

October 26, 2023



Via Email

City of Novato
Department of Community Development
922 Machin Avenue
Novato, CA 94945
Attn: Kaitlin Zitelli
Senior Planner

Re: Cover Letter to Land Use Applications for 1787 Grant Avenue – Lodge at Novato Creek

Dear Ms. Zitelli and Planning Department Staff:

This letter accompanies an application by Fulcrum Real Estate and Development, Inc. (Fulcrum) to the Novato Community Development Department for the “The Lodge at Novato Creek,” a mixed-use senior housing project located at 1787 Grant Avenue in the City of Novato (Property). Fulcrum is submitting applications for a Use Permit, Design Review, and a Lot Line Adjustment to develop the Project, and is paying all associated application fees, as of today’s date. We hope you find this letter helpful in your review and initial processing of the application materials.

I. Background and Project Description

The Property consists of a 2.12 acre parcel¹ located in the heart of Novato, near the intersection of Grant Ave and Novato Blvd. The Property was formerly the site of the 8,000 sq. ft. Bridgepoint Academy day care, which is now vacant and thus underutilized. Fulcrum proposes to redevelop the Property into a three-story, 72,948 sq. ft. Residential Care Facility for the Elderly (RCFE), consisting of 55 assisted living units for senior residents (considered a residential use), and 19,707 sq. ft. of memory care use consisting of 29 beds (considered a commercial use). The assisted living units would include bathrooms and kitchens for residents, however the memory care use would not include kitchens for each use. The project design offers the residents and neighborhood an attractive community that takes advantage of the natural creekside environment that surrounds the property. The residents will have access to 24-hour trained caregivers, daily nutritional meals prepared by chefs, access to transportation to appointments, activities and shopping, and full-time front desk security. Furthermore, the project location is one that takes advantage of nearby, walkable, shopping, religious services and access to the community library.

II. Consistency with Zoning and General Plan

The Property is designated as Medium Density Multiple Family Residential (R10) under the City’s General Plan and Zoning. The R10 designation is appropriate for “areas appropriate for single family, two-family and multi-family homes and related accessory residential uses.”² RCFEs are permitted in the R10 zone with a Use Permit and Design Review.³ The development standards applicable to RCFEs in the R10 zone include (i) 20 ft. front setbacks, (ii) 50% site coverage, (iii) 35 foot height limit, (iv) 30% landscaping and open space, and (v) a floor area ratio (FAR) of 0.6. The City may impose additional

¹ Further site surveys indicate that the previously provided figure (2.16 acres) is incorrect.

² Novato General Plan at 2-18.

³ Novato Municipal Code (NMC) Sec 19.10.040.

objective design standards pursuant to the design review process, consistent with the protections of the Housing Accountability Act (HAA). (See Section IV below). The Project is also located in the Affordable Housing Overlay (AHO), which permits “any land use normally allowed in the primary zoning district ..., subject to the land use permit required by the primary zoning district.”⁴ The Project, including its proposed uses, affordability levels, and designs satisfy all applicable objective development and design criteria — except for the 0.6 FAR limitation for the R10 zone. As discussed in Section III below, Applicant intends to request a waiver pursuant to State Density Bonus Law for this development standard.

III. State Density Bonus Law and Novato Inclusionary Affordable Unit Requirement

The R10 land use designation prescribes a residential density range of up to 20 dwelling units per acre, with a maximum FAR up to 0.6 for RCFEs. The base density for a 2.12 acre parcel is 43 units (rounded up from 42.4). Of the Project’s base units, Fulcrum will dedicate 4 units as very-low income (VLI) units, and 1 unit as a low-income (LI) unit. The City can treat these affordable units towards its Sixth Cycle Regional Housing Needs Allocation (RHNA) mandate. Under state density bonus law, the Project is entitled to a 30% density bonus (from the provision of 9.3% of the units as VLI), as well as one (1) incentive/concession from developments standards, and an unlimited amount of waivers from development standards that physically preclude development of the project at the density sought.

Base Density	VLI Units (%)	LI Units (%)	Density Bonus	Total Units	# of Incentives/ Concessions	# of Waivers
43 units	4 (9.3 %)	1 (2.3%, but 11.6% with VLI units)	30% from 9% VLI	56 units	1	Unlimited

The affordability mix also satisfies the City’s local inclusionary requirements for RCFEs. Novato Municipal Code Sec. 19.34.160.F provides that “[p]rojects of 10 or more units shall set aside 10 percent of the units for occupancy by persons of very low and low income.” Here, the Project’s provision of 4 VLI units and 1 LI unit satisfies the 10% affordability requirement (at 11.6%).

IV. Senate Bill (SB) 330 and the Housing Accountability Act

Included in Fulcrum’s application package is a preliminary application pursuant to SB 330, also known as the Housing Crisis Act of 2019. Under SB 330, an application for a “housing development project” shall be “deemed complete” upon the submittal of preliminary application. The submittal of an SB 330 preliminary application allows a housing development project to “vest” (or freeze) to the regulations, policies and impact fees “in effect” at that time. For purposes of SB 330, a “housing development project” includes mixed-use developments where “at least two-thirds of the square footage designated for residential use.”⁵ Here, the Project meets the definition of “housing development project” because at least 2/3rds of the square footage is dedicated to residential uses (53,277 sq. ft. / 72,948 sq. ft. = 73%).

