

RESOLUTION NO. 14773

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) (SCH #2019029046) PREPARED FOR THE BIOMARIN AND WHIISTLESTOP/EDEN HOUSING PROJECT TO ALLOW THE DEVELOPMENT OF TWO 72-FOOT TALL, FOUR-STORY RESEARCH AND DEVELOPMENT BUILDINGS AND A 67-UNIT, 70-FOOT TALL, SIX-STORY SENIOR CENTER AND AFFORDABLE SENIOR HOUSING BUILDING ON A 133,099 SQ. FT. PARCEL AT 999 3rd STREET AND ADJACENT SAN RAFAEL CORPORATE CENTER. (APN's: 011-265-01, 013-012-38 and -39 and 013-021-50, -51, -52 -53, -54, -55)

WHEREAS, on October 10, 2018, BioMarin Pharmaceutical (BioMarin) submitted project applications to the City of San Rafael Community Development Department for a General Plan Amendment (GPA18-001), Planned Development (PD) Rezoning (ZC18-002), Zoning Ordinance Text Amendment (ZO18-003), Development Agreement (DA19-001), Master Use Permit (UP18-034), Environmental and Design Review Permit (ED18-087), Small Subdivision (S18-001) and Sign Program Amendment (SP18-18-006) for the development of two 72-foot tall, four-story Research and Development buildings for BioMarin and a 67-unit, 70-foot tall, six-story senior center and affordable senior housing building for Whistlestop/EDEN Housing on a 133,099 sq. ft. parcel at 999 3rd Street; and

WHEREAS, on February 28, 2019, in accord with Public Resources Code Sections 5097.94, 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2 and 21084.3 to specifically the directive of Assembly Bill 52 (AB 52) and Senate Bill 18 (SB 18), the Community Development Department staff sent an offer for tribal consultation to the representatives of the Federated Indians of the Graton Rancheria (Federated Indians). Tribal consultation is required for all projects that propose preparing a CEQA document Plan. The purpose of the tribal consultation is to consult with the local tribe representatives on potential impacts to Native American places, features and objects described in the California Public Resources Code. The prescribed 30-day period was observed for the Federated Indians to respond to the offer, but the City received no response; and

WHEREAS, on March 12, 2019, the Planning Commission (Commission) held an appropriately noticed public scoping hearing on the Notice of Preparation (NOP) for the preparation of an Environmental Impact Report (EIR) to assess the impacts of the Project. The Planning Commission directed staff to prepare an EIR for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to address the following issues, Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards, Noise, Public Services, Recreation, Greenhouse Gases, Hydrology and Water Quality, Land Use and Planning, Transportation/Traffic, Energy, Utilities, Cumulative effects and a reasonable range of alternatives; and

WHEREAS, the Draft EIR (DEIR) was prepared and circulated for a 45-day public review period beginning August 9, 2019 and ending September 23, 2019 (SCH # 2019029046). Following this review period, on September 24, 2019, the Planning Commission held a duly-noticed public hearing to consider and accept comments on the DEIR. The DEIR concluded that the Project would result in significant, unavoidable impacts associated with Land Use and Planning and Transportation. All other significant impacts identified in the DEIR were identified to be mitigated to less-than-significant levels with implementation of mitigation measures recommended in the DEIR; and

WHEREAS, based on written and oral comments received from the public on the DEIR and its own review of the DEIR, the Planning Commission directed staff to prepare a Final Environmental Impact Report (FEIR) and respond to comments received on the DEIR; and

WHEREAS, pursuant to Public Resources Code Section 21091(d)(2)(A) and CEQA Guidelines Sections 15088, 15089 and 15132, the City responded to all the environmental comments that were submitted on the DEIR during the public review period and a FEIR was completed; and

WHEREAS, on January 10, 2020, Notice of Availability for the FIER/Response to Comments, was mailed to interested persons and property owners and occupants within 500 feet of the property as well as other interested persons and organizations and responsible and trustee agencies and written responses to public agency comments were provided to agencies who commented on the DEIR. In addition, on January 11, 2020, Notice of Availability was published in the Marin Independent Journal; and

WHEREAS, the City intends that the FEIR, and all applicable mitigation measures therein, shall be used as the environmental documentation required by CEQA for subsequent discretionary actions required for this project; and

WHEREAS, on January 28, 2020 the Planning Commission held a duly noticed public hearing on the FEIR/Response to comments and considered the FEIR along with the project applications/ entitlements, accepting all public testimony and the written report of the Community Development Department staff. Following the public hearing on the FEIR and project merits, on a 5-0-2 vote (Commissioners Mercado and Schaefer absent), the Planning Commission adopted Resolution No. 20-01, recommending to the City Council certification of the FEIR; and

WHEREAS, on January 28, 2020, the Planning Commission in its consideration of the FEIR determined that there was additional clarity needed to Mitigation Measure (MM) TRANS-1, and as part of their motion to pass Resolution No. 20-02, revised MM TRANS-1 to confirm that the ongoing monitoring would continue, past the annual reviews and updated the text as follows:

TRANS-1: BioMarin, or any successive owner or lessor of the site, shall continue and expand the implementation of a Transportation Demand Management (TDM) program that focuses on reducing vehicle trips and improving traffic flow. BioMarin, or any successive owner or lessor of the site, shall generate at least 15 percent fewer vehicle trips on a daily, AM peak hour, and PM peak hour basis (i.e., 1,584 daily, 173 AM peak hour, and 162 PM peak hour trips) as compared to those projected by the project applicant. BioMarin and any successive owner or lessor of the site shall monitor, on an annual basis, all traffic generated at the site, including single-occupant vehicles, carpools, pedestrian and bicycle trips, and public transit use, to gauge success and promote appropriate measures to retain vehicle trip rates at, or below, the current trip rates. BioMarin, or any successive owner or lessor of the site, shall submit an annual TDM monitoring report to the City of San Rafael for City review. This mitigation measure shall continue in perpetuity for the project site until the 15% reduction is identified for three consecutive years. After three consecutive years demonstrating 15% reduction each year, the monitoring shall be done every three years to ensure maintenance of the 15% reduction unless a violation occurs, or a new owner/lessor of the site applies. At that time, the monitoring shall start anew to ensure successful 15% reduction for three consecutive years. This mitigation measure would reduce the impact to less than significant.

