

ATTACHMENT A

RESOLUTION NO. 2022-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS MAKING FINDINGS, APPROVING A SUBDIVISION MODIFICATION APPLICATION FOR A 196-UNIT MULTIPLE-FAMILY DEVELOPMENT AT 5150 EL CAMINO REAL

WHEREAS, the City of Los Altos received a development application from Michael Ducote of Prometheus Real Estate Group, Inc. (Applicant), for a modification to a 196-unit multiple-family residential development at 5150 El Camino Real that includes a modification to a Subdivision MOD22-0003 application, referred to herein as the “Project”; and

WHEREAS, said Project is located in the CT District, which allows multiple-family housing as a conditional use at a maximum density of 38 dwelling units per net acre of land; and

WHEREAS, said Project has a net site area of 3.80 acres (165,345 square feet), which will allow for a base residential density of 145 dwelling units; and

WHEREAS, the Applicant is offering 29 low-income affordable housing units for sale as part of the Project; and

WHEREAS, the Applicant’s proposed unit mix would consist of 20 percent of its base density as affordable, with 20 percent of the units affordable at the low-income level, thereby entitling the project to qualify for a density bonus, two incentives and additional concessions pursuant to Los Altos Municipal Code Section 14.28.046 and Government Code Section 65915, *et seq.*; and

WHEREAS, the City Council on December 10, 2019 by Resolution 2019-43 approved two incentives under Government Code Section 65915(e) and Los Altos Municipal Code Section 14.28.046 to allow: a) the two condominium buildings along El Camino Real to have a primary height of 56 feet, where the Code allows for 45 feet; and b) an on-site parking stall width of 8.5 feet for the parking spaces in the underground garage, where the Code requires an on-site parking stall width of nine feet on December 10, 2019; and

WHEREAS, the Applicant is eligible for and has requested a 35 percent density bonus to allow development of the Project pursuant to Government Code 65915 and Los Altos Municipal Code Section 14.28.046 and Table A in the Appendix to the Affordable Housing Ordinance; and

WHEREAS, the City Council approved on December 10, 2019 by Resolution 2019-43, a parking requirement alteration under Government Code Section 65915(e) and Los Altos Municipal Code Section 14.28.046 to allow for a reduction in the parking requirement, inclusive of handicapped and guest parking, to allow for a reduction in the parking requirement to: 1) zero to one bedroom units, one onsite parking space, 2) two to three bedroom units, two onsite parking spaces, and for four and more bedroom units, two and one-half parking space on December 10, 2019; and

WHEREAS, the Applicant is eligible for and has requested a waiver from the 75-foot site frontage requirement under Government Code Section 65915(e) and Los Altos Municipal Code Section 14.28.046 to not require a minimum site frontage where Section 14.50.070 requires a minimum 75-foot site frontage for lot No. 2; and

WHEREAS, the Project qualifies as a project under the California Environmental Quality Act (CEQA), Public Resource Code §§21000-21189.3 but no further environmental review is necessary; and

WHEREAS, State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations) provides that when an EIR has been certified or negative declaration adopted for a project, no subsequent EIR or negative declaration shall be required for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are new significant environmental effects due to a change in the project or circumstances, or there is new information of substantial importance as identified in CEQA Guidelines Section 15162(a)(3); and

WHEREAS, the subject property was evaluated in 2019 with the approval of the 196-unit multiple-family development at 5150 El Camino Real. A Mitigated Negative Declaration (MND) was prepared for the project; and

WHEREAS, an MND was prepared and certified by the City Council as part of the 5150 El Camino Real Residential Development MND (SHC# 2019079050) on December 10, 2019; and

WHEREAS, based on staff's review of the Project, no special circumstances exist that would create a reasonable possibility that the Project will have a significant effect on the environment beyond what was previously analyzed and disclosed; and

WHEREAS, said Project has been processed in accordance with the applicable provisions of the California Government Code and the Los Altos Municipal Code; and

