

MEMORANDUM

TO: Susie Murray, Senior Planner, City of Santa Rosa
FROM: Steve Ring and David Ford, Managing Principals
DATE: September 14, 2018
RE: 2028 Piner Road, Santa Rosa, CA APN 036-011-053

We are the applicants for a project on a 2.02 acre parcel located at 2028 Piner Road (the "Property"), currently a vacant parcel of land near the intersection of Marlowe Road. This Property is designated in the General Plan as Retail & Business Services/Medium Density Residential/Community Shopping Center and is zoned CG (Commercial General). Fulcrum is currently under contract to purchase this property. Fulcrum has combined with Chronograph Properties, a prominent developer of senior assisted living facilities, to propose and seek entitlements for a senior residential care facility on the site.

Fulcrum has filed an application for entitlements to construct a 92 unit (98 beds) senior residential care facility on the Property made up of 66 assisted living and 26 memory care units (the "Project"). This Project will provide badly needed senior living facilities within the City. It will also offer an alternative to seniors that have been displaced by the 2017 fires and are unable and do not wish to restore or rebuild their homes.

1. Purpose and Requirements of Categorical Exemption: The purpose of this memo is to suggest to you that in determining the appropriate CEQA analysis for the Project, the City could and should determine that the Project satisfies all of the requirements of CEQA Guidelines § 15332 and that the Project could be determined to be categorically exempt from CEQA pursuant to Categorical Exemption No. 32, the Infill Exemption. The use of this Categorical Exemption will be in accordance with the intent of CEQA and will still allow a full and complete analysis of the environmental issues of concern. The Guidelines section reads as follows:

"Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

(a) 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.

(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.

(c) The project site has no value as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.”

2. The Project Satisfies All Of The Requirements Of CEQA Guidelines § 15332 And Should Be Deemed Exempt: In analyzing the five requirements set forth in Section 15332 we feel that the Project satisfies all of the requirements and that substantial evidence can be put into the record indicating that is the case. The various requirements are satisfied as follows:

(a) The Project is Consistent With The General Plan Designation And All Applicable General Plan Policies And With Applicable Zoning Designations And Regulations: The Property is located in the land use district designated in the General Plan as Retail & Business Services/Medium Density Residential/Community Shopping Center. The Housing Element of the General Plan identifies the parcel on page 4-135 in Table 4-15 as Medium Density Residential as one possible land use in addition to commercial uses. The proposed project is a community care facility of seven or more clients and will be occupied by the elderly and persons with disabilities. There are a number of other goals, policies and actions in the General Plan that are fully consistent with the proposed Project and we will prepare a background to be used in preparing findings that would allow the adoption of the exemption.

The Housing Element 4-1 of the General Plan recognizes the overall demographic and housing characteristics of Santa Rosa. The overall vision is “a diversity of housing options is available to Santa Rosans by 2035”. Seniors, disabled persons, and special housing needs are recognized, specifically, as residents that should be supported by the City.

The General Plan cites the senior population over 85 is ranked sixth in the nation of large cities or 2.5% of the population, Furthermore, the senior population over 75, our primary residents, per Table 9-1 of the General Plan, is 8.2% of the residents of Santa Rosa.

Per page 4-15 of the General Plan, the City recognizes elderly persons as a Special Needs Group and to Furthermore, the City recognizes “[P]ersons with disabilities may have difficulty caring for themselves, going outside the home, or working.” Per Table 4-16, approximately 5 percent of the Santa Rosa population had an ambulatory difficulty, 4 percent had cognitive difficulty and 4 percent had an independent living difficulty. 16,432 persons over age 65 are recognized with persons with disabilities, approximately 8.5% of the Santa Rosa population.

Table 4-16: Persons with Disabilities by Age Group, 2012

<i>Type of Difficulty</i>	<i>Under 18 Years of Age</i>	<i>Age 18 to 64</i>	<i>Age 65 and Older</i>	<i>Total</i>	<i>Percentage of Total Population*</i>
Hearing	342	2,060	3,253	5,655	3%
Vision	444	1,844	1,217	3,505	2%
Cognitive	717	4,591	2,056	7,364	4%
Ambulatory	135	4,421	4,423	8,979	5%
Self-care	165	1,757	1,988	3,910	2%
Independent living	n/a	3,512	3,495	7,007	4%

Source: 2012 American Community Survey (5-year estimate)

** The 2012 ACS estimates the total population at 168,850.*

The General Plan further recognizes the goal of providing housing for persons with disabilities on page 4-42 and 43 of the General Plan. “[I]n Santa Rosa, community care facilities are allowed in all residential and commercial land use designations and zoning districts.” Furthermore, per page 4-43, the City adopted a Reasonable Accommodation Ordinance in 2002, providing persons with disabilities a procedure to seek equal access to housing under the federal Fair Housing Act and the California Fair Employment and Housing Act in the application of zoning laws and other land use regulations.

