

PLANNING COMMISSION

RESOLUTION NO. 2023 - 013

RESOLUTION OF THE NOVATO PLANNING COMMISSION FINDING AND REPORTING TO THE NOVATO CITY COUNCIL THAT THE PROPOSED VACATION OF PUBLIC RIGHT-OF-WAY OF PINKSTON ROAD, LOCATED ON THE WEST SIDE OF REDWOOD BLVD, AND MORE SPECIFICALLY DEPICTED IN EXHIBIT A; PORTION OF ASSESSOR'S PARCEL NUMBER (APN) 125-580-34, IS CONSISTENT WITH THE GENERAL PLAN

WHEREAS, Campus Properties ("Applicant") has requested the City Council vacate the public right-of-way of the remaining portion of the Pinkston Road, as depicted in Exhibit A, to accommodate a new private street to serve the proposed Valley Oaks ("Project"); and

WHEREAS, California Streets and Highways Code Section 8300 *et seq.* allows interested parties to request that a legislative body vacate streets and highways; and

WHEREAS, California Government Code Section 65402 requires that the Planning Commission review and provide a report to the City Council regarding a proposed vacation as to its conformity with the General Plan; and

WHEREAS, the City also received applications for a General Plan Amendment (P2021-047), Master Plan (P2021-048), Precise Development Plan (P2022-065), Design Review (P2021-049), and Vesting Tentative Map (P2022-066) to permit the Project; and

WHEREAS, by separate resolution adopted prior hereto, the Planning Commission did recommend the City Council adopt a Mitigated Negative Declaration for the Project, and did consider the IS/MND prior to making a recommendation on the Project; and

WHEREAS, by separate resolution adopted prior hereto, the Planning Commission did recommend the City Council approve the General Plan Amendment (map and text amendments), Master Plan, Precise Development Plan, Design Review, and Vesting Tentative Map and development standards exceptions to permit the Project; and

WHEREAS, public notices describing the Planning Commission's public hearing on the Project were sent to all affected property owners within 600 feet of the boundaries of the Project site, 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 Novato Municipal Code Section 19.58.020 and California Government Code Sections 65905 and 65091, on November 3, 2023, and published in the Marin Independent Journal, a newspaper of general circulation, on November 3, 2023; and

WHEREAS, the Planning Commission held a duly noticed public hearing on November 13, 2023, to consider and receive public testimony on the Project, including the right-of-way vacation at issue herein; and

NOW, THEREFORE, BE IT RESOLVED, 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 recommendation includes, but is not limited to: (1) the Initial Study, Mitigated Negative Declaration, and the appendices and technical reports cited in and/or relied upon in preparing the IS/MND, (2) the staff reports, City files and records and other documents, prepared for and/or submitted to the City relating to the IS/MND, the Project, and the Project's associated development entitlement requests (3) the evidence, facts, findings and other determinations set forth in this resolution, (4) the City of Novato 2035 General Plan and its related EIR and the Novato Municipal Code, (5) all designs, plans, studies, data and correspondence submitted by the City in connection with the IS/MND, the Project, and the Project's associated development entitlement requests (6) all documentary and oral evidence received at public workshops, meetings, and hearings or submitted to the City during the comment period relating to the IS/MND, the Project, and the Project's associated development entitlement requests (7) 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 3. Findings & Report**

**Vacation of Right-of-Way**

Government Code Section 65402 requires the Planning Commission to review and provide a report to the City Council regarding whether the proposed vacation of public right-of-way conforms with the General Plan. Based on the facts set forth in the Record the Planning Commission finds and reports to the City Council the following:

1. The vacation of the Pinkston Road as public right-of-way would not eliminate access from any lot to a publicly maintained roadway, in this case Redwood Boulevard; and
2. There are no General Plan policies directly or indirectly prohibiting vacating a right-of-way where legal access to a public street is maintained; and

3. The City of Novato Public Works Engineering Division did not identify any safety hazards, undesirable elements, or improvement deficiencies that would result from the vacation of public right-of-way; and
4. The City of Novato Public Works Engineering Division has the ability to control the design of private roadways connecting to Redwood Boulevard through the encroachment permit application and approval process.

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Planning Commission reports to the City Council that the proposed Vacation of Right-of-Way is consistent with the General Plan, subject to the indemnification and time limits below:

**Section 4. Indemnification and Time Limitations**

- a. The Applicant, property owner 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 action(s) 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 property owner, and/or any successors in interest, the City, and/or parties initiating or bringing such action.
- b. The Applicant, property owner 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.
- c. In the event that a claim, action, or proceeding described in no. a or b above is brought, the City shall promptly notify the Applicant, property owner, and any successor in interest, 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, property owner, and/or any successor in interest 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 Applicant, property owner, and/or any successor in interest 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 or property owner.

- d. The Applicant, property owner 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.
- 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 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 13<sup>th</sup> day of November 2023, by the following vote:

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

NOES: None

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 13<sup>th</sup> day of November 2023.

Lia Heath  
Chair

**Attachments**

Exhibit A – Pinkston Road Public Right-of-Way Vacation Map

Ref: P2022-066

# EXHIBIT A

## Pinkston Road Public Right-of-Way Vacation Map

