

# Holland & Knight

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September 15, 2021

To: Wendy Atkins, Associate Planner  
City of Sonoma

From: Daniel R. Golub  
Holland & Knight

Re: Hummingbird Cottages  
19910 5th Street

cc: Dana Tsubota  
Trent Sanson  
Kerri Watt

We have been retained by DeNova Homes, Inc. (“DeNova”) to conduct analysis of entitlement and environmental review processing in connection with the Hummingbird Cottages at 19910 5th Street in Sonoma, California, APN 128-061-001 (“Project”). The purpose of this memorandum is twofold: (I) to address the applicability of the Housing Crisis Act of 2019, Stats. 2019, Ch. 654, § 6 (also known as “SB 330”), and (II) to document the Project’s eligibility for exemptions from the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000, *et seq.*

## **I. The Housing Crisis Act of 2019**

The Housing Crisis Act contains a number of important components, among which are (1) vesting rights for housing applicants, (2) prohibitions against growth control ordinances and (3) limits on “completeness” review. All three of these components apply to the Project.

### **A. The Project Has a Vested Right to Be Processed In Accordance with City Ordinances, Policies, Standards and Fees In Effect On April 28, 2021.**

Under the Permit Streamlining Act (“PSA”), Gov. Code § 65920, *et seq.*, and the Housing Accountability Act (“HAA”), Gov. Code § 65589.5, as amended by the HCA, an applicant is “deemed to have submitted a preliminary application” upon providing the information listed in Gov. Code § 65941.1(a). The Project qualifies as a “housing development project” for purposes

of the HAA, and for purposes of this vesting rights provision, because the Project consists of residential uses only. Gov. Code § 655589.5(h)(2), 65941.1(a).

Upon submitting this material, the application is “deemed complete” for purposes of the HAA, and has a vested right to proceed on the basis of the ordinances, policies, and standards, including fees, that were in effect on that date. Gov. Code § 65589.5(j)(2), (h)(5), (o); *see also* Department of Housing and Community Development, September 15, 2020 Housing Accountability Act Technical Assistance Advisory (“HCD TAA”), Appendix C, at pp. 23-27.<sup>1</sup>

On April 28, 2021, DeNova submitted a preliminary SB 330 application for a Medium Density Residential Development at 19910 5th Street. The April 28, 2021 submission included all materials listed in Gov. Code § 65941.1(a), and therefore DeNova is deemed to have submitted a preliminary application. The Project is subject to the vesting rights provided by SB 330 as of April 28, 2021. DeNova respectfully requests that the City confirm that the application is complete pursuant to the PSA and that the application will not be subject to any ordinances, policies, standards, including fees, that were not in effect on April 28, 2021.

In its letter to DeNova dated August 25, 2021, the City stated that DeNova’s application was “incomplete.” We understand that the City was not referring to the “completeness” of the SB 330 Preliminary Application but rather to the planning applications (which we discuss *infra*). However, write just to confirm our mutual understanding that an SB 330 preliminary application is not reviewed for “completeness.” *See* HCD TAA, at p. 26. The Project is subject to the vesting rights provided by SB 330 as of April 28, 2021 because on that date DeNova submitted all of the required information to be deemed to have submitted a preliminary application.

### **B. The Housing Crisis Act Prohibits the City From Enforcing Its Growth Management Ordinance**

Although the Project is generally subject to objective ordinances, policies, standards that were in effect on April 28, 2021, the Sonoma Growth Management Ordinance (“SGMO”), Sonoma Municipal Code, Chapter 19.94, cannot lawfully be applied to the Project.

SB 330 prohibits any “affected city” from “[i]mposing a moratorium or similar restriction or limitation on housing development,” as well as from implementing any previously enacted provision that “[l]imits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city...,” or “[a]cts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.” Gov. Code § 66300(b)(1). Sonoma is an “affected city,” as determined by HCD pursuant to statute. *See* Gov. Code § 66300(a)(1).<sup>2</sup> The Legislature has directed that these prohibitions “be broadly construed so as to maximize the development of housing within this state.” Gov. Code § 66300(f)(2).

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<sup>1</sup> Available at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf>

<sup>2</sup> *See also* <https://www.hcd.ca.gov/community-development/docs/affected-cities.pdf>

To date, this prohibition has been applied very broadly. See *The NRF Project Owner LLC v. City of Oceanside*, No. 37-2020-00025295-CU-MC-CTL (San Diego Cty. Super. Ct. May 6, 2021) (striking down referendum that reversed zoning change as an unlawful “limitation on housing development”). Here, there is no question that the SGMO falls squarely within the core of SB 330’s prohibitions.