This Project will provide a needed element in this housing supply. Goals H-D-1 through H-D-4 addresses the need to continue providing housing for households with special needs, including the elderly. Furthermore, goal H-D-13 supports incentives to development of housing for the elderly, particularly for those in need of assisted and skilled nursing. Incentives may include density bonuses, reduced parking requirements or deferred development fees.

Furthermore, the Project recognizes Youth and Family Element as outlined in the General Plan. Per page 9-4, the city recognizes senior citizens as “valuable economic, social and political contributors to our society.” Section 9-5 further realizes the importance to their needs which arise due to aging. The Project will provide an alternative living arrangement for those that suffer disabilities due to aging including signs of dementia. The Project will provide a safe environment and provide programs and services for the “frail” elderly.

The zoning for the Property is CG, Commercial General. Santa Rosa Municipal Code Section 20-23.030 provides the use, community care facility – 7 or more clients, as allowable in the CG Zone with a Minor Use Permit, per Table 2-6. Thus, with the issuance

of a Minor Use Permit, the Project is fully consistent with both the General Plan provisions and the Zoning Regulations.

(b) A Proposed Development is Within City Limits On A Project Site of No More Than Five (5) Acres, Substantially Surrounded by Urban Uses: The Project constitutes 2.02 acres and is a true infill site, surrounded primarily by residential and retail uses. The Project will fit into the already established street pattern and urban setting and will provide a badly needed source of housing for senior citizens.

(c) The Project Has No Value As Habitat For Endangered Species: The Property is fully urbanized and has no value for endangered species. The applicants have submitted a previously prepared biologic study by Laurence Stromberg Ph.D. a wetlands consultant to evidence this. This study was done for the adjacent Bay Village site located on the adjacent southern boundary of the Property. The Bay Village had similar characteristics to the Property and was also vacant. The applicants have submitted a peer review analysis by Jane Valerius, another wetlands consultant, and Trish Tatarian of Wildlife Research Associates, a wildlife specialist consultant. Both reports support the conclusions of Laurence Stromberg Ph.D. and how it relates to the minor wetland located on the Property. The submitted design avoids building upon the minor wetland area on the southern boundary and a "buffer" zone has been created that will be fenced and marked as a sensitive area. Furthermore, the wetland has been identified as "degraded with low habitat values" and "isolated" from other wetlands. The Property is considered outside the Core Management Areas and it is unlikely that a California tiger salamander ("CTS") can make a habitat in the wetlands areas due to the impenetrable barriers of migration making it "impossible for the CTS to move to the adjacent Bay Village site." The nearest breeding grounds for the CTS are identified approximately 1.37 miles away. In conclusion, Laurence Stromberg Ph.D. and our consultants have concluded that the isolated wetlands have degraded features and the applicants have taken an avoidance approach to the wetlands. The buffer avoids building upon or near the wetlands thus no mitigation needs to be done. Furthermore, the water source has been located as migrating from the southwest. The Property will be built north of the wetland and will not discontinue or alter the hydrology source. Our peer review study indicates that no endangered species exists on the Property nor have the potential of breeding on the degraded wetland.

(d) Approval of The Project Will Not Result In Any Significant Effects Relating To Traffic: A Traffic Study was prepared by Crane Transportation that indicates the Project will produce a no significant effects based on the projected daily and peak trip traffic. Daily trips are projected at 256 trips per day and morning peak trips are 19 in and out and evening is 26 in and out. Due to the use, the majority of residents do not own vehicles and, on average a Project of this size and nature may have less than 5 residents owning a vehicle. Furthermore, no more than 18 staff members are on site during the peak mid-morning hours and visitors are, primarily after 6:00 p.m. on weekdays and during the weekends. Visitors are, generally, no more than 3-4 at any given time.

Table 1
TRIP GENERATION

USE	SIZE OR # UNITS	DAILY 2-WAY TRIPS*		AM PEAK HOUR VOLUMES *				PM PEAK HOUR VOLUMES *			
				IN		OUT		IN		OUT	
		RATE	VOL	RATE	VOL	RATE	VOL	RATE	VOL	RATE	VOL
Assisted Living Facility	98 beds	2.60	256	.12	12	.07	7	.10	10	.16	16

*Trips/bed^{SEP}

Trip Rate Source: *Trip Generation*, 10th Edition, by the Institute of Transportation Engineers 2017
Compiled by: Crane Transportation Group

(e) Approval of the The Project Will Not Result in Any Significant Effects Relating to Noise: The Project will not produce any significant noise to the surrounding neighborhood. All HVAC and noise emitting equipment is designed to meet the Title 24 and Part 11 CALGreen criteria that is required of the project. The HVAC and cooking fans will be installed on the roof that will be screened by the roof design. Furthermore, an emergency generator will be installed and screened and operated only upon an emergency or a monthly testing period. It is considered a Standby Emergency Generator. Furthermore, a memorandum is being produced by Noise Consultant indicating that the Project design will incorporate the necessary window and exterior siding system to reduce the noise levels for residents to the acceptable dB level allowed by Title 24 and Part 11 CALGreen code standards.