WHEREAS, on June 16, 2022, the Planning Commission conducted a duly noticed public hearing at which members of the public were afforded an opportunity to comment upon the Project, and at the conclusion of the hearing, the Planning Commission recommended that the City Council approve the Project; and

WHEREAS, on _____, the City Council held a duly noticed public meeting as prescribed by law and considered public testimony and evidence and recommendations presented by staff related to the Project; and

WHEREAS, all the requirements of the Public Resources Code, the State CEQA Guidelines, and the regulations and policies of the City of Los Altos have been satisfied or complied with by the City in connection with the Project; and

WHEREAS, the findings and conclusions made by the City Council in this Resolution are based upon the oral and written evidence presented as well as the entirety of the administrative record for the proposed Project, which is incorporated herein by this reference. The findings are not based solely on the information provided in this Resolution; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos hereby approves the Project subject to the Findings (Exhibit A), Conditions of Approval (Exhibit B), attached hereto and incorporated by this reference.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 16th day of June 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Anita Enander, MAYOR

Attest:

Angel Rodriguez, CITY CLERK

EXHIBIT A

FINDINGS

1. FINDING: Finding that no further environmental review is necessary under CEQA pursuant to State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations).

CEQA requires analysis of agency approvals of discretionary “Projects.” A “Project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (State CEQA Guidelines Section 15378).

The proposed Project is a project under CEQA. State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations) provides that when a mitigated negative declaration (MND) adopted for a project, no subsequent EIR or MND shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are new significant environmental effects due to a change in the project or circumstances, or there is new information of substantial importance as identified in State CEQA Guidelines Section 15162(a)(3). The project was evaluated in 2019 with the approval of the 196-unit multiple-family development. A Mitigated Negative Declaration (MND) were prepared and certified for the project titled the 5150 El Camino Real Residential Development MND (SHC# 2019079050), which was adopted in December 2019.

The proposed Project requests a modification to the approved vesting tentative map to subdivide the property from one lot to two lots. The tentative map does not involve any physical changes in the environment and hence does not have the potential for causing a significant effect on the environment. No potential new impacts related to the Project have been identified that would necessitate further environmental review beyond the impacts and issues already disclosed and analyzed in the 5150 El Camino Real Residential Development MND. No other special circumstances exist that would create a reasonable possibility that the Project will have a significant adverse effect on the environment. Therefore, no further environmental review is required.

2. SUBDIVISION FINDINGS. With regard to Subdivision MOD22-0003, the City Council finds, in accordance with Section 66474 of the Subdivision Map Act of the State of California, as follows:
 - a. The proposed subdivision is not consistent with the General Plan;

This Finding cannot be made. The proposed subdivision is consistent with the Los Altos General Plan, including the Land Use Element, which designates the parcel as Thoroughfare Commercial and allows for higher density residential development. Specific applicable policies of the General Plan for creating one parcel to be further divided into 196 condominium units include Land Use Element Policies 2.2, 4.3 and 4.4, Housing Element Policy 4.3, and the Infrastructure and Waste Disposal Element Policies 1.3, 2.2 and 3.1. The subdivision is also consistent with the El Camino Special Planning

- b. The Project site is not physically suitable for this type and density of development in that the project meets all applicable Zoning requirements except where a density bonus, and development incentives have been granted;

This Finding cannot be made. The proposed subdivision is consistent with the Los Altos General Plan, including the Land Use Element, which designates the parcel as Commercial Thoroughfare and allows for higher density residential development. Specific applicable policies of the General Plan for creating one parcel to be further divided in 196 residential condominium units include Land Use Element Policies 2.2, 4.3 and 4.4, Housing Element Policy 4.3, and the Infrastructure and Waste Disposal Element Policies 1.3, 2.2 and 3.1. The subdivision is also consistent with the El Camino Special Planning Area within the Land Use Element. The subdivision is not within an area adopted as specific plan area.

