

PLANNING COMMISSION
RESOLUTION NO. 2024-013

RESOLUTION OF THE NOVATO PLANNING COMMISSION
FINDING THE LODGE ON NOVATO CREEK, A PROPOSED
RESIDENTIAL CARE FACILITY FOR THE ELDERLY LOCATED AT
1787 GRANT AVENUE (APNS 141-201-12 AND 141-201-48), TO BE
EXEMPT FROM ADDITIONAL ENVIRONMENTAL REVIEW
PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT
GUIDELINES SECTION 15183

WHEREAS, the City of Novato (“City”) received applications from Fulcrum Real Estate and Development (“Applicant”) requesting use permit, design review, and density bonus approvals for The Lodge on Novato Creek, a proposed residential care facility for the elderly (“RCFE”) located at 1787 Grant Ave, APNs 141-201-12 and 141-201-48 (“Project Site”), which is owned by Michael L. Meyer Company (the “Property Owner”); and

WHEREAS, the proposed RCFE is comprised of 55 assisted living units and 31 memory care beds in a three-story, 73,000± square-foot building, and ancillary improvements (“Project”); and

WHEREAS, the City determined the Project is subject to the requirements of the California Environmental Quality Act (“CEQA”) and its implementing regulations (CEQA Guidelines); and

WHEREAS, the Project is exempt from additional environmental review pursuant to CEQA Guidelines Section 15183 and the procedures for review set forth in the City of Novato Environmental Review Guidelines; and

WHEREAS, on October 27, 2020, the City Council, acting as lead agency, adopted Resolution 2020-068, approving the General Plan 2035 Final Environmental Impact Report (“FEIR”) in accordance with CEQA and the City of Novato Environmental Review Guidelines. Said FEIR analyzed the potential environmental impacts of new development in Novato as envisioned in Novato General Plan 2035, including that occurring on properties assigned the Medium Density Multiple-Family Residential (R10) land use designation; and

WHEREAS, on January 24, 2023, the City Council, acting as lead agency, adopted Resolution 2023-004, approving an Addendum to the General Plan 2035 Final Environmental Impact Report (FEIR) (titled, “2023-2031 Housing Element Update General Plan EIR Addendum”) (hereafter “Addendum”) in accordance with CEQA and the City of Novato Environmental Review Guidelines. Said Addendum analyzed the environmental impacts of the policies and programs of the Housing Element. The Housing Element anticipated a multi-family residential project at the Project Site; and

WHEREAS, the Design Review Commission held a duly noticed public hearing on July 17, 2024, to consider the design aspects of the Project. The Design Review Commission recommended the Planning Commission approve the design of the Project; and

WHEREAS, a public hearing notice describing the City's intent to exempt the Project from additional environmental review was sent to the Marin County Clerk, public agencies serving the Project, all affected property owners within 600 feet of the boundaries of the Project Site pursuant to Novato Municipal Code Section 19.58.020, all persons requesting notice, and published in the Marin Independent Journal, a newspaper of local circulation, on November 7, 2024; and

WHEREAS, the Planning Commission held a public hearing on November 18, 2024, and considered all oral and written comments on the proposed exemption from additional environmental review and the Project, including the proposed CEQA determination at issue herein.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby find and determine as follows:

Section 1. Record

The Record of Proceedings ("Record") upon which the Planning Commission bases its determination 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 the Project, and the Project's associated development entitlement requests (2) the evidence, facts, findings and other determinations set forth in this resolution, (3) the City of Novato 2035 General Plan, including the Housing Element, and its certified EIR and associated Addendum, and the Novato Municipal Code, (4) all designs, plans, studies, data and correspondence submitted to the City in connection with the Project, and the Project's associated development entitlement requests (5) all documentary and oral evidence received at public workshops, meetings, and hearings or submitted to the City during the comment period relating to the CEQA determination, the Project, and the Project's associated development entitlement requests (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 and its surrounding areas.

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

Section 2. Findings

The Project does not require further environmental review pursuant to CEQA Guidelines Section 15183. Section 15183 applies to projects that are consistent with the land use and development intensity established by a general plan for which an EIR was certified. According to Section 15183, additional environmental review may be required only to the extent necessary to examine whether there are project-specific significant effects which are peculiar to a project or its site. A request for a density bonus and associated waivers/reductions pursuant to State density bonus

law (Government Code Section 65915) is not, in and of itself, a basis to require additional CEQA review.