Through the SGMO, the City directly limits annual residential development. “The Growth Management Ordinance establishes a process for annually distributing development allocations for the purpose of determining which large residential projects may apply for planning approval, while limiting residential development to an average of 65 units per year.”<sup>3</sup> On September 21, 2020, the City adopted allocations for the 2020-2021 development year, consistent with the 65 unit limit. But SB 330 prohibits the City from implementing the SGMO, since the SGMO “imits the number of land use approvals or permits necessary for the approval and construction of housing” and “[a]cts as a cap on the number of housing units that can be approved or constructed . . . annually . . .” Gov. Code § 66300(b)(1).

The SGMO may not be lawfully applied.

### **C. The Application Is Complete.**

Under the PSA, as amended by SB 330, a local agency’s authority to review the “completeness” of an application for a development permit is strictly limited to confirming whether the application has provided the material contained on the agency’s official submittal requirements checklist, as that checklist existed at the time of application submittal. Gov. Code § 65943(a); *see also* Gov. Code §§ 65940, 65941 & 65941.5. The application is deemed complete if the local government does not, within 30 days of submission, “provide the applicant with an exhaustive list of items that were not complete,” and “specify those parts of the application which are incomplete and . . . indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application.” Gov. Code § 65943. “In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.” *Ibid.*

On August 9, 2021, DeNova submitted a formal development application for the Project (“August 9th Submission”), including applications for a Tentative Parcel Map, Design Review, a Demolition Permit, and Tree Removal. The application included all items listed on the City’s submittal requirements checklist. On August 25, 2021, the City sent DeNova a letter contending that the application was incomplete.<sup>4</sup> The August 25th Letter lists four incompleteness items. On September 3, 2021, Trent Sanson of DeNova responded to document that the requested items had already been submitted to the City in the August 9th Submission, but provided additional to

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<sup>3</sup> Resolution Distributing Growth Management Allocations for the 2020-21 Development Year, at p. 5, available at <https://sonomacity.civicweb.net/document/38436>

<sup>4</sup> Letter from Wendy Atkins to Trent Sanson re Incomplete Application - Design Review, Vesting Parcel Map, and Planned Unit Development, application for a 15-unit condominium development located at 19910 Fifth Street West (APN 126-061-001), August 25, 2021.

provide additional details regarding those items (“Response Letter”), as a courtesy.<sup>5</sup> At the very least, DeNova clarified that the application was complete in the Second Submission on September 3, 2021. Accordingly, DeNova respectfully requests that the City confirm that a complete application at least as of September 3, 2021, and reminds the City that any further response “shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.” Gov. Code § 65943.

## II. CEQA Exemptions

There are multiple overlapping compliance pathways through which the City can process and approve the Project as exempt from CEQA. Based on our preliminary analysis below, the Project is eligible for at least the following CEQA exemptions:

- A. The Class 32 Categorical Exemption for Infill Development Projects, per CEQA Guidelines § 15332.
- B. The Statutory Exemption for projects consistent with a general plan, a community plan, or a zoning action for which an EIR was certified pursuant to Pub. Res. Code § 21083.3 and CEQA Guidelines § 15183.

An agency may rely on and cite several different exemptions to support a determination that CEQA review is not required for a particular activity.<sup>6</sup> An agency may also combine several exemptions to find an entire project exempt.<sup>7</sup>

Below, we provide a preliminary discussion of these exemptions and their applicability to the Project. We respectfully request the City consider processing the Project application under all of these exemptions to maximize the legal defensibility of the Project approvals and to ensure compliance with applicable environmental review requirements. We look forward to working with the City to provide appropriate documentation and analysis of the Project’s compliance with all exemption criteria, consistent with the City’s practices and procedures for documenting CEQA exemption determinations.

### A. The Class 32 Categorical Exemption for Infill Development Projects, per CEQA Guidelines § 15332.

Under this categorical exemption, a project is exempt from CEQA if: (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 five acres substantially surrounded by urban uses; (c) the project site has no value as habitat for endangered, rare or threatened species; (d) approval of

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<sup>5</sup> With respect to the project narrative for the Planned Unit Development Application, this project does not require a Planned Unit Development Application, and never submitted a Planned Unit Development Application, as documented by Mr. Sanson’s letter. *See* Letter from DeNova Homes to the City of Sonoma re Response to Comment Letter dated August 25, 2021 for Hummingbird Cottages located at 19910 Fifth Street West (APN 126-061-001) September 3, 2021.

<sup>6</sup> *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 858 & 868; see also *Surfrider Foundation v. Calif. Coastal Comm’n* (1994) 26 Cal.App.4th 151, 155-56.