(f) Approval of the The Project Will Not Result in Any Significant Effects Relating to Air Quality: The Project will not produce any significant effects to the air quality of the surrounding neighborhood. An air quality memorandum is attached to indicates that indicates the dwelling units is considered below the threshold of significance for operational daily use and the construction activity will be mitigated as outlined by Santa Rosa construction practices and Bay Area Air Quality Management requirements.

(g) Approval of the The Project Will Not Result in Any Significant Effects Relating to Water Quality: Attached is a memorandum from Phillippi Engineering indicating that the Project will not cause significant effects to the Water Quality. The Project does not produce any pollutants that will be drained into the existing water table other than stormwater runoff. The stormwater runoff is being designed to the required standards of the City of Santa Rosa and Regional Water Quality Board. All runoff is being filtered and dispersed into existing stormwater systems or in a treated fashion to not cause a significant effect to the Water Quality.

(h) The Site Can Be Adequately Served By All Required Utilities And Public Services: The Property location evidences the fact that it can be served as an infill project by all required utilities; but, in addition, the applicant will provide "will serve" letters from all of the appropriate utilities.

3. Exemptions To Use of Categorical Exemptions: The use of any CEQA categorical exemption is limited by CEQA Guidelines § 15300.2 that states six (6) instances and conditions in which the Categorical Exemption is not appropriate. Preliminary consultant studies and analysis have indicated that none of these exceptional situations are applicable to the Project and the Property, but additional environmental studies will be done to document that and provide substantial evidence that these exceptional situations do not preclude the use of the exemption. The exceptional situations are as follows:

(a) Subsection (a) of the Guidelines section applies only to other classes of Categorical Exemptions;

(b) Subsection (b), likewise, applies only to other classes of Categorical Exemptions and is not applicable to the Project;

(c) A Categorical Exemption Is Not Available If There Are (i) Unusual Circumstances About The Site Or The Project; (ii) That Will Cause A Significant Environmental Effect: There are no unusual circumstances applicable to this site which is urbanized and surrounded by primarily residential and retail development. The applicant is preparing consultant reports looking at any possible argument that there are unusual circumstances adhering in this site and determining that there are not.

(d) For Projects Affecting Scenic Highways, An Exemption Is Not Available If The Project Damage Scenic Resources Within The Scenic Highway: The construction of the Project will not "damage scenic resources within the Scenic Highway".

(e) Categorical Exemptions Are Not Available For A Project On A Designated Hazardous Waste Site: The Property site is not so designated and the applicants have a separate Phase I Environmental Reports that indicate there is no evidence of hazardous or toxic materials on the site.

(f) A Categorical Exemption Shall Not Be Used For A Project Which May Cause A Change In The Significance of a Historic Resource: No historic resources are involved or affected by the Project. The property is vacant.

Conclusion: This Project is a true infill project and one which will provide minimal traffic impacts. The intent of CEQA is that projects of this sort be exempt if the appropriate findings can be made. We propose that a categorical exemption document be prepared that would include all of the necessary and appropriate consultant studies and would provide the substantial evidence necessary to make the findings to approve the Exemption. Additionally, if the Project approval is challenged in court, the use of the Categorical Exemption is preferable to the use of a mitigated negative declaration. Approval of the Project using an MND would be problematic in that the standard for review by a reviewing court on a Mitigated Negative Declaration is the fair argument standard.

To challenge the approval of the requested exemption, the claimant would have to satisfy the requirements of CEQA Guidelines § 15300.2(c) which says that a categorical exemption shall not be used for an activity when there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. In

addition to showing that there are unusual circumstances, the claimant would also have to show that those unusual circumstances create a significant environmental impact. The courts have held that as to the first question, a reviewing court must use the substantial evidence test not the fair argument test. Thus, if there is substantial evidence in the record upon which the City could have based its decision and finding that there were no unusual circumstances and that the Class 32 Categorical Exemption was appropriate for this Project, then the court will uphold the City's determination. Obviously, that means that with the inclusion of adequate substantial evidence into the record and the preparation of extensive findings, this determination can likely be upheld. Only if there is no such substantial evidence in the record would the court get to the second question, whether any unusual circumstances caused negative environmental impacts, and that question would be determined based upon the fair argument standard.

Thus, it seems clear that the Legislature intended this type of project to be exempt from CEQA. That doesn't mean the Project applicant will not assist the City in preparing findings and environmental evidence that will answer all of the appropriate environmental questions about the Property and allow the Project to go forward more expeditiously and in a more defensible manner.

Finally, the applicant has conducted a Neighborhood Meeting on August 27, 2018. The results of the meeting are published and was attended by two members of the public, including an adjacent neighbor. The attendees were supportive of the project and a separate letter of support, by a neighbor, was sent to the City prior to the meeting. To date, no opponents of the project have been identified.