeding where the developer has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the developer.
4. The developer and any successor in interest, whether in whole or in part, indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
5. Unless a shorter limitation period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.
6. The conditions of project approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), the conditions constitute written notice of a statement of the amount of such fees and a description of dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

Passed and adopted at a regular meeting of the Planning Commission of the City of Novato held on the 13th day of May 2024, by the following vote:

AYES: Commissioners Crockett, Dawson, Derby, Engdahl, and Heath

NOES:

ABSTAIN:

ABSENT: Commissioners Havel and Tiernan

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of the resolution which was adopted by the Planning Commission, City of Novato, County of Marin, State of California, on the 13th day of May 2024.

Lia Heath

Lia Heath, Chair