To preserve vesting under SB 330, applicants must submit a formal land use application within 180 days of the preliminary application. Once an applicant submits a formal application, in the event the City determines that formal application is incomplete, it must provide applicant with an “exhaustive list of items that were not complete” within 30 days. After that, no further requests can be made for items not on this initial list.⁶ Although the statute contemplates that applicants must submit a formal application within 180 days of the preliminary application, nothing prohibits applicants from submitting application packages that concurrently satisfy SB 330's preliminary and formal application

⁴ NMC Sec. 19.16.070

⁵ § 65589.5(h).

⁶ Gov. Code § 65943.

requirements. Here, Fulcrum’s application package is intended to fulfill both preliminary and formal application requirements under SB 330.

Lastly, as a housing development project, the Project is entitled to certain protections under the Housing Accountability Act (HAA) (Gov. Code § 65589.5). Under the HAA, local agencies may only deny or reduce the density of housing development projects that satisfy applicable objective development and design standards if, by a preponderance of evidence, the project would have a significant, unavoidable, and quantifiable impact on “objective, identified written public health or safety standards, policies, or conditions.” These types of conditions, per state law, “arise infrequently,” and Fulcrum is aware of no such conditions for the Property.

V. California Environmental Quality Act (CEQA)

CEQA requires lead agencies — here, the City — to analyze and, to the extent feasible, mitigate environmental impacts from their discretionary approvals. Here, the Project will involve discretionary approvals so will be subject to environmental review unless exempt. Here, the Project meets all the criteria for the Class 32 categorical exemption.⁷ The Class 32 categorical exemption exempts from CEQA infill development within urbanized areas that meet qualifying criteria (**Table I**) and none of the *exceptions* to the exemption apply (**Table II**).

Table I: Qualifying Criteria for Class 32 Categorical Exemption

<i>Criteria</i>	<i>Does Project Qualify?</i>
The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.	Yes. The Project is consistent with all “applicable” General Plan and Zoning standards, excluding those that are subject to state density bonus law waiver (e.g., FAR). ⁸
The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.	Yes. The Project is within city limits and surrounding by urban uses.
The project site has no value as habitat for endangered, rare or threatened species.	Yes. The Project is in a developed urban area which is not expected to result in the presence of sensitive species or their habitat.
Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.	Yes, the Project will not generate any significant effects in these impact areas. See attached reports. Additional reports or documentation can be provide upon request.
The site can be adequately served by all required utilities and public services.	Yes, the Project can be adequately served by sanitary and water utilities serving the area. See attached reports.

Table II: Exceptions to Class 32 Categorical Exemption

<i>Exclusionary Criteria</i>	<i>Does Exception Apply?</i>
The project and successive projects of the same type in the same place will result in cumulative impacts;	No. The Project does not involve “successive projects of the same type in the same place,” but rather a single discrete approval.
There are <i>unusual circumstances</i> creating the reasonable possibility of significant effects;	No. The City can make findings that the Project involves no unusual circumstances that would cause a significant effect on the environment. “The presence of

⁷ CEQA Guidelines § 15332.

⁸ Wollmer v. City of Berkeley, 193 Cal. App. 4th 1329.

<i>Exclusionary Criteria</i>	<i>Does Exception Apply?</i>
	comparable facilities in the immediate area adequately supports [an] implied finding that there were no unusual circumstances precluding a categorical exemption.” The Project lacks any unusual features that distinguish it from others in the exempt class.
The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within an officially designated scenic highway;	No. The Project is in an urban, developed area, and physically removed from scenic resources.
The project is located on a site that the Department of Toxic Substances Control and the Secretary of the Environmental Protection have identified, pursuant to Government Code section 65962.5, as being affected by hazardous wastes or clean-up problems; or	No. The Project is not a Cortese List site.
The project may cause a substantial adverse change in the significance of an historical resource.	No. The City maintains a list of historic, which this property is not on.

While Fulcrum believes the Project is a suitable candidate for the Class 32 categorical exemption, we are willing to meet with the City to discuss any other potential exemptions or streamlining mechanisms that might be used. For example, the Project may also qualify for a Sustainable Communities Exemption under SB 375 (CEQA Guidelines 1518.3(d)(2), due to its location within 1/2 mile of a "major transit stop," as defined, and a Low VMT Area.

VI. Conclusion

The City’s draft Sixth Cycle Housing Element states that senior citizens (65 years and up) make up approximately 20.6% of the City of Novato’s population. The draft Housing Element also recognizes that seniors “can face higher levels of housing insecurity as they are more likely to be on a fixed income while requiring higher levels of care,”⁹ and that “displacement is a particular risk for cost-burdened seniors who are no longer able to make mortgage payments or pay rents.”¹⁰ Fulcrum shares these concerns, and believes this well-designed and community-oriented Project can be of great value for current and future seniors living in our community, particularly those that need assisted living opportunities.

Fulcrum appreciates the time and dedication City Staff have offered thus far in our preliminary discussions about the Project, and is committed to further collaboration to ensure this much-needed housing Project comes to fruition. Should any questions arise as the process proceeds, please do not hesitate to reach out to discuss this project further.

⁹ City of Novato, Sixth Cycle Housing Element (December 2022 Draft), at A-3.

¹⁰ Id. at A-63.

Sincerely yours,

Steven Ring

Steven Ring, CPM®, RPA, LEED-AP

Managing Principal
Fulcrum Real Estate and Development, Inc.
CalDRE License #00842601

cc:

David Ford, Fulcrum Real Estate and Development, Inc.
James Lawson, AICP
Kevin J. Ashe, Holland & Knight, LLP