The City of Novato adopted *General Plan 2035* and its associated Final Environmental Impact Report (FEIR) on October 27, 2020. Subsequently, the City of Novato adopted the 6th Cycle Housing Element on January 24, 2023, and its associated Addendum to the FEIR. The Project is being developed pursuant to the Medium Density Multiple-family Residential (R10) land use designation, which is the land use designation assigned to the Project Site by General Plan 2035 and analyzed in the FEIR. The 6th Cycle Housing Element, and its associated Addendum to the FEIR, anticipated the potential development of the Project Site with a 35-unit multi-family residential townhome project.

The Project requires no further environmental review pursuant to CEQA Guidelines Section 15183 based on the following facts.

As noted above, the Project Site is assigned the Medium Density Multiple-Family Residential (R10) General Plan land use designation. This designation allows for multi-family residential uses at a density range of 10.1-20.0 units per acre and a floor area ratio (FAR) of 0.6 for residential care facilities for the elderly (RCFE). Based on the 2.12-acre Project Site, the maximum number of units anticipated by the General Plan is 43 units (rounded up) and a maximum RCFE building size of 55,408 square feet. However, the Project has a density of 26 units per acre and the FAR is 0.78 based on the 72,948 square-foot building. The Project includes a density bonus request allowing additional assisted living units and an FAR above the maximum allowed by the General Plan.

Although the Project includes a greater density and FAR than anticipated in the General Plan and 6th Cycle Housing Element, an RCFE is a lower intensity land use compared to a traditional multi-family residential development that could be developed under the R10 land use designation, including having lower vehicle trip generation and vehicle miles travelled and commensurate reductions in air pollutants and noise. Floor area ratio is a measure of intensity of use typically associated with a commercial use. A secondary purpose of FAR is to control the bulk and mass of a building on a site by limiting overall allowable floor area as a ratio to lot size. An RCFE would have normally been addressed solely through FAR. However, State housing law qualifies assisted living units as residential dwellings, which are regulated by density.

The Project was reviewed by the City's Design Review Commission ("DRC"). The DRC recommended the Planning Commission approve the design aspects of the Project. The DRC found the Project is appropriately sized for the Project Site based on building height and setbacks to property lines. It should also be noted that the 35-unit townhome development analyzed in the 6th Cycle Housing Element and associated Addendum had a larger "footprint" on the 2.12-acre site, would result in increased impervious surface, and had a less of a setback from Novato Creek as compared to the Project.

The FEIR certified for General Plan 2035 analyzed the potential environmental effects of the land use designations and associated development intensities (floor area ratio and/or density) assigned to parcels throughout Novato as depicted on General Plan Land Use Map - GP-1. The FEIR included a mitigation monitoring and reporting program specifying mitigation measures that may be applicable to individual projects, depending on the characteristics of the project and its site.

The mitigation measures of the FEIR applicable to the Project include BIO-2 (Biological Studies for New Development); BIO-3 (Biological Resources Inventory for New Development); BIO-4 (Nesting Bird Protection); CUL-1 (Historical Resources Study Program); CUL-2 (Archaeological Resources Study Program); and CUL-3 (Paleontological Resource Studies). Accordingly, the Applicant provided a biological resources assessment and cultural resources study based on the above-listed mitigation measures. The two studies did not identify any potential impacts to biological resources or cultural resources that would be peculiar to the Project or the Project Site, but confirmed the findings of the FEIR relative to sites with such resources. Accordingly, the two studies recommend measures including, but not limited to on-site archeological monitoring during grading operations and a pre-construction nesting bird survey(s), to ensure consistency with the FEIR mitigation measures. These recommended measures will be included as conditions of approval for the Project.

Based on the facts above, CEQA Guidelines Section 15183 applies to the Project since the proposal is consistent with General Plan 2035 and its certified FEIR as required by the criteria of Guidelines subsection 15183(d)(1), including the criteria stipulated under subsections (d)(1)(C) and (d)(2).

The Project has been reviewed to determine whether there are specific significant environmental effects which are peculiar to the Project or the Project Site, as required under CEQA Guidelines subsection 15183(b)(1) through (b)(4), as detailed below:

