

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1584

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO ADOPTING AN AMENDMENT TO THE CITY OF NOVATO ORDINANCE NO. 1441 APPROVING THE CHANGE IN THE ZONING DESIGNATION FROM MIXED USE (MU) TO R-1 7.5 (LOW DENSITY RESIDENTIAL DISTRICT) AT 825 DELONG AVENUE, APN 153-064-21, IN ACCORDANCE WITH THE CITY OF NOVATO MUNICIPAL CODE, CHAPTER XIX, AND THE CONSERVATION AND PLANNING LAW OF THE STATE OF CALIFORNIA

WHEREAS, the City of Novato received an application (P2012-090) proposing to amend the zoning designation to allow the Silva Kuser House to be used as a single family residence at 825 DeLong Avenue, APN 153-064-21 ("Project Site"); and .

WHEREAS, in compliance with the requirements of the California Environmental Quality Act ("CEQA") and the City of Novato Environmental Review Guidelines, the City analyzed the requested amendment to the Zoning Ordinance, General Plan land use map amendment, creation of an access and utility easement that , and the sale and disposition of surplus public land to a private citizen relating to the Project Site (the "Project"), to determine if these actions would result in significant physical impacts to the environment. By the adoption of a Resolution of even date herewith, a Categorical Exemption was adopted by the City Council of the City of Novato, determining that the Project and all of the discretionary actions associated therewith a categorically exempt from the requirements of CEQA, pursuant to California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines")Section 15301, Existing Facilities; Section 15312, Surplus Government Property Sales; and, Section 15331, Historical Resource Restoration/Rehabilitation; and

WHEREAS, the City of Novato received an application (P2012-089) proposing to amend the Novato General Plan Land Use Map (Land Use Map LU 1) to change the Project Site's land use classification from Mixed Use (MU) to Low Density Residential (R1) to accommodate the Project. The City Council, by separate resolution adopted prior hereto, approved amendment of the Novato General Plan Land Use Map to assign the R1 land use designation to the Project Site; and

WHEREAS, the Novato Planning Commission conducted a public hearing on September 16, 2013 to consider and receive public testimony on the proposed Project, including the amendment to the Zoning Ordinance, and the other development entitlements required for the

Project. At this hearing, the Planning Commission adopted a resolution recommending the City Council conditionally approve the proposed amendment to the Zoning Ordinance; and

WHEREAS, Notices describing the City Council's public hearing on the Project, including the proposed Categorical Exemption, the requested amendment to the General Plan Land Use Map, the proposed amendment to the Zoning Ordinance, the proposed creation of an access and utility easement that benefits 825 DeLong Avenue, and the sale and disposition of surplus public property to a private citizen, were sent to all affected property owners within 600-feet of the boundaries of the Project Site, 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 September 26, 2013; and

WHEREAS, the Record of Proceedings ("Record") upon which the City Council bases its decision on the proposed amendment to the Zoning Ordinance includes, but is not limited to: (1) the Categorical Exemption, (2) the staff reports, City files and records and other documents, prepared for and/or submitted to the Design Review Commission, Planning Commission, and City Council relating to the Categorical Exemption, the proposed amendment to the Zoning Ordinance, the other development entitlements (general plan amendment, creation of an access and utility easement, and the sale and disposition of surplus public property to a private citizen) required for the Project, and/or the Project itself (3) the evidence, facts, findings and other determinations set forth in this resolution, (4) the City of Novato 1996 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 proposed amendments to the zoning ordinance, the other development entitlements required for the Project, and/or the Project itself, (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 Project itself, (7) all other matters of common knowledge to the City Council 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; and

WHEREAS, the City Council makes the following findings as required by Section 19.56.070.C.1 of the Novato Municipal Code with the respect to the proposed amendment to the Zoning Ordinance as described herein:

- 1a. The proposed amendment is consistent with the General Plan;

Facts in Support: A proposal to rezone the property from Mixed Use (MU) to Low Density Residential (R1-7.5) is considered an amendment to Novato's Official Zoning Map. By previous resolution, the City Council amended the General Plan Land Use Map for the subject property from Mixed Use (MU) to Low Density Residential (R1). State law requires that any amendment to Zoning must be consistent with the General Plan. Therefore, to be in compliance with state law, an application to amend the Zoning Map from Mixed Use (MU) to Low Density Residential (R1-7.5) as a compatible Zoning designation is recommended to the City Council.