- c. The design of the subdivision and the proposed improvements are likely to cause substantial environmental damage, or substantially injure fish or wildlife; and no evidence of such has been presented;

This Finding cannot be made. The design of the subdivision and the proposed improvements will not cause substantial environmental damage, or substantially injure fish or wildlife because the site is located within a developed urban context and is not in or adjacent to any sensitive habitat areas;

- d. The design of the subdivision or type of improvements is likely to cause serious public health problems.; and

This Finding cannot be made. The design of the subdivision will not cause serious public health problems because the site is located within an urban context and has access to urban services including sewer and water.

- e. The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of the property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

This Finding cannot be made. The design of the subdivision will not conflict with access easements because there are no known existing access easements encumbering this property.

- 3. AFFORDABLE HOUSING AND DENSITY BONUS FINDINGS. With regard to the offered below market rate units and requested density bonus, and incentives and parking

requirement alteration, the City Council finds, in accordance with Los Altos Municipal Code Section 14.28.046, as follows:

- a. The Applicant is offering 29 affordable units for rent at the low income, which is 20 percent of the Project's base density, and qualifies the Project for a 35 percent density bonus, two incentives, and a parking requirement alteration, as well as development standard waivers;
- b. Per Table DB 3 in Section 14.28.040(C)(1)(b), a project that offers 20 percent of its total units (base density) as low income restricted affordable units shall be granted a density bonus of 35 percent, and per Table DB4 in Section 14.28.040(C)(1)(b), a project that offers 17 percent or more of its total units (base density) as low income restricted affordable units shall be granted two (2) incentives. Since the Project is providing 20 percent of its total units as affordable at the low income level, the City shall grant a density bonus of at least 35 percent and two (2) incentives;
- c. Per Government Code Section 65915(e) and Section 14.28.046, a project can request a waiver or reduction of development standards that have the effect of physically precluding the construction of a development in addition to the density bonus and incentives permitted by the Code. Consistent with these requirements, the applicant is requesting a complete waiver from the requirement for a 75-foot street frontage for lot No. 2.

With regard to the waiver, it can be supported by the fact that implementation of this Zoning Code standard physically precludes the construction of the development and the facilities. The waiver request appears appropriate and reasonable for a project of this size and scope. To provide appropriate vehicular and emergency vehicle access to the site, appropriate and reasonable access and entry spaces to the ground level townhouse, 26-foot wide lanes with emergency vehicle access (EVAE) and private access and utility easement (PAUE) easements, and four- to seven-foot wide pedestrian assessments along the east and west sides of lot No. 1 for pedestrian access to lot No. 2. Thus, the requested waiver would not have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to very low-income and moderate-income households.

- a. The proposed project provides for a variety of housing types in a variety of income categories, including low-income units, and retaining the affordability of these units for 99 years allows the conservation of the City's affordable housing stock for the long term.
- b. The proposed project, as conditioned, provides for the long-term affordability of housing units that further the Goals, Policies, and Programs of the 2015-2023 Housing Element of the Los Altos General Plan.

EXHIBIT B

CONDITIONS

GENERAL

1. Conditions in Resolution No. 2022-043

The below conditions shall supplement and not supersede the conditions of approval in resolution No. 2022-42, unless specified otherwise in the below conditions.

2. Approved Plans

The condition shall supersede Condition No. 1 in Resolution No. 2022-043, the project approval is based upon the plans and documentation received on May 20, 2022, except as modified by these conditions.

3. Affordable Housing

The condition shall supersede Condition No. 2 in Resolution No. 2022-043, and the project shall provide the City 29 below market rate units as follows:

- a. Fourteen (14) one-bedroom condominium units at the low-income level; and
- b. Fifteen (15) two-bedroom condominium units at the low-income level;

4. Phased Parking

The condition shall supersede Condition No. 5 in Resolution No. 2022-043. Once construction is initiated by the developer, there shall be continuous progress without phasing of the development. The project shall provide the resident and guest parking spaces required for the rental and townhouse units

5. Phase Development

The condition shall supersede Condition No. 5 in Resolution No. 2022-043. Once construction is initiated by the developer, there shall be continuous progress without phasing of the development.