1. There are no circumstances peculiar to the Project or Project Site indicating the potential for environmental effects beyond the potential impacts of new development observed in the certified FEIR for General Plan 2035 and the subsequent Addendum. The FEIR anticipated that site specific environmental assessments may be necessary. Accordingly, the Applicant provided site specific environmental studies addressing biological resources and cultural resources based on the characteristics of the Project Site. As discussed above, these studies determined that feasible mitigation measures, consistent with the FEIR can reduce any potentially significant biological resources and/or cultural resources impacts to a less than significant level. The Project has been designed to avoid biological and cultural resources at the Project Site, and where such resources could potentially be impacted, feasible and adequate mitigation measures will be applied as conditions of approval.
2. There is no evidence of circumstances indicating the potential for significant environmental impacts that are unique to the Project Site or Project that were not analyzed in the certified FEIR for General Plan 2035 and the subsequent Addendum. The FEIR analyzed potential impacts to biological resources and cultural resources and included mitigation measures to require site specific studies based on site characteristics. Accordingly, the City analyzed the

Project to determine if any special site-specific studies were necessary to comply with the FEIR and its mitigation measures. In this case, the Applicant had site specific biological and cultural resource assessments prepared for the Project to determine whether it would potentially impact such resources. These assessments determined the Project would not adversely impact biological or cultural resources with implementation of recommended mitigation measures. The City will include the recommended mitigation measures as conditions of approval for the Project.

Although the Project Site is adjoined by Novato Creek and associated riparian areas and is in an area known to contain cultural resources, the Project has been designed to ensure such resources are not adversely impacted. The presence of biological resources and potentially cultural resources is not unique to the Project Site, as there are numerous waterways with associated riparian habitat and sites containing cultural resources throughout Novato. However, the FEIR anticipated sites with these conditions could be developed and, as appropriate, prescribed mitigation measures to address potential site specific impacts. In this instance, the conditions of approval for the Project, including, but not limited to on-site archeological monitoring and a pre-construction nesting bird survey(s), will avoid or minimize potential impacts to cultural and biological resources as envisioned in the FEIR.

3. There is no evidence of circumstances indicating the potential for significant off-site impacts or cumulative impacts that are unique to the Project Site or Project and which were not discussed in the certified FEIR for General Plan 2035;
4. There is no new information that was not known when the FEIR for General Plan 2035 was certified indicating that any potentially significant effect identified therein would be more severe than discussed in the FEIR. Generally, the circumstances under which the FEIR for General Plan 2035 was prepared have not changed, including the condition of the Project Site and its surroundings. Furthermore, there have been no recent development related studies, including CEQA analyses, indicating that potentially significant impacts addressed in the FEIR for General Plan 2035 would be more severe than anticipated.

The Project is subject to complying with all applicable mitigation measures adopted pursuant to the Mitigation Monitoring and Reporting Program (MMRP) for General Plan 2035 in addition to the uniformly applied development standards of the Novato Municipal Code. The combination of applicable mitigation measures (conditions of approval) and uniform standards reduce all potentially significant impacts to a less than significant level. This finding is consistent with the those of the Final EIR.

Section 3. Indemnity and Time Limitations

- a. The Applicant and the Property Owner, and any successor in interest, whether in whole or in part, to either of them, 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 determination at issue herein. This indemnification shall include damages or fees awarded against the City and/or its agents, officers,

attorneys, or employees, if any, costs of suit, attorney's fees, and any other costs and expenses incurred in connection with such action whether incurred by the developer, the City, and/or parties initiating or bringing such claim, action, or proceeding.

- b. The Applicant and the Property Owner, and any successor in interest, whether in whole or in part, to either of them, shall defend, indemnify, and hold harmless the City and its agents, officers, attorneys, and employees for all costs incurred in additional investigation of or study of, or for supplementing, preparing, redrafting, revising, or amending any document, if made necessary or advisable by said claim, action, or proceeding and the Applicant and/or the Property Owner desires to pursue securing such approvals, after initiation of such, which are conditioned on the approval of such documents in a form and under conditions approved by the City Attorney.
- c. In the event that a claim, action, or proceeding described in subparagraphs a. or b. above is brought, the City shall promptly notify the Applicant and the Property Owner 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 Applicant and/or the Property Owner in the defense of said claim, action, or proceeding. If the City chooses to have counsel of its own defend any claim, action, or proceeding where the Applicant and/or the Property Owner 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 Applicant or the Property Owner as appropriate.
- d. The Applicant and the Property Owner, and any successor in interest, whether in whole or in part, to either of them, indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- e. 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.
- f. The conditions of project approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to California 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 California 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 California Government Code Section 66020, you will be legally barred from later challenging such exactions.

Passed and adopted at a special meeting of the Planning Commission of the City of Novato held on the 18th day of November 2024, by the following vote:

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

NOES: Commissioner Tiernan

ABSTAIN: None

ABSENT: None

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 18th day of November 2024.

Curtis Havel

Chair Curtis Havel