The project contemplates amending the Novato Zoning Ordinance to change the zoning designation applicable to the site of the Silva-Kuser House from Mixed Use (MU) to R1-7.5, Low Density Residential (R1). The Zoning Ordinance does not include any text specifically

addressed to the site of the Silva-Kuser House remaining as a Mixed Use (MU) designated property. Therefore, assigning the R1-7.5 zoning designation to the Project Site is considered to be consistent with the text of the Novato General Plan. The property to the south of the Project Site is assigned the R1-7.5 Low Density Residential (R1) zoning, so there is local context for the assignment of a residential zoning use designation in this area of Novato.

- 1b. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City:

Facts in Support: The Silva Kuser House would be the only single-family residence permitted at the Project Site under the R1-7.5 zoning designation. A lone, single-family residential use at the Project Site would not generate significant traffic or noise, or result in any other adverse operating conditions that would be detrimental to the public interest, health, safety, convenience, or welfare of the City, its citizens, or other nearby uses. The proposed rehabilitation, expansion, and occupancy of the Silva-Kuser House as single-family residence would improve the public interest, health, safety, and welfare of the City by returning an uninhabited and vacant building to productive use and enhancing the appearance of the structure and its surroundings.

- 1c. The proposed project has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA), and the *Novato Environmental Review Guidelines*:

Facts in Support: The proposed project has been reviewed against the requirements of the California Environmental Quality Act (CEQA) and the City of Novato Environmental Review Guidelines. Based on this review, the project may be found categorically exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301, Existing Facilities; Section 15312, Surplus Government Property Sales; and, Section 15331, Historical Resource Restoration/Rehabilitation.

CEQA Guidelines Section 15301 exempts the construction of new additions to existing buildings up to a maximum 10,000 square-feet of additional floor area, provided all public utilities are available and the area in which the project is located is not environmentally sensitive. The proposed conversion and addition to the Silva-Kuser House qualifies for the categorical exemption since: a) the proposed addition is less than 10,000 square-feet in area; b) the Project Site is already connected to all necessary public utilities; and c) the Project Site is located in an urbanized area that is not environmentally sensitive.

CEQA Guidelines Section 15312 exempts the sale of surplus government property from CEQA, except where such property is located in an area of state wide, regional, or area-wide concern as identified in Section 15206(b)(4) of the CEQA Guidelines. The Project Site is not located in an area listed in Section 15206(b)(4). Accordingly, the proposed sale of the Silva-Kuser House, which has been declared surplus by the City, qualifies for a Section 15312 categorical exemption.

Section 15331, Historical Resource Restoration/Rehabilitation: Section 15331 exempts projects from CEQA involving the repair and rehabilitation of historic structures where such work is

conducted in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings. As described earlier, the proposed rehabilitation and expansion of the Silva-Kuser House will be conducted in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Guidelines utilizing the Guidelines for Rehabilitation. Compliance with the Guidelines for Rehabilitation will be required as condition sale of the Silva-Kuser House.

2. The site is physically suitable (including absence of physical constraints, access, and compatibility with adjoining land uses, and provision of utilities) for the requested zoning designations and anticipated land uses/developments.

Facts in Support: The Project Site is 10,320 square feet (approximately 0.24 acres) in area and has an average slope of 23-percent, with steeper slopes to the rear of the Silva-Kuser House. The Project Site has sufficient unconstrained land area to support use of the Silva-Kuser House as a single-family residence as would be permitted under the R1-7.5 zoning designation. Local utilities to the residence already exist.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NOVATO DOES ORDAIN AS FOLLOWS:

SECTION 1: The City Council hereby amends the zoning map for the City of Novato to rezone the property located at 825 DeLong Avenue, APN 153-064-21, from Mixed Use (MU) to R-1 7.5 (Low Density Residential District), as shown on Exhibit A, attached hereto, subject to the conditions of approval attached hereto as Exhibit B.

SECTION 2: Severability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

SECTION 3: Publication and Effective Date

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in the *Novato Advance*, a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

publishing the title or appropriate summary in the *Novato Advance* at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance; and

This ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

* * * * *

THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the 8th day of October, 2013, and was passed and adopted at a regular meeting of the Novato City Council on the 29th day of October, 2013.