WHEREAS, on February 28, 2020, a Notice of Availability for the FEIR/Response to Comments was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR, informing them of the City Council hearing for final action. A Notice of Availability was also published in the Marin Independent Journal on Saturday, February 29, 2020 and the site was posted with public hearing signs; and

WHEREAS, on March 23, 2020, the City Council held a duly noticed public hearing to review the FEIR/Response to Comments for the 999 3rd Street BioMarin/Whistlestop/EDEN Housing Project and considered all oral and written public testimony and the written report of the Community Development Department; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based, is the Community Development Department;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby certifies the Final EIR, based upon the following findings required by CEQA Guidelines Section 15090:

FINDINGS

1. The Final Environmental Impact Report (FEIR), which consists of the Draft Environmental Impact Report dated August 9, 2019, and the Response to Comments Document dated January 10, 2020 has been prepared in accordance with CEQA, including Public Resources Code Section 21083.3, and the provisions of the City of San Rafael Environmental Assessment Procedures Manual.
2. The FEIR has been prepared and completed in compliance with the California Environmental Quality Act (CEQA) Guidelines and the City of San Rafael Environmental Assessment Procedures Manual by following the appropriate format, content, technical analysis of the potential impact areas and project alternatives identified in the initially-authorized scope of work. Further, all prescribed public review periods and duly noticed hearings were held for the project Notice of Preparation (NOP), Notice of Completion (NOC) for public review of the DEIR and Notice of Availability following publication of the FEIR.
3. The City Council exercised its independent judgment in evaluating the FEIR and has considered the comments received during the public review period on the DEIR.
4. The FEIR reflects the independent judgment and analysis of the City of San Rafael Community Development Department, Planning Commission and City Council. The City Council has reviewed and considered all information contained in the FEIR prior to taking action on the project, and finds that the FEIR:
 - a) Appropriately analyzes and presents conclusions on the impacts of the project;
 - b) Analyzes a reasonable range of alternatives to the project that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any significant effect of the project;
 - c) Identifies or recommends mitigation measures to substantially lessen, eliminate or avoid the otherwise significant adverse environmental impacts of the project, and

- d) Includes findings and recommendations supported by technical studies prepared by professionals experienced in the specific areas of study, and which are contained within the document and/or made available within the project file maintained by the City of San Rafael Community Development Department, the custodian of all project documents.
5. The information contained in the FEIR is current, correct and complete for document certification. As a result of comments submitted on the DEIR, the FEIR provided responses to comments received on the DEIR and provided clarification to those comments. No new information has been added to the DEIR and does not deprive the public of meaningful opportunity to comment upon the significant adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project's proponents have declined to implement. In particular, no new information was presented in the FEIR and it does not disclose or result in:
- a) A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented;
 - b) A substantial increase in the severity of the impacts that were disclosed and analyzed in the DEIR;
 - c) Any new feasible project alternatives or mitigation measures considerably different from others previously analyzed that would clearly lessen significant environmental impacts of the project, but which the project's proponents refuse to adopt. This includes consideration of the "No Project" alternative that has been added in the FEIR assessing the status quo; and
 - d) A finding that the DEIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.
6. The FEIR presents factual, quantitative and qualitative data and studies, which find and support the conclusion that the project will result in several potentially significant impacts that necessitate mitigation. At the time the City considers action on the project's merits, it will be necessary to make complete and detailed findings pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a). For each significant effect identified in the EIR, the City will be required to make one or more of the following findings:
- a) That changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR; that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and that such changes have been adopted by such other agency or can and should be adopted by such other agency;
 - b) That specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR; and
 - c) As the project would result in several significant, unavoidable impacts, findings of overriding consideration will be required. Such findings will require that the City weigh the benefits of the project with the environmental impacts that cannot be mitigated.
7. The City is taking an action to certify the FEIR for the project, recognizing it as an informational document for assessment of the project. The CEQA Guidelines recognize that an environmental document is prepared for public disclosure of potential project impacts and

that it is used as an informational document to guide decision-makers in considering project merits. Certification of the FEIR, as presented, would not result in a land use entitlement or right of development for the project site. The FEIR document must be reviewed to determine whether it adequately assesses the impacts of the project, and whether the circumstances presented in Public Resources Code section 21166, as amplified by its corresponding CEQA Guidelines Sections 15162 to 15163 are present with respect to the project to determine whether a Subsequent EIR, a Supplement to the EIR, or Addendum to the EIR need be prepared or if further environmental review under CEQA is not required. Certification of the FEIR prior to consideration of and taking action on project entitlements does not prejudice or bias review or actions on the proposed development project.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 23rd of March 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS: Bushey, Colin, Gamblin, McCullough & Mayor Phillips

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



LINDSAY LARA, City Clerk