6. Indemnity and Hold Harmless

The applicant/owner agrees to indemnify, defend, protect, and hold the City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceedings brought in any State or Federal Court, challenging any of the City's action with respect to the applicant's project.

PRIOR TO SUBMITTAL OF BUILDING PERMIT

7. Affordable Units

Condition No. 24 in Resolution No. 2022-043 shall supersede Condition No. 24 in Resolution 2022-043. The Project's below market rate units shall be constructed concurrently with the market rate units.

8. Parkland Dedication

The condition shall supersede Condition No. 26 in Resolution No. 2022-043. The applicant and City shall enter into good faith negotiations toward executing a memorandum of understanding (MOU) or Exclusive Negotiating Agreement (ENA) prior to issuance of the project's first building permit. The agreement would allow the city and applicant/developer to negotiate the terms of an agreement that will provide a public park at 745 Distel Drive, and shall:

- a. Provide for a "turn key" park and detail the process by which the park design will be developed and approved.
- b. Provide for payment to the city of the difference between the total cost of the park and the in-lieu park fee amount that would otherwise be paid.
- c. Require the payment of the estimated difference between the total cost of the park and the otherwise required in-lieu fee at the time of issuance of the first building permit for the project.
- d. Include an "opt-out" clause.

In the event that an MOU or ENA is not executed by the parties prior to issuance of the project's first building permit, the applicant shall instead pay the applicable in lieu park fee.

PRIOR TO FINAL MAP RECORDATION

9. Pedestrian Access Easement

The condition shall supersede Condition No. 33 in Resolution No. 2022-043, and the applicant shall dedicate the portion of the public sidewalk along the El Camino Real frontage that is on the project site and along the east and west side of the two-five-story buildings and along the townhouses to the City of Los Altos for use as a pedestrian access easement. Applicant shall submit documentation to the City for review and approval for the recordation of the public easement to the City of Los Altos.

10. Emergency Vehicle Access Easement

The applicant shall dedicate the roadway along the east and west side of the two-five-story buildings and along the townhouses to the City of Los Altos for use as an emergency vehicle access easement. Applicant shall submit documentation to the City for review and approval for the recordation of the public easement to the City of Los Altos.

PRIOR TO ISSUANCE OF BUILDING PERMIT

11. Final Map Recordation

The applicant shall record the final map. Plats and legal descriptions of the final map shall be submitted for review by the City Land Surveyor. Applicant shall provide a sufficient fee retainer to cover the cost of the map review by the City.

12. Affordable Housing Agreement

The condition shall supersede Condition No. 40 in Resolution No. 2022-043, and the Applicant shall execute and record an Affordable Housing Agreement, in a form approved by the City Attorney and signed by the Community Development Director, that offers 29 below market rate rental units affordable to low-income households in 99 years, as defined in Condition No.

2. The below market rate units shall be constructed concurrently with the market rate units, shall be provided at the location on the approved plans, and shall not be significantly distinguishable with regard to design, construction or materials. Upon completion of the townhouses on Lot No. 2, five townhouses shall not be sold for five years from the date of occupancy and shall be held by an entity controlled by Prometheus Real Estate Group, Inc. If 172 rental units on Lot No. 1 are not initiated within five years from completion of townhouses, the five unsold townhouse units shall be dedicated as affordable units. If the 172 rental units on Lot No. 1 are initiated within five years from the completion of the townhouses, the condition for five unsold townhouse units be dedicated as affordable will terminate.

13. Affordable Housing

The Condition No. 41 as stated in the following sentence in Resolution No 2022-41 shall be deleted. ~~Within 30 days of project approval, the applicant shall enter into a Memorandum of Understanding with a third party affordable housing developer to use best efforts to explore and effectuate financing options for the purchase and management of up to an additional 58 market rate units in the Project to be dedicated as affordable rental units.~~

14. Grading and Drainage Plan

The applicant shall submit detailed plans for on-site and off-site grading and drainage plans that include drain swales, drain inlets, rough pad elevations, building envelopes, and grading elevations for review and approval by the City Engineer.