<sup>7</sup> *Surfrider Foundation*, 26 Cal.App.4th at 156.

the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.<sup>8</sup> The Class 32 Exemption is also subject to the limitations of CEQA Guidelines § 15300.2.<sup>9</sup>

**i. This Project meets all of the Class 32 Infill Exemption Criteria.**

First, per criteria (a), the project is consistent with the applicable general plan and zoning designation of Medium Density Residential. The Project density of 10 du/acre (15 dwelling units on 1.51 acres) is consistent with this designation, which allows a density between 7 and 11 dwelling units per acre under both the General Plan and the Zoning Code.<sup>10</sup> Further, the Project's proposed uses, single family dwellings and duplexes, are a use permitted by-right in this land use designation.<sup>11</sup> The Project will also comply with all applicable general plan policies and all applicable zoning regulations.

Per criteria (b), the Project is on a site of 1.51 acres within the City of Sonoma, and is surrounded by urban uses because the surrounding area is developed with existing residences and is adjacent to two main commercial thoroughfares. The Project Site is approximately one-half mile away from both the Highway 12 (Broadway) and Napa Street, which are home to strip malls with grocery stores, retail, restaurants, and other commercial uses. Per criteria (c), the Project site has no value as habitat for endangered, rare, or threatened species, as demonstrated by a biological assessment for the Project Site by Moore Biological Consultants dated January 17, 2021.<sup>12</sup> The assessment demonstrated that "The likelihood of occurrence of listed, candidate, and other special-status species in the site is generally low," and "[n]o special-status plants or suitable habitat for special-status plants were observed in the site."<sup>13</sup> Further, assessment indicated that the site is already developed as a homestead with small out-buildings and trees scattered

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<sup>8</sup> CEQA Guidelines § 15332.

<sup>9</sup> CEQA Guidelines § 15300.2.

"(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource."

<sup>10</sup> City of Sonoma General Plan, Figure CDE-2, at p. 9, available at

[https://storage.googleapis.com/proudcity/sonomaca/uploads/2017/08/2020\\_General\\_Plan.pdf](https://storage.googleapis.com/proudcity/sonomaca/uploads/2017/08/2020_General_Plan.pdf); *id.* at Figure CD-CDE-3: Land Use Definitions, at p. 14, City of Sonoma Zoning Map, available at

<https://storage.googleapis.com/proudcity/sonomaca/uploads/2018/11/ZoningMap110618.pdf>; Sonoma Municipal Code § 19.10.020.A.5.; *Id.* at § 19.26.020.

<sup>11</sup> Sonoma Municipal Code § 19.10.050, Table 2-1.

<sup>12</sup> California Department of Fish and Wildlife's CNDDDB BIOS Quickview Tool, available at <https://apps.wildlife.ca.gov/bios/?tool=cnddbQuick>.

<sup>13</sup> "19910 5th Street West, Sonoma, California: Biological Assessment" Moore Consultants, January 17, 2021, at pp. 11-13.

throughout, but has been abandoned and vacant. The biological assessment calls the site “functionally an infill parcel, of which the habitat suitability for special-status wildlife species has been greatly reduced by historical farming, past residential use of the site, and surrounding development.”<sup>14</sup> Therefore, the site has no value as habitat for endangered, rare, or threatened species.

Per criteria (d), approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. As a typical residential development project, there is no reason to expect any significant effects with respect to noise or water quality, and to the extent that there are any significant traffic or air quality effects, those will be avoided or mitigated by the implementation of VMT reduction measures identified by the transportation expert reports.<sup>15</sup> Regarding water quality, the Project will comply with local regulations enacted to protect water quality, including Sonoma Municipal Code Chapter 13.32 Stormwater Management and Discharge Control. Further, stormwater will be treated on site and discharged to the City’s existing storm drain system. Per criteria (e), the Project can obtain “will-serve” letters, to demonstrate that it will be served by existing utilities.

**ii. The Conditions Listed in CEQA Guidelines § 15300.2 are Not Present.**

None of the applicable “exceptions to the exemption” apply. Per CEQA Guidelines § 15300.2, there is no risk of cumulative impacts, no unusual circumstances present that would cause a significant effect on the environment,<sup>16</sup> no scenic resources that would be disturbed by the Project, the Project is not on a hazardous waste site,<sup>17</sup> and, according to a Historic Resource Evaluation of the Project Site, there are no historical resources that could be affected by the development.<sup>18</sup>

**B. Statutory Exemption for Project Consistent with the General Plan, a Community Plan, or a Zoning Action, per Pub. Res. Code § 21083.3 and CEQA Guidelines § 15183.**

Under this statutory exemption, “if a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan to accommodate a particular density of development and an environmental impact report was certified for that zoning or planning action,” or “[i]f a development project is consistent with the general plan of a local agency and an environmental impact report was certified with respect to that general plan,” environmental review is limited to (1) “effects upon the environment which are peculiar to the parcel or to the

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<sup>14</sup> *Id.* at p. 21.