AYES: Councilmembers Athas, Kellner, Lucan, MacLeamy, Eklund

NOES: Councilmembers None

ABSTAIN: Councilmembers None

ABSENT: Councilmembers None

Mayor of the City of Novato

Attest:

City Clerk of the City of Novato

Approved as to form:

City Attorney of the City of Novato

Ref: P2012-090

Exhibit A: Zoning Map

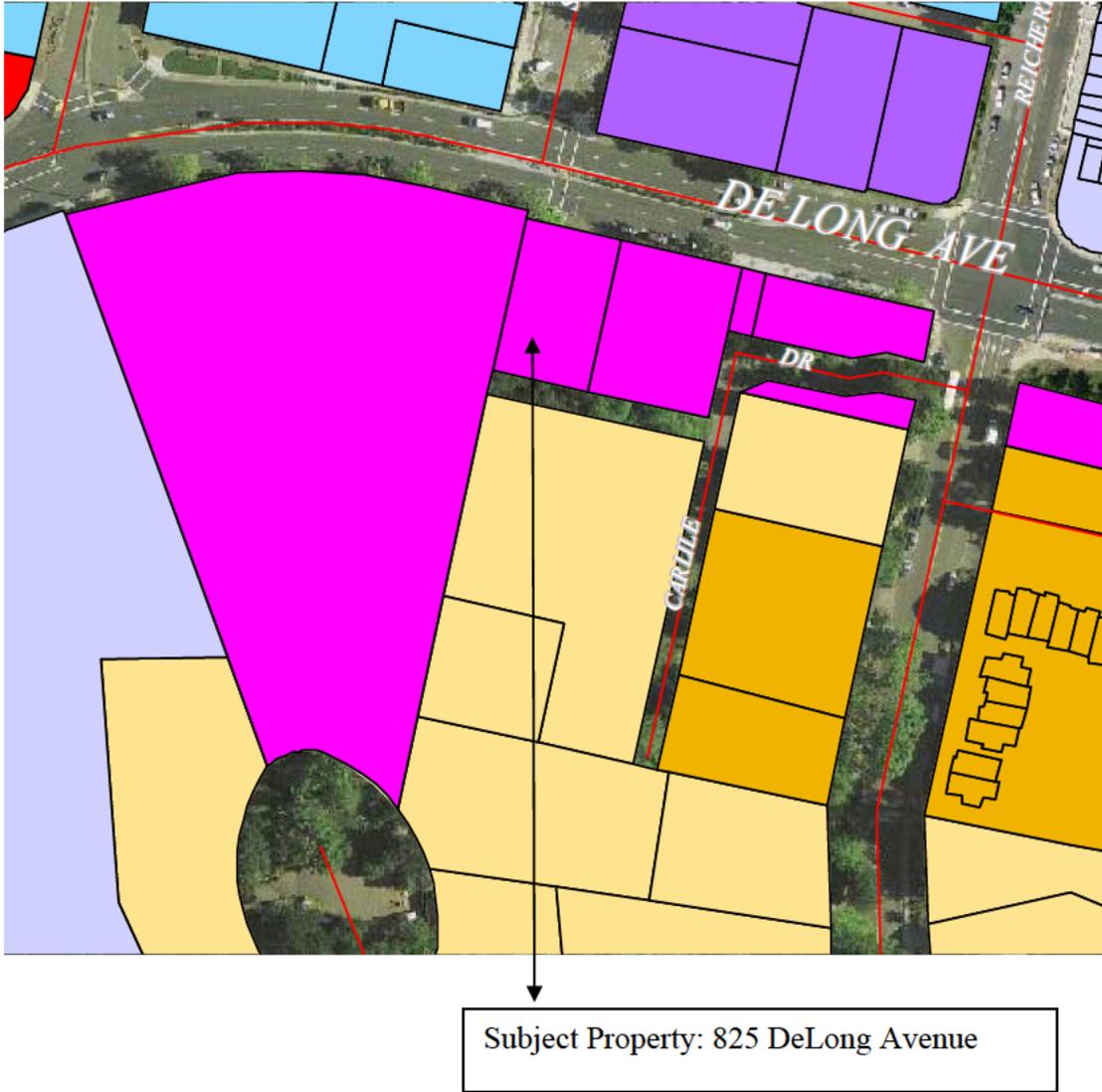


Exhibit B

1. Indemnity and Time Limitations

- a. 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 City Council'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.
- b. 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.
- 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 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.
- d. 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.
- 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.