<sup>15</sup> Potential VMT Reductions from Transportation Demand Management Measures for the 19910 5th Street West Project, W-Trans, July 22, 2021.

<sup>16</sup> *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086 (no unusual circumstances where a single family home would be demolished on hillside); *See also Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809 (no unusual circumstances where a car wash and coffee shop would be built on a vacant lot), *Respect Life South San Francisco v. City of South San Francisco* (2017) 15 Cal.App.5th 449 (no unusual circumstances where an existing office building would be converted to a medical office).

<sup>17</sup> CalEnvirostor Database, Report Generated for 19910 5th Street, available at <https://www.envirostor.dtsc.ca.gov/public/map/?myaddress=19910+5th+street>

<sup>18</sup> Historic Resource Evaluation of the Property Located at 19910 5th Street West, Sonoma, Sonoma County, California, Evans & De Shazo, Inc., April 22, 2021, at p. 35.

project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report” and (2) “potentially significant offsite impacts and cumulative impacts of the project not discussed in the prior environmental impact report . . . .”<sup>19</sup>

For purposes of Pub. Res. Code. § 21083.3, a project is “consistent with the general plan” if “the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan,” and “the project complies with any density-related standards” in the general plan.<sup>20</sup> Even if the project may have an impact, if the impact is “not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards,” no further CEQA analysis is required.<sup>21</sup>

This Project qualifies for this exemption because it is consistent with the City of Sonoma General Plan, for which an EIR was promulgated. Single family dwellings are a “land use permitted by right” at the Project location, which is zoned Medium Density Residential.<sup>22</sup> As described in the application materials and above, the density of the Project is consistent with the density in applicable General Plan policies and standards. Given that it is consistent with the uses allowed in this land use designation, the Project is a typical project of the type contemplated in the General Plan, and there is no reason to expect the Project would cause any impacts – cumulative, off-site or otherwise - that are “peculiar” to the Project or the Project site. The Project cannot reasonably be expected to have any peculiar impacts that were not anticipated at the time the applicable General Plan density was adopted. The Project is also “designated in a community plan,” namely the Central West Area Plan, “to accommodate a particular density of development, and therefore qualifies for the exemption in Pub. Res. Code § 21083.3 for this additional reason. The Central West Area Plan qualifies as a “community plan” for purposes of Pub. Res. Code § 21083.3 because it is part of the city’s general plan applying to a defined geographic portion of the city.”<sup>23</sup>

A lead agency may rely on a previously certified EIR, regardless of its age, as long as substantial evidence supports the agency’s conclusion that the EIR retains informational value.<sup>24</sup> This is especially true under the text of the statutory exemption, which limits any further CEQA review to one of two types of effects: effects that are “peculiar to the parcel or to the project” or “offsite impacts and cumulative impacts . . . not discussed in the prior environmental impact report . . . .”

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<sup>19</sup> Pub. Res. Code § 21083.3(a)-(c). Very similar streamlining is provided pursuant to Pub. Res. Code § 21094.5, for which the Project likely also qualifies. In the interest of brevity, this memorandum does not document the Project’s eligibility under this statute, since it largely duplicates Pub. Res. Code § 21083.3, but we would be please to provide this analysis as well if it would be helpful.

<sup>20</sup> CEQA Guidelines § 15183(i)(2).

<sup>21</sup> *Id.* at § 15183(c).

<sup>22</sup> Sonoma Municipal Code § 19.10.050, Table 2-1.

<sup>23</sup> *See* Pub. Res. Code § 21083.3(e).

<sup>24</sup> *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (“*San Mateo Gardens*”) (2016) 1 Cal.5th 937, 944; *see also Comm. for Re-Evaluation of T-Line Loop v. San Francisco Mun. Transportation Agency* (“*T-Line*”) (2016) 6 Cal.App.5th 1237, 1251 (Court of Appeal affirming agency’s 2014 reliance on a 1998 EIR).



..”<sup>25</sup> An EIR for the City of Sonoma General Plan was certified in 2006, and meets the requirements of this exemption.<sup>26</sup>

### **III. Conclusion and Suggested Approach**

The City can process the Project’s exemptions by simply documenting that the applicable exemption criteria are satisfied. We would be pleased to assist in the preparation of this analysis, subject of course to the City’s independent review and judgment, and consistent with the City’s standard procedure for documenting CEQA compliance.

We hope that this information is helpful, and we would happy to discuss further at your convenience.

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<sup>25</sup> Pub. Res. Code § 21083.3(b)-(c).

<sup>26</sup> General Plan Information Landing Page, City of Sonoma, available at <https://www.sonomacity.org/general-plan/>.